

Online Mediation Innovation in the Court of Justice, Thailand

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This research had studied online mediation innovation in the Court of Justice, Thailand. The right to access the Court of Justice is a fundamental human right in a civilised society. In recent years, the internet has become widespread and allows for the development of online mediation innovation in criminal and civil disputes. At present, legal practice allows distant parties or litigants to mediate disputes in court online. This is a method for dispute resolution by third parties acting as mediators to offer guidance and find a solution that the litigants would be able to accept and be satisfied with. If they agree to the offer, it will lead to an agreement. Even though this was the beginning of online mediation in the Court of Justice, Thailand, from the responses, online dispute resolution was a tool and process that can be fair and resolve a large number of cases.

Keywords: *Online Mediation, Innovation, Court of Justice, Alternative Dispute Resolution*

Introduction

Alternative dispute resolution is very popular nowadays for several reasons. For example, the alternative dispute resolution process is flexible, fast, and has less of an impact on the good relationship between the parties than in the mainstream dispute resolution. One of the popular alternative dispute resolution procedures is mediation, sometimes called "Conciliation", or collectively referred to as "Mediation and Conciliation". In the case of community disputes between members of the community, if there is a need to bring the case to court which takes a long time, this may destroy the relationship between the litigants and undeniably affect the good relationship of other members in the community. Thus, mediation becomes a dispute resolution process that is used in community dispute resolution. In this regard, the State has issued regulations of the Ministry of Interior on the Dispute Conciliation Practice of the Village Committee B.E.2530 (1987), the Ministerial Regulation on the Mediation and



Conciliation of Civil Disputes B.E. 2553 (2010) and the Ministerial Regulation on the Mediation of Criminal Offences B.E. 2553 (2010). These laws are mediated outside the court; any legislation is referred to in academic language as community fair work, reconciliation justice, restorative justice, or something else. In real life, the process of coexisting in community and society requires ways of dealing with immediate problems that rely on adults or people who are respected in the community to mediate disputes.

However, society grew larger, has many members, and the complexity of coexistence problems increased (Cane & Kritzer, 2010), resulting in a large system of law and justice. On the one hand, it has formed a pillar that supports the great social system, but it may overwhelm and obscure the existing community justice system to gradually disappear. Thai society has already learned that all conflicts are left to the mainstream of justice.

Eventually, the burden of government officials was overloaded, causing mediation regulations in court.

Currently, dispute mediation is internationally accepted as a convenient, quick, economical and satisfying dispute resolution. Supporting dispute resolution through dispute mediation is beneficial for both the Court of Justice, people, and the national economy. Not only is dispute mediation an effective dispute resolution method, but it also maintains relations between the parties (Druckman, & Olekalns, 2012), which has a positive effect on international trade and investment systems. For the general public, dispute mediation may be an alternative to the dispute resolution (Limparangsri, 2012), without bringing the case to court. Therefore, in order to have clarity in the justice of mediation before and after the litigation and be accepted internationally both within the country and abroad, they give opportunities for government, private sectors, and the general public who have disputes to be able to choose the correct appropriate and fair method for dispute resolution (Noam, 2012). There is also a mediator registration system to mediate disputes sufficiently and satisfactorily. (Katsh, 2007). There is a need for a mediation approach before and after litigation to allow the public sector to participate in the amicable dispute resolution process (Giancarlo et al., 2016) effectively in the same direction. Therefore, the focus on mediation work before and after litigation is a change in the direction of the Thai justice system to balance and promote each other between mainstream justice and alternative justice.

Research Method

This study was qualitative research. Documentary research was conducted by collecting from books, articles, thesis, research reports, academic reports, various electronic data, government and office of the Court of Justice policies, and the practice model of Courts of Justice by descriptive and analytical writing.

Literature review

1. Conflict Management Concept

Conflicts have occurred since the existence of human society until the present time. These conflicts can arise in both urban and rural societies due to the different needs of societies (Michelle & Patrick, 2001) for resources and interests that exist limitedly. The conflict may arise from violations, claims or defence of the rights of individuals (Wissler, 1995). The conflict may not be a single cause (Rahim et al., 2002) but it can have multiple causes such as communication and cognitive processes (Druckman & Broome, 1991). Humans normally express their needs by speaking rather than listening (Wall, J., Callister, R. 1999) so it causes communication problems. Another cause of the conflict is dissatisfaction with the actions of others. Human beings must live together as a society, interacting with each other, and doing their activities together, so it is normal to have conflicts which eventually become problems. Social conflicts are not only negative (Kelly, 1996) but also positive, because those conflicts will be resolved into better ways (Evert van de Vliert & Boris Kabanoff, 1990). It can be seen that the inevitable conflicts existing at any given moment and in every society, so the most important thing is to find a way to resolve the conflict. There are many forms of conflict management methods. They are informal forms or the processes in which the litigants decide on their own method or process for handling the conflict. The choices of conflict management form largely depend on the conflict level and the current situation. The official form is that the court defines a method for resolving disputes. Therefore, when a conflict arises, the management method selections are the most important thing which will lead to dispute resolutions.

2. Online Dispute Resolution (ODR)

The dispute resolution process used for electronics (Del Duca et al., 2010) must consider worthiness (Karolina, 2015) in terms of economics, ease of operations, and justice (Udechukwu et al., 2018). The key principles for implementing technology in online dispute resolution are system neutrality and independence of agents on dispute resolution (Impartiality and Independence) (McIntyre, 2019). The system operators must have transparency and fairness processes (Horrihan, 2004). Besides, the technology must be effective and have proper confidentiality and security (Miller, 1991) to facilitate the preparation of judgments or orders (Richard & Thomas, 2014).

Results

It was found that online dispute resolution is alternative dispute resolution (David W. Johnson. 2020) with technology (Goodman, J. W. 2003). Online dispute resolution consists of the concepts and theories of traditional alternative dispute resolution and the principles of civil contracts because it must have the approval from both sides of the litigants (Gregory et

al., 2004). In addition, the concepts and theories of electronic transactions were also involved because electronic transactions spawned the evolution of online dispute resolution (Prince, 2020). However, in general civil cases where there are two litigants that are in dispute, whether it is a case related to assets enforced under the lending, exchange and mortgage agreements, including consumer protection cases or criminal cases with two litigants can enter an online mediation system as well. Moreover, each country's court system is also a source of online dispute resolution (Cho & Hoyle, 2003). This early stage had some effect on public confidence in the online mediation system due to the traditional court judicial system causing 4 main problems.

First of all, if it was a case that what took place outside the Kingdom was the inadequacy of international law in effect at that time. When applied to online disputes, this creates difficulty in accepting jurisdiction and choice of law. In the second problem, the incompetent and unwillingness of judges to pursue rapidly evolving technology required the development of technology skills (Huang-Chih Sung, 2020). Third, the court proceedings are lengthy.

The last problem is that litigation in court is lacking in convenience, speed and in some cases requiring expertise (Chase & Thong, 2012). However, when using technological innovations that extend from existing systems developed as an online mediation system, which is essential in dispute resolution to be up to date and expedient, it will make people more confident in the access to the justice system.

1. Civil Dispute Mediation Process in the Court of Justice, Thailand

- Key principles of the dispute mediation process. Dispute mediation requires two or more litigants and a middleman, called a mediator.
- For dispute mediation in the Court of Justice, all parties must voluntarily enter the mediation system and negotiate an agreement before and during mediation, and if they change their mind they can request cancellation.
- Mediators have a duty to help, advise and find solutions for the parties to agree, but the mediators will not have the power to decide the dispute.
- For mediation in the Court of Justice, mediators must be qualified according to regulations used in court.
- Results of dispute mediation in the Court of Justice, if the mediation is successful, the litigants may conclude a compromise agreement, and the court will judge to agree or withdraw it. If the mediation is not successful, the litigants may take action to the court or use other dispute resolution methods.

2. Criminal Dispute Mediation Process in the Court of Justice, Thailand

- Criminal cases where inhabitants sue inhabitants (Withdraw)



- Compoundable offences and enter the court through the process of investigation and litigation by the prosecutor (Withdraw complaints)
- Non-Compoundable offenses when the defendant pleaded guilty and there was a need for legal remedy, compromise agreement, or withdrawn complaints.

Discussion

Alternative Dispute Mediation before Litigation

The aim of the justice system, no matter what system or who the director of justice is, the final and most important goal is to maintain fairness. Therefore, pre-litigation mediation is another method that is used to provide the administration of justice in appropriate and maximum benefit.

Pre-litigation mediation is the mediation that occurs before the case is brought into court proceedings. It is a mediation in which the parties have agreed to mediation by the third parties or third party organisations, without the court. Therefore, it can be summarised as follows:

- It is caused by the consent of the parties. This principle of consent is the same as for general dispute mediation and must be genuine. The parties intend to use mediation as a real solution to resolving the dispute. Therefore, the mediation before the litigation requires the actual consent of both parties.
- Legal mediators do not specifically specify any person. The person whom the parties request or consent to mediation would have the power to mediate. The mediator's conduct is consistent with the mediator's conduct in general cases, but the formality of the process may be less.
- It is a compromise agreement that is commonly done. If there is a compromise agreement, the contract is also enforced according to the general reciprocal agreement. Each party has the right to claim each other as creditors and debtors. If either party does not comply with the agreement, the other party cannot enforce for the property, forced to act, or refrain. They can only sue the court forcing the other party to comply with the compromise agreement and must be sued based on the debt in the compromise agreement only.

Dispute Mediation System Organization in the Court of Justice

The mediation in court took place after litigation to court. Mediation in court is the court's authority to refer all parties or either party to court in person. If the court sees that the parties came to court by themselves, it may still create an agreement or a compromise under the Section 19-Code of Civil Procedure. Compromise in court can be done at every court level,

whether it is the court of first instance or the court of appeals of the supreme court, and does not have to consider how much of the trial has been conducted. The court shall have the power to mediate for the parties to reach an agreement on the dispute. However, it must be taken before the court reads the verdict under Section 20 of Code of Civil Procedure, in which the competent parties can request the court to use the mediation system at any time during the trial, or the court may agree to mediate if the two parties approve. The judge sends the case to a mediation centre in the court to proceed. If agreed to mediate, the litigation may be withdrawn or the court has a judgment under the compromise agreement that the parties approve. The mediation system organisation can be separated in 3 as follows:

1. Separating people is that in cases where the judge is a mediator, the judge must be separated from the judge who is the owner of the case to reassure the couple that the judges in the mediation room are unaware of the incident in the mediation room. Accepting the facts will not affect the case, or the judges who will judge their case, or prejudice them because they can't agree. The mediator must return the complaint to the judge in order to continue the normal proceedings.
2. Separating the cases according to the mediation system, the mediation cases will be separated from the original cases. The mediation that is recorded in the mediation would not appear in the original portion. If the parties are unable to reach an agreement, the mediation cases will be released and burned down so that neither party may use it as a reference as evidence in the class.
3. Separating rooms, litigants will be satisfied in the mediation process in the informal meeting rooms. Thus, it helps save time and expenses.

The infectious disease, Coronavirus-2019, has spread in Thailand and all regions around the world. One of the key factors contributing to the widespread epidemic is that large numbers of individuals gather in one location or in close connection. Therefore, to stop the spread of the disease, which will seriously affect the health of the country and increase the number of deaths, the government declared an Emergency Decree, limiting travel and certain types of business operations, which has caused people to be affected by lack of income. People may not be able to work as usual for themselves and their families, leading to a burden of debt. Many individuals have suffered unexpected economic losses as a result of the epidemic. If a group has a legal action in a court, whether civil or criminal and whether the plaintiff or the defendant, this surely duplicates suffering.

To reduce the burden of these groups and seek appropriate legal measures for the benefit of the parties in the current situation, there is an innovation to reduce the burden on the parties and those who are involved in the Court of Justice process.

At present, there are currently more than 20,000 legal mediation cases (Benchakun, 2020) available online. It means that it is a system that is supported by the Court of Justice and can actually be used. In normal online mediation, court officials at the mediation centre are also required to call the parties' wishes whether they wish to mediate. When inquiring about the needs of the first party, they still need to ask the second party as well. There will be steps and a time period to match the date and time. The Court of Justice office, in the field of technology, saw the importance of saving time and reducing the process of prosecutions, so they created an innovative system. Based on the existing system, the CIOS (Case Information Online Service) system provides service of case information of the Court of Justice. People can search for information within the court and the e-filing system that can submit accusations and plaintiffs electronically through the website. Both existing systems provide people with access to justice with easy, fast and cost-effective ways.

The new innovations in online mediation can reduce the process and allow people to have access to justice. Online mediation is optional and is a request for mediation which the parties do not need a username or password. Court officers attached a QR Code, then the parties scanned the QR Code and expressed intentions to mediate online.

After that, they filled in a phone number for the system to send a link via SMS to allow the parties to verify identity whether they are parties in the case or are involved in this case. After the party has passed through the identity verification system, the mediation centre staff then approve if the details are consistent.

After approval, there will be a period for the parties to choose a time to be switched. This reduces the working process of both the parties and the mediation centre staff. After the parties express their purposes, the system will create the date and time that the first party chooses for the other party to choose as well. This reduces court works and can reduce mediation centre staff work and can access justice anytime, anywhere with convenience.

1. Disputes or cases that can be mediated online are:

- Civil disputes whether it is ordinary civil cases, consumer cases, or labour cases
- Criminal disputes that are compoundable offenses or criminal cases where citizens are plaintiffs.

2. Disputes online mediation importation

The dispute has not been litigated with the court (before litigation cases).

A. Parties who prefer to mediate online file a complaint to the court by themselves.



B. Parties who prefer to mediate online submit a request via electronic media such as Line, e-mail, or QR Code application of the court.

The dispute was filed as a court case (after litigation cases).

A. Court invites parties to an online mediation process by sending an invitation letter together with a summons and a copy of the indictment, or to the mediation centre staff, inviting them to the parties or lawyers. Then the litigants respond.

B. The parties notify their intention to mediate online to the court that accepted the cases through the system, e-mail, and Line application.

To make mediation clearer there is a way to work in the same direction. Therefore, there is an innovative online mediation practice guideline for the Courts of Justice across the country to use it as an online mediation practice.

A. Provide and arrange communication equipment such as computers or cell phones to communicate and mediate online.

B. Give advice to personnel, related persons, mediator, and a peacemaker to conduct online mediation.

C. Prepare books or documents to invite mediation online.

D. Provide channels to coordinate in importing cases or disputes into online mediation processes.

The strategic plan of the Court of Justice 2018-2021 Strategy E (Excellence Organisation) has supported the administration of justice to be carried out effectively. They worked together with the policy of the President of the Supreme Court 2019-2020 designated to bring technology to support current court performance to facilitate justice, to be convenient and fast, and to save time and money. To provide justice in the dispute mediation related to the strategic plan and policy of the President of the Supreme Court on the application of technology in operations. It also supports the entry into the Digital Court 2020 (D-Court 2020), which creates convenience, speed, fairness, and the parties do not have to come to the Court of Justice. Thus, it can help save time and money, and reduces the number of cases that can enter the court process in another way.

Online Dispute Resolution Program, which the Court of Justice office will use in courts across the country, found that debt problems arising from personal loans, credit cards, loans, rent and hire purchase, and the Student Loan Fund (SLF) have been filed in court in a great number of cases. It is not just debtors who are stressed out of litigation, but creditors were



also affected by not receiving repayment affecting the overall business and economy of the country. The situation where the COVID-19 virus is spread at the moment, people are affected by the temporary closure of some businesses. Many employees have been laid off or may receive a lower salary resulting in insufficient income for expenditures. They need to borrow money which may cause disputes due to breach of contracts leading to more court cases. Therefore, in order for the dispute to be settled satisfactorily and maintain a good relationship between the two, the Court of Justice has adopted a mediation process in conjunction with the judicial proceedings as an alternative for the people to settle disputes.

When general citizens or legal entities that have disputes and cannot agree upon themselves, they can ask the court to be the mediators, helping the parties negotiate a solution that each party can accept. Usually, if the party wishes to bring the dispute into a mediation, the court will set the date and time of the convenience of the disputing parties to attend the mediation meeting. However, many times the parties may be separated by a distance, find it hard to come, the parties did not want to meet each other, or concerns about the COVID-19 epidemic are all obstacles affecting the parties' decision whether to enter the mediation process.

The Court of Justice office has brought innovation "Online dispute mediation" used in all Courts of Justice nationwide to help people access the justice process quickly and easily, save traveling expenses, reduce the congestion in the meeting room and reduce confrontation. It also makes the parties more voluntary to join in mediation. The Court of Justice office has established plans and laid out guidelines for providing services to all Courts of Justice nationwide from the press release of the Office of the Court of Justice on November 6, 2020 (Hongwilai, 2020). After the Courts of Justice across the country started online mediation from February 1, 2020 to September 30, 2020, it was found that there are 221 online mediation cases, a total of 22,824 cases, 19,531 successful cases and 1,534 unsuccessful. Later, from October 1, 2020 to November 6, 2020, there was an increase of 226 court cases to enter the online mediation system. However, the Court of Justice office aims to encourage more prosecutors to bring more cases into online mediation and have a successful mediation process of 80 percent of all cases that go into online mediation.

For parties who prefer to resolve disputes online, they can proceed before prosecution and the trial of the Court of First Instance or the Court of Appeal - Petition by submitting a petition to the court having jurisdiction to adjudicate the case or to the court in which either party is domiciled in the court or submit a claim via e-filing system along with the indictment or filing through the CIOS system (the case is pending). When the court considers accepting a mediation case, the court will ask for the purpose of resolving the dispute, and the convenient date and time to schedule an appointment for further settlement of the dispute.

3. Pros and cons of online mediation

First, forcing the parties to mediation may be a tool to motivate the parties to see the importance and enter the process of resolving more alternative disputes. When the partner enters the mediation process, a well-trained mediator will not let go of the opportunity to make the partner understand the mediation process and help negotiate between the parties to reach an agreement in dispute resolution.

Second, compulsory mediation requiring parties who are prejudicial to the mediation process can participate in the process and be able to resolve the dispute by mediation. This not only gives the parties the opportunity to resolve disputes, but also reduces the number of cases to court.

Third, forcing the parties to mediation also helps to resolve misunderstandings in resolving disputes.

Especially the fact that either party thinks that going into the mediation process is a sign of fear of being disadvantaged in litigation. Forcing the parties to mediation will also increase the opportunity for prosecutors to enter alternative justice and familiarise with the process by asking the parties involved. In compulsory mediation, the parties benefit from time and cost savings. However, even compulsory mediation is useful in many ways, but it cannot be denied that there are some concerns both in the legal and policy aspects of the implementation of compulsory mediation, policymakers and academics. It is intended for the parties to enter the mediation process to relieve or find a way out of the disputes, not to delay the cases. It also prevents the parties from entering the mediation process and making an agreement with intention to comply with the terms of the mediation process.

Enforcing compliance agreements, the issue of enforcing agreements arising in the compulsory mediation process is the law. It is still a concern for many parties. However, if the agreement arising from the compulsory mediation process cannot be enforced, there is no benefit in forcing the parties to enter the process.

4. The benefits of online dispute resolution

A. Convenience. The parties can mediate at home or anywhere as convenient for them. This allows the parties to mediate at any time as long as the litigants have computers or smartphones (Smart Phone) and can be connected to the internet signal.

B. Economical. Online dispute mediation helps parties save time and money especially in the event that the parties are far from each other.



C. Fast, online dispute resolution can be done anywhere, anytime without having to set a date for mediation, like face-to-face mediation, making it possible to quickly settle the problem

D. Parties have time to meditate before making decisions. In face-to-face mediation, the parties must make immediate decisions many times. There is no opportunity to deliberately ponder a proposal before making a decision, and it perhaps not the best one for the parties. In online dispute resolution, the parties have no time constraints, giving them the opportunity to meditate well before the parties send any proposals. Therefore, the proposal of the parties is a proposal that has been through the thought process of the parties well.

E. Avoid confrontation. In face to face mediation, it is unlikely that the parties avoid meeting face to face during a mediation. In some instances, one party may not want to confront the other during mediation. This is especially the case where the parties have unequal bargaining power, such as the labour dispute between the employer and the employee or disputes about domestic violence between husband and wife, etc.

5. Notice for online dispute resolution

-Lack of feelings because in face-to-face mediation, the litigants are in the presence of the mediators which builds trust in the mediator. In online dispute resolution, none of these have occurred. Therefore, it is difficult to capture the feelings of body language (non-verbal). The solution is that the parties must prepare a pen and paper to write down the details of mediation and study the regulatory requirements clearly first.

-Lack of Secrets. Mediation must be done in confidentiality, and it is considered one of the cornerstones of mediation. Communicating through electronic mail or chat room may not be a secret anymore because files may be copied, transcribed, or captured. The solution is to use the password for mediation or maybe use a video conference instead of a chat room.

-Internet Access. The key principles of online dispute resolution are: The parties must have knowledge of internet access.

-Easy to misunderstand. Online dispute resolution is communicated via electronic mail or chat room by typing the main message, but many times, the parties sending the message wanted to convey a certain meaning but the parties to the receiving party may understand another meaning. This creates a misunderstanding between them, which makes online dispute mediation unsuccessful.



Conclusion and Recommendation

The Court of Justice has sped up the process with the introduction of various technologies being used in operations to serve the people thoroughly, comfortably, and swiftly. Innovation of online mediation has led to practitioners or personnel of the office of Court of Justice having to accept the change and develop their capabilities to respond to the change. There is an adjustment to adapt the working paradigm to make it appropriate for the changes of organization. This is considered to promote the agency via electronic devices, such as computers or smartphones, using digital marketing channels to transmit information (chat bots). Once the information has been sent, the senders can get a quick response. The recipients of the information can access the message whenever they want and can offer data and information both before and after prosecution. This is a service innovation in design thinking; an innovative design under design thinking refers to a thinking process that uses a deep understanding of problems by centering the user and bringing creativity and perspectives from various fields to create ideas.

Therefore, when mediation action is compared with the conflicts or the parties, it is expected that this process will be with the elements of justice, but there are different expectations, such as what will meet the above criteria. The negotiation process through online mediation has helped to increase trust resulting in increasing activities in the Thai justice system. It appears to support the notion that users modify public expectations of procedural justice to media that offer their own value dispute resolution services, as well as their desired impact. Online dispute mediation is another form of action associated with policy of the President of the Supreme Court by bringing technology to facilitate justice and considering other convenient and economical channels for the public without having to come to court. It also supports the court's role in the voluntary basis of the alternative justice process of the parties. In addition, the parties will be able to choose their own exit resulting in satisfaction from both sides, and create harmony. It also helps the cases to be completed quickly, costs less, and reduces the amount of cases that can be brought against the court as well.



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