The Role of Mediators in ASEAN Trade Disputes in Consumer Protection Law Perspective

[1*]Retno Sari Dewi, [2]Surjanti, [3]Widowati, [4]Bambang Slamet Eko S, [5]Erly Pangestuti
[1,2,3,4,5]Fakultas Hukum Universitas Tulungagung
E-mail: [1] sarie.soegito@gmail.com , [2] surjanti.unita@gmail.com, [3]widowati.p4@gmail.com ,[4] bambangtook@gmail.com , [5] sherly8080@gmail.com
*Corresponding Author

Abstract— The presence of the AEC (ASEAN Economic Community) is an integration of countries in the Southeast Asian region in particular, which aims to reduce the gap between ASEAN countries in terms of economic growth. This has led to increased competition between ASEAN countries in terms of products and services which led to disputes. The role of the mediator is very important to resolve consumer disputes. This paper discusses the role of the mediator in terms of the perspective of consumer protection law.
Keywords— ASEAN; Consumer Protection Law; Mediator

Corresponding Author:

Retno sari Dewi,
Study Program Hukum,
Universitas Tulungagung,
Email: sarie.soegito@gmail.com

I. INTRODUCTION

Recently, there have been more and more criticisms of the court's performance, not only in Indonesia but also in other countries. The process of resolving cases through the courts takes a long time (Suryadi et al., 2000). Therefore, the discourse began to emerge for the settlement of cases outside the court. Alternative Dispute Resolution is one way to resolve disputes that have long been known. Various facts have shown that mediation is not a strange way to resolve disputes in the community. It's just that the approach methods and methods are different, more in line with the legal culture adopted by the local community. Mediation is a dispute resolution process that is faster, cheaper, and can also provide greater access to justice for the parties in finding a satisfactory way of resolving disputes and providing a sense of justice (Hanifah, 2016).

Mediation is an important element of third-party intervention, and much has been written describing the mediation process, analyzing the consequences and outcomes of mediation, and highlighting the main characteristics and roles of disputants and mediators that have an impact on these consequences and outcomes. Broadly defined, mediation can be seen as assistance to two or more parties involved in a dispute by a third party with incentives but may not have the authority to conclude a final agreement. To better explain what mediation is and isn't, Jacob Bercovitch and Allison Houston provide a comprehensive definition: Mediation is] a reactive process of conflict management whereby parties seek the assistance of or accept an offer of help from, an individual, group, or organization to change their behavior, settle their conflict, or resolve their problem without resorting to physical force or invoking the authority of the law (Huang, 2008).

Mediation is a reactive process of conflict management in which parties need assistance, or accept offers of assistance originating either from, individuals, groups, or organizations to change their behavior, resolve their conflicts, or resolve their problems without the use of physical force. or use legal channels. Business activities are always colored by disputes or disputes between various parties involved in them. A dispute is a discrepancy between the will of one party and another on something, for example in the implementation of a business contract. Disputes often lead to conflict and can even lead to violence or persecution, of course, this must be addressed immediately so that it does not drag on, so the solution through mediation is chosen. Indonesia in this regard is one of the members of the Association of Southeast Asian Nations (ASEAN) which has a stake in the management and resolution of disputes between its member countries in the Southeast Asian region. (Amer, 2009)

The presence of the AEC (ASEAN Economic Community) is an integration of countries in the Southeast Asian region in particular, which aims to reduce the gap between ASEAN countries in terms of economic growth. This has led to increased competition among ASEAN countries in

terms of products and services (Setiantoro et al., 2018). To ensure the realization of healthy and fair competition, the AEC makes a policy that regulates consumer protection which also ensures the flow of accurate information in the market for goods and services of the ASEAN Economic Community (AEC).

With more than hundreds of millions of consumers, increasing purchasing power, and a young demographic profile, ASEAN is a growing and attractive market. Therefore, policies and legal provisions on consumer protection are important to provide consumers with wider choices and competitive prices; empower them to make decisions based on accurate, clear, and consistent information; and ensure that they buy with trust and confidence through effective product and service safety standards and regulations and proper complaint handling mechanisms. With the AEC, consumer protection is critical in expanding economic growth and promoting a competitive market. Empowered consumers can make informed choices, which in turn can lead to changes in consumer demand and confidence with possible implications for the business cycle. However, consumer protection can also be very challenging.

Another challenge regarding legal protection for consumers is the development of e-commerce (electronic transactions) which continues to grow rapidly along with the development of advanced telecommunications technology so that the possibility of disputes will become very serious. On the other hand, the development of the AEC since 2015 has been increasingly stretched at the ASEAN level. If an e-commerce dispute occurs between countries needs a more in-depth study and restructuring of inter-state rules to resolve the dispute. Law Number 30 of 1999 concerning Arbitration and Dispute Resolution is used as an alternative dispute resolution, but the rules in it still have many weaknesses because it does not regulate in detail the issue of e-commerce dispute resolution. Based on the description of the background above, this paper aims to discuss the role of the mediator in terms of the perspective of consumer protection law.

II. RESEARCH METHOD

The research method used in this article uses a normative juridical approach, which is a legal research method that prioritizes how to review library materials (Hulu et al., 2020) or what is called secondary data material in the form of laws and regulations relating to the mediation. Concerning normative research, one thing is certain is the statute approach. In this study, the authors use 2 (two) approaches, namely (Sitepu & Muhamad, 2022): (1) The statute approach. The legal approach is carried out by examining all laws and regulations related to legal issues that are relevant to the problem. being studied, this legal approach will open up opportunities for researchers to study whether there is consistency and conformity between one law and other laws or between laws and the constitution or regulations and laws. (2) Conceptual Approach

(Conceptual Approach) The conceptual approach departs from the views and doctrines that develop in the science of law. By studying the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles relevant to the issues at hand. to solve the issues at hand. For the method of collecting research data using library research methods.

For library data obtained through previous research, literature sourced from laws and regulations, reference books, official documents, and publications. This research uses descriptive-analytical research methods, the data analysis used is a qualitative approach to primary data and secondary data. The description relates to the content and structure of positive law, which is an activity carried out by the author to determine the content or meaning of the rule of law that is used as a reference in solving legal problems that are the object of study.

III. RESULT AND DISCUSSION

For now, the rapid development of the ASEAN Economic Community (AEC) free market has changed the way of doing business towards electronic commerce (e-commerce). In today's modern and digital era, e-commerce trading activities have become the main weapon that can facilitate trade transactions. E-commerce is a buying process.

Indonesia's electronic commerce (e-commerce) market is expected to be a major growth contributor in the Asia Pacific. Based on RedSeer's analysis, Indonesia's e-commerce market is projected to increase to US$137.5 billion by 2025. The transaction value represents a compound annual growth (CAGR) of 25.3% from the 2020 achievement of US$44.6 billion. RedSeer also projects the value of Indonesia's e-commerce transactions to reach US$67.4 billion in 2021. By 2022, the transaction value is projected to be US$86 billion. Furthermore, this value will increase to US$104 billion in 2023 and US$121 billion in 2024.

In its analysis, RedSeer sees that the growth of the e-commerce market in Indonesia is supported by four things, namely a consumption-based economy, a young demographic, a growing digital economy, and the desire of consumers who want everything to be easy. The value of e-commerce transactions in Indonesia will also be the largest in the Asia Pacific. With an estimate of US$137.5 billion in 2025, this means that Indonesia covers 59% of the total value of Asia Pacific transactions of US$231 billion.

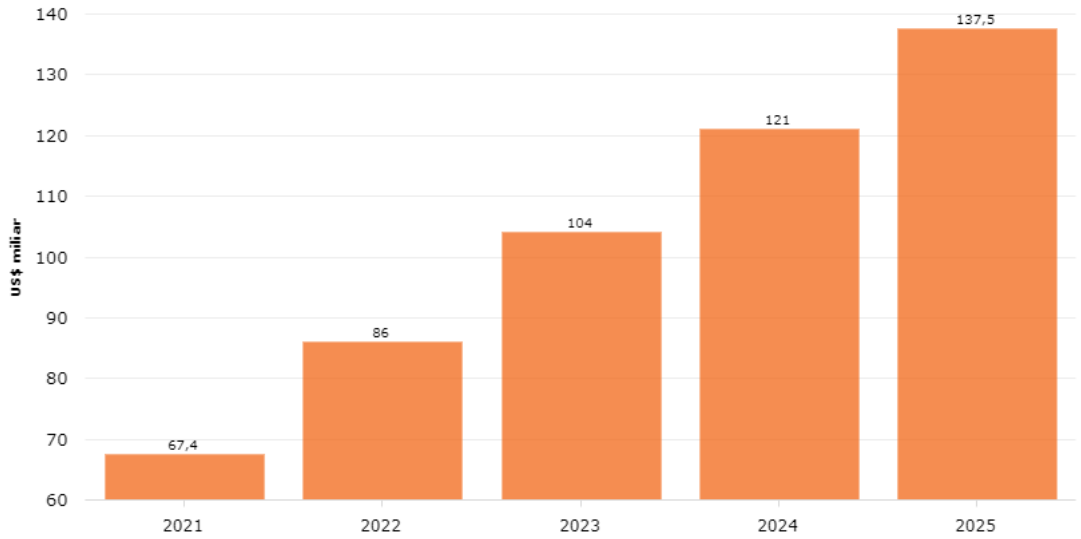

Figure1. E-Commerce Transaction Value Estimate In Indonesia (2021-2025)

Several problems that arise relating to consumer rights in e-commerce transactions include consumers cannot directly identify, see, or touch the goods to be ordered; unclear information about the products offered, and/or lack of certainty whether consumers have obtained various information that is worth knowing, or that should be needed to decide on a transaction. The unclear status of the legal subject of the business actor; there is no guarantee of transaction security and privacy as well as an explanation of the risks associated with the system used, especially in terms of electronic payments using either credit cards or electronic cash; unbalanced risk imposition, because generally for buying and selling on the internet, payments have been paid in advance by consumers, while goods are not necessarily received or will follow (Bernada, 2017).

Consumer protection refers to measures aimed at protecting and promoting the welfare and/or financial interests of consumers. Consumer protection measures, including consumer education, mobilization and representation are in place to ensure that consumers can make informed decisions about their choices and that producers and sellers will fulfill their promises about the products and services they offer. A consumer protection system may consist of several elements, including but not limited to a major consumer legislation; legal provisions, rules and other sector-specific regulations that protect the interests of consumers in certain fields; institutional structure to enforce legal provisions; and the existence of non-governmental organizations that work to protect the interests of consumers. Simplified procedures and evidence are made to hear consumer complaints.

Such provisions usually facilitate consumers' access to justice by permitting collective redress procedures. In such cases, they can negotiate with public officials, and in some cases social action groups such as consumer associations, about the right to initiate litigation on behalf of a consumer

or a group of consumers; A variety of legal remedies, including annulment, in which the consumer's right to redress (punitive damages), injunctive relief and declarative awards, are available.

The complaint handling process in business is an integral element in consumer dispute resolution and compensation systems. Efficient and effective handling of consumer complaints at an early stage can bring benefits to both businesses and consumers, reducing the need for assistance for external mechanisms that are more expensive and time-consuming in the majority of cases. However, as with other informal mechanisms, recourse to the internal complaint handling process will not be effective in cases where consumers have been victims of illegal business or fraud. In recent years, many technology-based companies have introduced online dispute resolution (ODR) systems. The ODR system will allow consumers to submit complaints electronically, which will then be responded to with a refund, replacement or other restitution without any further human intervention or more. The cost and time savings for businesses can be huge while consumers can receive instant redress.

Settlement of consumer disputes is carried out by referring to consumer protection laws. Consumer protection law is part of consumer law. The definition of consumer itself consists of 3 (three) notions, namely consumers, intermediate consumers and final consumers (Nugroho, 2015). Consumers are anyone who gets goods and or services that are used for certain purposes; 1 Intermediate consumer is anyone who gets goods and or services used for trading/commercial. 3. End consumers are natural persons (natuurlijke persoon) who obtain goods and or services, which are used for the purpose of fulfilling their personal, family and or household needs and not for re-trading (Hulu et al., 2020).

Scope of Consumer Protection Law A comprehensive legal framework for consumer protection may include, but is not limited to the following elements:• Consumer rights protected by law - rights such as the right to safety, the right to vote, the right to to information, the right to education, the right to a fair price, the right to be represented and the right to to obtain compensation, etc. as mentioned above (Sitepu & Muhamad, 2022). Basic principles or general policies on consumer protection;• A definition of 'consumer';• The scope of supply of consumer goods and services, as well as consumer transactions, which may sometimes include the provision of services in a professional manner (doctors, dentists, lawyers, engineers, architects, etc.);• The imposition of pre-contractual disclosure requirements for products sold or services provided, including prices and rates, as well as contractual terms ; • Prohibition of unfair provisions in consumer contracts, and provisions relating to contracts in the form of standard and general trade terms; • Prohibition of false, misleading or deceptive advertising and other dubious forms of commercial communication; • Prohibition or restriction of commercial practices deemed

misleading, aggressive or unfair to consumers, and/or biased practices; Establishment of a consultative body consisting of representatives of government, industry, consumers and other relevant stakeholders, or which can be inter-ministerial, to proactively address systemic consumer problems and recommend legislation and other consumer protection measures; • Issues related to product and service safety as well as provisions for standard setting, notification of unsafe products and recalls of defective products;• Facilitate compensation for consumers for defective products by introducing a strict liability principle whereby the defective product has caused a serious loss. material, personal injury or death to consumers;• Establishment, structure, authority and function of government agencies responsible for policy-making and law enforcement on consumer protection ("Consumer protection agencies"), which may be cross-sectoral or sector-specific; • Establishment of specialized courts, most recently the Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) systems . There are many different ADR mechanisms. Some of the most common forms are mediation, conciliation, assisted negotiation, and arbitration. Dispute resolution through mediation also has several stages that must be passed (ASEAN, 2019).

According to Jacqueline M. & Nolan-Haley, there are several stages that must be carried out in mediation, namely: (1) screening; (2) mediator describes the process and role of mediator; (3) mediator assists parties in drafting agreement. In the dispute resolution mechanism using mediation, it is necessary to state the role and function of mediator as stated by Raiffa, namely the weak side of the role to the strongest side. The weakest side of the role is if the mediator only carries out his role, namely: Organizing the meeting; 2) Neutral discussion leader; 3) Maintaining or maintaining negotiation rules so that the negotiation process takes place in a civilized manner; 4) Controlling the emotions of the parties; 5) Encouraging parties/negotiators who are lacking able or reluctant to express their views.

The strong role of the mediator when in negotiations is to do/do things including: 1) Preparing and making minutes of negotiations; 2) Formulating a meeting point/agreement of the parties; helping the parties to realize that the dispute not a battle to be won, but resolved; 3) Develop and propose alternative solutions to problems; 4) Helping the parties analyze alternative problem solving. According to Fuller as quoted by Suyud Margono, mentions 7 (seven) functions of the mediator, namely: 1) As a catalyst (catalyst) implies that the presence of a mediator in the negotiation process is able to encourage the birth of a constructive atmosphere for discussion. 2) As an educator, it means that a mediator must try to understand the aspirations, work procedures, political limitations and business constraints of the parties. Therefore, he must try to involve himself in the dynamics of differences between the parties. 3) As a translator, it means that the mediator must try to convey and formulate the proposals of one party to the other through

language or expressions that are pleasing to the ears of the other party, without reduce the goals achieved by the proposer. 4) As a resource person, it means that a mediator must utilize the available information sources. 5) As a bearer of bad news, it means that a mediator must realize that the parties in the negotiation process can be emotional, so the mediator should hold separate meetings with the parties to accommodate various proposals. 6) As an agent of reality, it means that the mediator must try to give a clear understanding to one of the parties that the target is impossible/unreasonable to achieve through negotiations. 7) As a scapegoat, it means that a mediator must be ready to be blamed, for example in making an agreement as a result of negotiations.

Furthermore, the actual mediation mechanism depends on the social and cultural situation of the community in which the parties are. Broadly speaking, the stages of mediation can be stated as follows: 1) The stage of forming a forum. At the beginning of the mediation, before the meeting between the mediator and the parties, the mediator creates or establishes a forum. After the forum is formed, a joint meeting is held. The mediator informs the parties about the nature of the process, explains the ground rules, works on the basis of the developmental relationship with the parties and gains trust as a neutral party, and negotiates about his authority with the parties, answers the questions of the parties, if the parties agree to continue the negotiations, the parties are asked to commit to comply with the applicable rules. 2) The second stage: collection and sharing of information. After the initial stage is complete, the mediator continues by holding a joint meeting, by asking for a statement or preliminary explanation from each disputing party.

At the information stage, the parties and the mediator share information with each other in a joint event and individually share information with the mediator, in a joint event. If the parties agree to continue mediation, the mediator then invites each party to present their version of the facts and benchmarks taken in the dispute. The mediator may ask questions to develop information, but does not allow the other party to ask questions or make any interruptions. The mediator gives each party a hearing on his or her version of the dispute. The mediator must qualify the facts that have been submitted, because the facts submitted by the parties are the interests that are defended by each party so that the other party agrees. The parties in conveying the facts have different styles and versions, some are relaxed, some are emotional, some are unclear, all of which must be considered by the mediator. Then proceed with a discussion of the information submitted by each party, to confirm that the mediator has understood the parties, the mediator makes a neutral conclusion on the presentation of each party, repeating the essential facts regarding each perspective or benchmark regarding the dispute. 3) The third stage, is the stage of problem solving. During the bargaining or problem-solving stage of negotiation, the mediator works with the parties jointly and sometimes separately, as needed, to help the parties formulate problems,

develop an agenda for discussing problems and evaluating solutions. In this third stage sometimes the mediator holds a "caucus" with each in mediation. A caucus is an independent meeting of the parties on one side or a separate meeting between the parties on the one hand and the mediator. The mediator uses the caucus (small booth) to hold private meetings with the parties separately, in this case the mediator can conduct in-depth questions and answers and will obtain information that was not disclosed in a joint mediation activity (Setiantoro et al., 2018).

The mediator can also help a party to determine alternatives to resolve it, explore and evaluate options, interests and possible settlements more openly. If the mediator will hold a caucus, he must explain the implementation of this caucus to the parties, arrange the behavior of the mediator in relation to the caucus which includes confidentiality, namely the mediator will not reveal anything to the other party, unless he has been authorized to do so. This is to maintain the neutrality of the mediator and will treat the parties equally. 4) The decision-making stage. In this stage the parties cooperate with each other with the help of a mediator to select a mutually agreeable solution or at least an acceptable solution to the problems identified. Once the parties have identified possible solutions, the parties must decide for themselves what they will agree to or agree to. In the end, the parties who agreed succeeded in making a joint decision, which was then stated in the form of an agreement. The mediator can help formulate the terms that will be included in the agreement so that it is as efficient as possible, so that none of the benefits of the parties are left behind in the negotiations.

As a third party assisting the dispute resolution process, a mediator must be able to carry out his role so that the objectives of mediation can be achieved. In addition, a mediator has various functions ranging from holding meetings, leading negotiations, taking notes, making agendas, submitting proposals for settlement, maintaining order in negotiations, to assisting the parties in drafting agreements. According to Moore, mediators have the following functions: 1. Opening communication channels that initiate or facilitate good communication between the parties. 2. Helping parties understand their rights other parties to be involved in negotiations. 3. The facilitator leads the negotiation process. 4. Educate negotiators who are new, unskilled, or unprepared for the bargaining process. 5. Offering assistance to connect the parties with experts or outside sources to help the parties obtain the right choices 6. Helping the parties to see the problem from various perspectives so that they can find their issues and interests so that the choice leads to mutual agreement satisfactory can be achieved.7. Helping the parties to develop feasible and implementable solutions and questioning the goals of certain parties that are extreme and unrealistic. 8. Become a scapegoat and be the party to blame. This can happen if there are parties who feel that what they want is not achieved as it should be (Mamudji, 2004).

IV. CONCLUSION

Based on the analysis above, it is clear that within the scope of the Asean Economic Community (AEC) the role of a neutral mediator is to mediate in the resolution of regional conflicts. Mediators are expected to be able to carry out formal and informal mediation – that is, to resolve disputes both through established and accepted rules of the game and agreements that can be carried out by both parties to the dispute.

REFERENCES

Amer, R. (2009). The Association of Southeast Asian Nations' (ASEAN) Conflict Management Approach Revisited: Will the Charter Reinforce ASEAN's Role? Mechanisms for conflict management within ASEAN. *Aseas*, *2*(2).

ASEAN. (2019). *Buku Pegangan tentang Hukum dan Peraturan Perundang-Undangan Perlindungan Konsumen di ASEAN*.

Bernada, T. (2017). Upaya Perlindungan Hukum Pada Konsumen Dalam Transaksi E-Commerce Untuk Mendukung Pertumbuhan Ekonomi Digital Di Indonesia. *Jurnal Hukum Dan Peradilan*, *6*(1), 1–24.

Hanifah, M. (2016). Kajian Yuridis : Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan. *Jurnal Hukum Acara Perdata ADHAPER*, *2*(1), 1–13.

Huang, K. B. (2008). The transformation of ASEAN as a third-party mediator in intra-regional disputes of Southeast Asia. *Conflict Management, Security and Intervention in East Asia: Third-Party Mediation in Regional Conflict*, 147–164. https://doi.org/10.4324/9780203928288

Hulu, A., Dewi Ni, A. A. L. S., & Karma, M. S. (2020). Peran Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Penyelesaian Sengketa Konsumen (Studi Kasus : Putusan BPSK Badung No.01/AP/BPSK/IV/2016). *Jurnal Preferensi Hukum*, *1*(2), 28–32. https://doi.org/10.22225/jph.1.2.2338.28-32

Mamudji, S. (2004). Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan. *Hukum Dan Pembangunan*, *September*, 194–209.

Nugroho, S. A. (2015). *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya* (1st ed.). Prenada Media Group.

Setiantoro, A., Putri, Fayreizha Destika ; Novitarani, A., & Njatrijani, R. . (2018). Urgensi perlindungan hukum konsumen dan penyelesaian sengketa. *Rechts Vinding*, *7*(1), 1–17.

Sitepu, R. I., & Muhamad, H. (2022). Efektifitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia. *Jurnal Rechten : Riset*

Hukum Dan Hak Asasi Manusia, *3*(2), 7–14. https://doi.org/10.52005/rechten.v3i2.35

Suryadi, Soedarmoko, S., Tumpa, H., Sutrisno, S., & Nugroho, S. A. (2000). *Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) Dan Court Conected Dispute Resolution (Penyelesaian Sengketa yang Terkait Dengan Pengadilan*. Proyek Penelitian dan Pengembangan Mahkamah Agung RI.