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JUDGE'S ATTITUDE TOWARDS THE MEDIATOR'S RECOMMENDATION REGARDING THE BAD FAITH PARTY AND MEDIATION FEES ISSUE

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ABSTRACT

This article was the result of research in 2021 with normative research. The formulations of the problems are: 1) What is the consideration of the panel of judges on the recommendation of the mediator regarding the sanctions for payment of mediation fees for parties who are declared to have no good intentions; 2) What is the procedure for payment of mediation fees by these parties. The conclusions are: 1) There is no data on the mediator's recommendation regarding paying mediation fees. It is not immediately followed up if the panel of judges receives it. The judges continue to examine the recommendation of providing justice so that the defendant does not feel more burdened so that the recommendation is not included in the court's product; and 2) The procedure for payment of mediation fees is carried out together with the accumulated principal costs of the case by complying with the principles of execution. This study advises the Supreme Court of the Republic of Indonesia that there should be a mechanism agreed upon by both parties to jointly consign the amount of money that is expected to be used in the mediation process.

Keywords: bad faith; judge; mediation in court; payment of mediation fees; mediator's recommendation.

INTRODUCTION

The issuance of the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2016 regarding the Mediation Procedures in Court ("**PERMA 1/2016**"), which was promulgated on February 4, 2016, brought significant changes in the mediation procedures and processes in court. Comparing the rules on mediation procedures in PERMA 1/2016 with the previous provisions on mediation in court,[1] it can be concluded that the Supreme Court of the Republic of Indonesia (Indonesian word: *Mahkamah Agung*, hereinafter "**MA**") encourages people to resolve their disputes in a win-win and fair manner through mediation. Mediation in PERMA 1/2016 is an appropriate, effective, and access-to-justice way of resolving disputes peacefully. In PERMA 1/2016, the MA made a new breakthrough to increase public access to justice while reducing the burden of case examination, creating a simple, fast, and low-cost judiciary.[2]

The new breakthrough referred to is the rule on the obligation of mediation taken by the parties with good faith. It means that the parties have guidelines to act and behave in the mediation process. This is because if the parties are found to lack good faith by the mediator, legal consequences will harm them. The bad faith norm established by PERMA 1/2016 emphasizes the process and procedures that the parties must carry out. Article 7 paragraph (2) of PERMA 1/2016 states that one or both parties and/or their legal representatives may be declared to lack good faith by the mediator in question if:

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[1] Supreme Court of the Republic of Indonesia Regulation Number 1 of 2008 regarding the Mediation Procedures in Court.
[2] Considering the letters a and b of PERMA 1/2016.

1. They do not attend after being called twice in a row to a mediation meeting without a valid reason;
2. They attend the first mediation meeting but never attend the following meetings even though they have been called twice in a row without a valid reason;
3. A repeated absence that disrupts the schedule of mediation meetings without a valid reason;
4. Attending a mediation meeting but not submitting and/or not responding to the other party's case summary; and/or
5. They refuse to sign the concept of a peace agreement that has been agreed upon without a valid reason.

The parties' assessment of good or bad faith is left to the mediator. In the next stage, the mediator makes recommendations and reports to the judges regarding the mediation results. One of the mediator's reports recommends the imposition of mediation costs on one or all of the parties who, according to the mediator, did not show good faith during the mediation process. It means that the mediation in question is considered unsuccessful. The judges will then mention the number of mediation costs to be borne by the party who did not act in good faith through a final decision. Empirical experience shows that in court mediation registered in the Yogyakarta District Court above, the parties in mediation did not act in good faith. Following the mediator's recommendation, the party was not required to pay mediation costs. However, conversely, the mediator did not make recommendations to the judge, even though some parties did not act in good faith during mediation.[3]

This research aims to understand and analyze the follow-up process to the mediator's recommendation for mediation cost sanctions to the panel of judges based on the norms of Article 22, Article 23, and Article 32 of PERMA 1/2016. Furthermore, this article aims to understand the payment method for mediation costs imposed by the judges on one or more parties deemed not to have acted in good faith. It is because if the plaintiff/their legal representative is found not to have acted in good faith, the execution of the penalty to pay mediation costs is taken from the case deposit when registering the lawsuit. The PERMA 1/2016 does not regulate how to handle the defendant/their legal representative if they are found not to have acted in good faith. Based on the background description, the author poses the following research questions: How does the panel of judges consider the mediator's recommendation regarding the imposition of mediation cost sanctions on parties who did not act in good faith, and how is the payment method for mediation costs by parties who are deemed not to have acted in good faith determined by the mediator?

METHODS

This article's research type is normative juridical research, also known as doctrinal research, based on reading, understanding, and studying primary and secondary legal materials.[4] The author

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[3] Trisya Azzahra, "Penerapan Aturan Iktikad Tidak Baik dalam Mediasi di Pengadilan Negeri (Studi Proses Mediasi dalam Perkara Perceraian di Pengadilan Negeri Yogyakarta).", 2019, <https://dspace.uii.ac.id/bitstream/handle/123456789/16280/05.4%20bab%204.pdf?sequence =9&isAllowed=y.>, [accessed on 18th May 2021].

[4] Bachtiar, *Metode Penelitian Hukum*, UNPAM Press, Pamulang: 2018, p. 56.

presents the statute approach, the conceptual approach derived from interviews with mediator judges, and the case approach to answering various problems that have been previously raised.

Specifically, the case approach differs from a case study that focuses on real cases being examined in court, such as corruption cases involving social assistance funds. The case approach studies real problems regarding legal issues[5] previously determined in this research. The author analyzes the judges' considerations/attitudes towards the mediator's recommendation regarding payment sanctions for mediation costs by parties found not acting in good faith and analyzes the procedure for payment of mediation costs by parties found not acting in good faith by the mediator.

The data source comes from secondary data, meaning data obtained from documented legal materials,[6] which can consist of primary, secondary, or tertiary legal materials.

The data collection techniques used in this research are document study and interview techniques. First, the document study technique or literature review is done by searching for legal materials relevant to the research problem. Second, the interview technique is carried out by asking relevant questions about the research object to the respondents or informants. In some literature, interview data are equated with legal scholars' opinions classified as secondary legal materials. The data analysis model applied in this research is descriptive analysis. This model is an analysis based on collecting, analyzing, and interpreting data in narrative and visual form (not numerical) to obtain a deeper understanding of a particular phenomenon.[7]

DISCUSSION

Consideration of the Panel of Judges on the Mediator's Recommendation Regarding Payment Sanctions for Mediation Costs for Bad Faith Parties

In the Indonesian Dictionary, the term mediation is defined as a process of involving a third party as an advisor in resolving a dispute.[8] From this definition, there are at least three important elements:

1. Mediation is a process of resolving disputes or conflicts that occur between two or more parties;
2. The parties involved in resolving the dispute come from outside the disputing parties;
3. The parties involved in resolving the dispute act as advisors and are not authorized to make decisions. [9]

Article 1 number 1 of PERMA 1/2016 states that mediation is a way of resolving disputes through a negotiation process to reach an agreement between the parties with the help of a mediator. Article 3 paragraph (1) of PERMA 1/2016 states that every judge, mediator, parties and/or

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[5] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta: 2006, p. 94.
[6] Bachtiar, *Op.Cit.*, (Note 1), p. 192.
[7] Sutanto Leo, *Kiat Jitu Menulis Skripsi, Tesis dan Disertasi*, Penerbit Erlangga, Jakarta: 2013, p. 100.
[8] Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia, Departemen Pendidikan dan Kebudayaan*, Jakarta: 1988, p. 569.
[9] Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Syariah Hukum Adat & Hukum Nasional*, Kencana, Jakarta: 2009, p. 3.

their lawyers must follow the dispute resolution procedures through mediation. If mediation is not carried out, there will be sanctions in the form of null and void decisions. When comparing dispute resolution methods between litigation/arbitration and mediation, according to Mardalena Hanifah, litigation/arbitration is oriented towards the past, meaning everything that happened in the past will be presented again to determine the outcome. Mediation, on the other hand, is oriented towards the future, as the mediator does not make decisions but only acts as a referee, and the final decision is in the hands of the parties whether to reach an agreement or not.[10]

The journey of mediation institutions in the court, from the HIR to PERMA 1/2016, shows the seriousness of the MA in encouraging parties to resolve their disputes themselves and reduce the backlog of cases on the judges' desks. Therefore, the MA established rules regarding good faith in pursuing mediation so that mediation in court is no longer viewed as a mere formality,[11] as failure to pursue mediation could result in null and void decisions. In line with Thomas C. Dienes' thinking, as continued by Abdul Manan, the purpose of the changes in PERMA 1/2016 is a law as a tool of social engineering. The great hope is that the MA will encourage society to resolve their disputes without a court decision that generally results in a win-lose solution, and one of the ways is through the good faith rules in pursuing mediation.

Mediation based on PERMA 1/2016 is carried out in the presence of the disputing parties or contradictors. In other words, mediation is not carried out in cases decided by default or with invalidated decisions. The presence of the parties is to comply with the summons or notices that are legally and properly conveyed by the court bailiff who examines the case. In cases where the summoned party is domiciled outside the jurisdiction of the court examining the case, the court chairperson will request the assistance of the court chairperson in the place where the party is domiciled to carry out the delegation summons. Nowadays, summonses for the parties, especially the plaintiff, are conducted through e-summons, as the court has mandated that every lawsuit be filed through the e-court application. The summons will be linked to the plaintiff's or their legal counsel's email after completing the e-payment.

The e-court, which has updated its features to allow for online trials known as e-litigation, has some things that could be improved, particularly regarding openness to the public. The principle of open trials for the public, when implemented in e-litigation, misses the mark. Based on the principle of *lex superiori derogate legi inferiori,* the provisions of the law should not be contradicted by the MA’s regulations.[12] On the day of the trial, when the parties are present, the duty of the panel of judges is to conduct mediation by first explaining the mediation procedure to the parties. The explanation includes:

1. The definition and benefits of mediation;

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[10] Mardalena Hanifah, “Kajian Yuridis: Mediasi sebagai Alternatif Penyelesaian Sengketa Perdata di Pengadilan”, *Jurnal Hukum Acara Perdata (ADHAPER)*, Vol. 2, No. 1, 2016, p. 4.

[11] Ajrina Yuka Ardhira & Ghansham Anand, “Itikad Baik dalam Proses Mediasi Perkara Perdata di Pengadilan”, *Jurnal Media Iuris*, Vol. 1, No. 2, 2018, p. 212-213.

[12] Iga Endang Nurselly and Rizky Ramadhan Baried, “Implementasi Persidangan Elektronik (E-Litigation) terhadap Asas Persidangan Terbuka untuk Umum”, *Jurnal Literasi Hukum*, Vol. 5, No, 2, 2021, p. 62.

2. The obligation of the parties to attend the mediation meeting directly and the legal consequences of not acting in good faith during the mediation process;
3. The costs that may arise from using a non-judge mediator and non-court employees;
4. The option to follow up on the peace agreement through a peace agreement document or withdrawal the lawsuit; and
5. The parties are obliged to sign the mediation explanation form.[13]

There are two types of mediators in the court: judges or court officials as mediators and non-judge mediators with a mediator certificate. Based on the judges' explanation regarding the probability of costs arising from non-judge mediators or non-court officials, parties often choose to use judge or court official mediators due to cost issues. Based on the writer's observation, the Wonosari District Court explicitly informs the public that the cost of using non-judge mediators registered to settle disputes registered in the court registry is set at IDR 500,000 (five hundred thousand rupiahs) until completion.[14]

The results of data analysis regarding the number of mediators obtained from five district courts under the jurisdiction of the Yogyakarta High Court are as follows:

Court	Judge Mediator	Non-judge Mediator	Total
Wates Disctrict Court	10	2	12
Wonosari District Court	4	3	7
Bantul District Court	9	2	11
Sleman District Court	8	4	12
Yogyakarta District Court	10	6	16

After explaining the obligation to conduct mediation as referred to in Article 17 paragraph (7) PERMA 1/2016, the panel of judges required the parties on that day, together with the deputy clerk, to meet with a mediator appointed by the panel of judges, in case the parties did not reach an agreement in choosing a non-judge mediator. The appointment of this mediator is documented in a decree, which then hands over the further process to the mediator and suspends the trial process for the parties to pursue mediation.

According to the author, the recusation right (*recusatie*) that is generally applied to the panel of judges or deputy clerks against the examined or disputing parties can also be analogously applied in the selection of a mediator. Apart from preventing subjectivity, it also maintains the dignity of the court. The mediator is not bound by the substance of the legal argument and the prayer of relief in the lawsuit because, according to practice, the content of the lawsuit made by the lawyer often prioritizes the economic interests of the lawyer and not the interests of the principal plaintiff/client

[13] Article 17 paragraph (7) PERMA 1/2016.
[14] Interview results with I Gede Adi Muliawan, Judge at Wonosari District Court, on September 30, 2021.

of the lawyer.[15] It drives the importance and necessity of the principal plaintiff to come and have their problem heard by the mediator, especially during the negotiation agenda or when reaching an agreement.

In carrying out their duties, the mediator does not only consider the legal aspects but also broader aspects such as the psychological well-being of the parties and/or their families, sociological factors, and others. For example, in a marital dispute, the mediator uses the legal arguments presented in the lawsuit only as a trigger and tries to touch the hearts of the parties to forgive each other and forget the issues at hand while also considering other issues, such as child custody if the parents separate, according to A. Suryo Hendratmoko opens up the possibility of resolving the dispute through mediation negotiations.[16]

Black's Law Dictionary defines good faith as a state of mind characterized by (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek an unconscionable advantage.[17] Good faith can also be found in Article 1338, paragraph (3) of the Civil Code, which, according to Wirjono Prodjodikoro, refers to actions that tend to be far from harmful to others and beneficial to oneself.[18] Article 7 of PERMA 1/2016 regulates what actions or behaviors are classified as not acting in good faith when pursuing mediation. Conversely, contextualizing the obligation to pursue mediation in good faith is an action that is earnest and responsible for doing good and not causing harm.

The mediator plays an important role in assessing whether the parties he is trying to reconcile are pursuing mediation in good faith. It relates to the legal consequences for parties declared not acting in good faith by the mediator during mediation. For the plaintiff or their legal representative, if declared not to be acting in good faith by the mediator during mediation, the lawsuit will be deemed inadmissible (*niet ontvankelijke verklaard*/NO) by the court hearing the case. Additionally, the plaintiff will also be penalized for paying the mediation fees after the mediator recommends the imposition of the mediation fees and their calculation in the unsuccessful mediation report. Conversely, for the defendant or their legal representative who is declared not to be acting in good faith when pursuing mediation, the mediator will submit a report with a recommendation for the imposition of the mediation fees and their calculation in the unsuccessful mediation report or the report on the inability to carry out mediation.

There is no meeting or communication between the judging panel and the mediator throughout the mediation process regarding the dispute being handled. Additionally, any documentation resulting from the mediation process cannot be used as evidence in court, and such documentation will be destroyed once the mediation is complete.[19] The mediator will only communicate with the judging panel regarding the dispute when one or the parties make the final

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[15] *Ibid*.
[16] Interview with A. Suryo Hendratmoko, Judge at the Yogyakarta District Court, on November 11, 2021.
[17] Bryan A. Garner, Black's Law Dictionary, Tenth Edition, West Publishing Company, USA: 2010, p. 808.
[18] Wirjono Prodjodikoro, *Azas-Azas Hukum Perjanjian*, Mandar Maju, Bandung: 2000, p. 102.
[19] Interview with Aminuddin, Chief Judge at Bantul District Court, October 6, 2021.

report stating that the mediation was unsuccessful and provides a statement or evaluation of one or both parties' bad faith during the mediation. However, it is not always the case that the mediator reports bad faith since the parties may not fulfill the requirements of Article 7, paragraph (2) of PERMA 1/2016.

Normatively, the judging panel will issue a NO decision and impose mediation costs if the mediator reports that the plaintiff acted in bad faith during the mediation. Similarly, suppose the defendant is found to have acted in bad faith. In that case, the judging panel must order to confirm that and impose mediation costs before examining the case's merits. Based on the above normative provisions, the mediator's recommendation to the judging panel will be followed up through the court's product (order or decision). Empirically, according to Ayun Kristianto, it is rare for a mediator to make recommendations for mediation costs and their calculation.[20] It was confirmed throughout the author's research of five district courts within the jurisdiction of the Yogyakarta High Court, where no data on mediators reporting unsuccessful mediations and recommending mediation costs were found. Another issue is that if the mediator states that one of the parties acted in bad faith and recommends mediation costs, such statements and admissions made during the mediation process cannot be used as evidence in examining the case's merits.[21]

However, one of the mediator judges at Wonosari District Court, I Gede Adi Muliawan, while on duty at Kefamenanu District Court, once made a failed mediation report along with a recommendation for the number of mediation costs to be imposed on the examining panel of judges. The reference for mediation costs is based on Article 1, number 6 of PERMA 1/2016, one of which is summoning the parties. The judge mediator estimated that the cost of public transportation or a motorcycle taxi for one round trip is IDR 10,000 (ten thousand rupiahs) multiplied by four, making it IDR 40,000 (forty thousand rupiahs). The recommended sanction for mediation costs was imposed on the defendant, and by the panel of judges, it was followed up by reading the ruling that the defendant had acted in bad faith and was sentenced to pay mediation costs of IDR 40,000 (forty thousand rupiahs).[22]

The cost of summoning the parties is inseparable when the plaintiff or their legal representative pays the case deposit at the beginning of the lawsuit registration. The cost of summoning can vary in amount, depending on the location/residence/status of the party being summoned. The farther away from the court - even within the same city/district - the more expensive it will be. For example, at the Bantul Religious Court, summoning a party in Sidorejo Village, Sedayu Subdistrict, is set at Rp.150,000 (one hundred and fifty thousand rupiahs) per summons. Thus, although not comparable on the same level, the mediator can adjust the number of mediation costs recommended as punishment for parties who act in bad faith. It shows the existence of procedural

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[20] Interview with Ayun Kristianto, Vice Chairman of the Wates District Court, September 29th, 2021.
[21] Article 35 paragraph (3) of PERMA 1/2016.
[22] Interview with I Gede Adi Muliawan, Judge at the Wonosari District Court, on September 30th, 2021.

justice that John Rawls proposed. One aspect of this justice relates to providing justice in the legal process, including resolving civil disputes through mediation.[23]

The mediator judge of the Yogyakarta District Court, A. Suryo Hendratmoko, revealed that there had been a report of unsuccessful mediation and a recommendation for mediation costs to be imposed on the defendant to the panel of judges examining the case. However, the judges did not follow the recommendation by ruling as specified in Article 23, paragraph (3) of PERMA 1/2016. It was revealed that the defendant was a wife being sued for divorce by her husband. To provide substantive justice and not burden the defendant excessively, the panel of judges disregarded the recommendation.

Procedure for Payment of Mediation Fees by Parties Declared in Bad Faith by Mediator

The procedure for payment of mediation fees by parties declared in bad faith by the mediator during the mediation process is normatively carried out with the main case costs per the principles of civil case execution. Mediation fees, as referred to in Article 1 number 6 of PERMA 1/2016, are costs arising from the mediation process as part of the case costs, which include the costs of summoning the parties, the travel costs of one party based on actual expenses, meeting costs, expert fees, and/or other costs necessary in the mediation process. These costs are exempted from the judge mediator or court officials, who provide mediation services free of charge.

The plaintiff bears the cost of summoning the parties to attend the mediation process, which has already been paid in the cash deposit. If the mediation successfully reaches an agreement, then the summons cost is borne jointly or according to the parties' agreement. On the other hand, if the mediation is declared unable to be carried out or unsuccessful, then the summons cost is borne jointly or according to the parties' agreement. As described in the previous section, parties that can be declared in bad faith during the mediation process by the mediator are the plaintiff/their legal representative or the defendant/their legal representative, or even both. The probability of parties being declared in bad faith is stated in Article 7 paragraph (2) letters d and e, namely:

d. attending the mediation meeting but not submitting and/or not responding to the other party's case summary;
e. not signing the agreed-upon draft of the peace agreement without valid reasons.

A resume of a case is a document created by the parties involved that contains the essence of the case and proposals for settlement.[24] The resume is written and only intended for consumption by the parties and mediator in the mediation negotiation agenda because after the mediation is declared failed, all documents will be destroyed/disappeared and cannot be used as evidence in the main case examination. In practice, the mediator opens up as widely as possible the demands or offers made by the parties in the resume, which means they can exceed the prayer of relief. When one party has

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[23] Maulana Abdillah, "Analisis Yuridis terhadap Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan dalam Perkara Gugatan di Pengadilan Negeri", 2016, <https://jurnal.untan.ac.id/index.php/nestor/article/view/17261>, [accessed on 1 September 2021]. See also: Damanhuri Fattah, "Teori Keadilan Menurut John Rawls", *Jurnal TAPIs*, Vol. 9, No. 2, 2013, p. 42-43.

[24] Article 1 number 7 PERMA 1/2016.

submitted a resume, but the opposing party does not respond to it, the mediator will not directly declare that this party has acted in bad faith. The mediator will ask and provide an opportunity. If the opportunity is not used, this is considered by the mediator as an act of bad faith when going through the mediation process.[25]

Suppose the plaintiff is deemed to have acted in bad faith and is ordered to pay the mediation costs recommended by the mediator in the report. In that case, the panel of judges in charge will issue a final decision stating that the lawsuit is unacceptable (NO), along with a payment penalty for the mediation costs and litigation fees. Both of these penalties can be taken from the court fees deposit or paid separately by the plaintiff/their legal representative through the court administration to be handed over to the defendant.

Furthermore, if the defendant/their legal representative is deemed to have acted in bad faith, the penalty is to pay for the mediation costs. Unlike before, where the panel of judges issues a decision with a NO verdict and a penalty for paying the mediation costs against the plaintiff if the defendant is deemed to have acted in bad faith, the panel of judges must issue a decree stating that the defendant has acted in bad faith and is therefore sentenced to pay the mediation costs before continuing the examination.

Mediation costs are part of the case expenses that must be mentioned in the final verdict. If the defendant is defeated, the mediation costs and case expenses will be accumulated and charged to the defendant. However, if the defendant wins, the verdict states that the claim is rejected, or even if the verdict states that the claim is denied, the mediation costs will still be charged to the defendant, while the case expenses will be charged to the plaintiff. Payment of mediation costs by the defendant to the plaintiff is made through the court registry following the execution procedure after the verdict becomes legally binding (*inkracht van gewijsde*).

Considering the provisions of Articles 22 and 23 of PERMA 1/2016 regarding payment of mediation costs by parties declared to have acted in bad faith, they can be divided into two parts. First, for the plaintiff, payment can be made automatically by deducting the case deposit fee that has been paid previously. For the author, implementing payment is relatively easier. It can be carried out even if the plaintiff does not come to the court after the panel of judges pronounces the verdict. Another issue is if the deposit fee is less than the penalty for payment of mediation costs and case expenses.

Article 23 of PERMA 1/2016 regulates the situation and conditions if the defendant acted in bad faith and is sentenced to pay mediation costs. The decision issued by the judges examining the case is the legal basis for obligating and collecting payment from the defendant for mediation costs. Technically, the court registry will send a letter to the defendant to settle or pay their obligation. The

[25] Interview with H. Cahyono, Judge at the Sleman District Court, on October 22, 2021.

court can force the defendant to pay mediation costs by requiring them to settle their obligation before filing a legal action or decision.[26]

A different opinion is presented by Aminuddin, who sees the payment of mediation fees as separate from the costs of the case. Therefore, if the defendant is ordered to pay mediation fees, the key to implementing the payment lies with the plaintiff's attitude. Since the plaintiff has already been declared the case winner, they generally do not question their right to receive payment for mediation fees from the defendant. Even the mediation fees that can be accumulated with the case costs charged to the defendant as the losing party, the payment mechanism can be enforced through the execution of the defendant's property auction.[27]

The provision referred to in Article 23, paragraphs (3) and (4) of PERMA 1/2016 contains a condemnatory clause which, in the implementation of the payment of mediation fees by a defendant who is not acting in good faith, can be carried out using the legal basis for execution. First, it can be done voluntarily, meaning that after the decision is pronounced and the defendant realizes they are ordered to pay mediation fees, they will go to the court registry to pay their obligation. Second, it can be done by force, as previously explained through forced execution, namely auction.[28]

Article 23, paragraphs (3) and (4) of PERMA 1/2016 contain a condemnatory provision that allows for the enforcement of payment of mediation costs by the losing party through legal execution. If the defendant fails to pay the mediation costs in good faith, legal measures can be taken to enforce payment. The first step is voluntary compliance. Once the order is pronounced and the defendant understands they have been ordered to pay mediation costs, they will go to the court clerk's office to fulfill their obligation. The second step is forced compliance, as previously explained through forced execution, namely through auction.[29]

According to Ayun Kristanto, differences in understanding regarding the concept of good faith may contribute to such disputes. In practice, if the mediator finds that mediation is likely to fail, there is no need to consider whether or not good faith exists among the parties. Procedural law clearly states that the mediation costs imposed in the order read out by the panel of judges before continuing with the trial are placed behind the global costs of the case in the final verdict. In his view, execution cannot be divided into two parts based on the order and final verdict. Furthermore, the principle of executing civil court decisions requires the existence of a legally binding court decision.[30] Theoretically, a legally binding decision (*inkracht van gewijsde*) can occur in two situations: firstly, after the district court or high court has read out/informed the decision to the parties and no legal remedy is requested against the decision within 14 days; secondly, when the case has been examined by the MA and the decision has been communicated to the parties.[31]

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[26] Interview with H. Cahyono, Judge at the Sleman District Court, on October 22, 2021.
[27] Interview with Aminuddin, Chief Judge of the Bantul District Court, on October 6, 2021.
[28] Interview with I Gede Adi Muliawan, Judge at Wonosari District Court, on September 30th, 2021.
[29] Interview with I Gede Adi Muliawan, Judge at Wonosari District Court, on September 30th, 2021.
[30] Interview with Ayun Kristianto, Vice Chairman of the Wates District Court, on September 29, 2021, supported by an interview with A. Suryo Hendratmoko, Judge at the Yogyakarta District Court, on November 11, 2021.
[31] Herri Swantoro, *Dilema Eksekusi Ketika Eksekusi Perdata Ada di Simpang Jalan Pembelajaran dari Pengadilan Negeri*, Rayyana Komunikasindo, Jakarta: 2018, p. 29-30.

The mechanism for payment of mediation costs by the defendant due to being found to have acted in bad faith during mediation by the mediator is carried out according to the principles of civil court execution law. Suppose the execution is in the form of payment. In that case, the defendant's assets that have been successfully sold at auction are then used to fulfill the judgment in accordance with the case, including the principal costs of the case, which also include mediation costs. If the execution is real, then during the *aanmaning*, the court chairman will warn the defendant of his obligations in the case as well as his administrative obligations (principal costs of the case and mediation costs).[32]

Therefore, even though the PERMA 1/2016 regulation clearly states that mediation costs will be accumulated with the principal costs of the case as determined in the final judgment, the court system[33], as an institution that determines the legal jurisdiction, in practice, has various interpretations of the procedures for implementing the payment of mediation costs. The mechanism for payment by the defendant is carried out under the principles of civil court execution, which can be done voluntarily or by force.

Considering that there is a need for improvement in mediation rules, it is important and necessary to make improvements. It is because the public still trusts the judiciary to resolve disputes, as evidenced by the annual reports of the MA, which show the number of complaints filed by the public to the courts to resolve disputes.[34]

CONCLUSION

Based on the above analysis and discussion, this article concludes that: firstly, the panel of judges who receive the mediation report only immediately follow up if the plaintiff is deemed to have acted in bad faith. The panel of judges still examines the party referred to as acting in bad faith, and if for the sake of justice and to prevent the defendant from being burdened again, the recommendation for mediation fees is not included in the ruling before continuing the examination or in the final decision. Secondly, the procedure for paying mediation fees by the party deemed to have acted in bad faith by the mediator is done together with the principal costs of the case in accumulation. The payment mechanism is carried out by fulfilling the principles of civil litigation execution laws if the defendant is sentenced to pay mediation fees. Meanwhile, if the plaintiff is sentenced, the provisions in PERMA 1/2016 apply.

The norm of PERMA 1/2016 regarding bad faith and payment of mediation fees has already been sufficiently regulated, but the future issue is how to guarantee the payment of mediation fees and optimize the mediation process so that case accumulation does not occur.

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[32] Interview with A. Suryo Hendratmoko, Judge at the Yogyakarta District Court, on November 11, 2021.

[33] Umar Sholahudin, *Hukum dan Keadilan Masyarakat Perspektif Kajian Sosiologi Hukum*, Setara Press, Malang: 2017, p. 124.

[34] Idriati Amarini, "Penyelesaian Sengketa yang Efektif dan Efisien Melalui Optimalisasi Mediasi di Pengadilan", *Jurnal Kosmik Hukum*, Vol. 16, No. 2, 2016, p. 90.

Therefore, the author recommends to the MA that at the beginning of the mediation process, there should be a mechanism agreed upon by the parties to deposit a certain amount of money estimated to be used in the mediation process. If a party is deemed to have acted in bad faith, the mediation fees can be paid directly and in cash, and the deposited money can be taken from the court registry.

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