

Legal Sanctions Against the plaintiff and Defendant Not in Good Faith in the Mediation Process of Civil Cases

Ahmad Hadi Prayitno^{1*}, Farid¹, Ratih Mega Puspa Sari¹

¹Faculty of Law, Sultan Agung Islamic University, Jl. Kaligawe Raya No.KM, RW.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

DOI: [10.36348/sb.2022.v08i02.001](https://doi.org/10.36348/sb.2022.v08i02.001)

| Received: 19.12.2021 | Accepted: 26.01.2022 | Published: 09.02.2022

*Corresponding author: Ahmad Hadi Prayitno

Faculty of Law, Sultan Agung Islamic University, Jl. Kaligawe Raya No.KM, RW.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

Abstract

In the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures, it provides settlement efforts for the plaintiffs and defendants in civil cases. Mediation is carried out by a mediator, either from a judge mediator or a non-judge mediator. The absence of a mediation meeting by the plaintiff or the defendant who has been properly summoned by the court, in article 7 paragraph (2) is stated as behavior not in good faith. In the provisions of article 22 and article 23 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures, it is stated that legal sanctions can be given by parties who do not have good intentions at mediation meetings.

Keywords: Legal Sanctions, Parties Not in Good Faith, Mediation.

Copyright © 2022 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

A. INTRODUCTION

The duties and functions of judges are regulated by law Number 48 of 2009 concerning Judicial Power which regulates the main tasks The judge is examining, adjudicating, and deciding cases [1]. Therefore, judges should be responsible for the determination of a decision which is made as well as in making legal considerations, a judge must be based on reasons and proper and correct legal basis [2]. In the principle of applying the law as Unity has required Judges to identify carefully each right and obligation by law. By because that judge in solve an existing fact and finally decide on the attitude that must be taken, namely give a Justice, source law as regulation legislation inside, norm, doctrine, habitan decision court Becomes basic *reasoning* from the verdict.

Terms about solution problem in Justice has set in *Burgerlijk Wetboek* (BW) which aim for resolve disputes that arise in society. Procedure in

court regulated in the Civil Procedure Code as a material condition that it can take place judicial process. Civil procedural law regulates how and who authorized to enforce material law in the event of a violation of the law material. According to Wirjono Prodjodikoro, civil procedural law is a series of rules that contain the ways in which people should act with one another to carry out the course of a civil law regulation. good civil cases contains disputes or those that do not contain disputes and the duties of the Judge In civil cases, it is to investigate whether there is a legal relationship which is the basis of the lawsuit actually exists or not [3]. Claims for rights are actions which aim for protection law which given by court for prevention action "eigenrichting" or action judge alone [4].

If in the relationship between law and society, there is treatment that violates the norms or rules of

³Retnowulan Sutantio and Iskandar Oeripkartawinata, 1992, *Civil Procedure Law in Theory and Practice*, Bandung: Mandarin Up, p.53.

⁴ Sudikno Mertokusumo, 2010, *Indonesian Civil Procedure Code*, Yogyakarta: Atma Jaya University, Prints Fifth, p.2-3.

¹Article 11 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power

²Article 68 A of Law Number 49 of 2009 concerning General Courts

civil law as referred to in paragraph (1) specified in material law. Civil procedural law really requires even require something mediation before happening the judge which next. The peace effort is an initiative that arises from the judge. In accordance with the provisions chapter 130 HIR (*Herzien Inlandsch Regulations*) nor chapter 154 R.Bg (*Rechtreglement Voor de Butengeswesten*). It is hoped that from the initial mediation the judge could succeed and reduce case which enter to Court Great. Arrangements for peace (mediation) are not only in Article 130 of the HIR and Article 154 RBg. The Supreme Court then issued a Supreme Court Regulation Number 1 of 2016 (PERMA No.1 of 2016) concerning Mediation Procedures in Courts where there are some changes from the previous PERMA regulations. A number of the most basic changes are:

1. The deadline for mediation is shorter, namely within 30 days counted since stipulation orders to mediate;
2. There is an obligation for the parties (*in person*) to attend in person mediation meeting without accompanied by a legal representative, unless there is a valid reason such as a health condition that does not allow attending in the mediation trial based on a doctor's certificate and others so with a strong reason not to consider;
3. The new thing is the existence of rules regarding good faith in the mediation process and consequence para law party which no intend good in mediation process.

Whereas in practice in court, we often find both the Plaintiff and the Defendant at the time of mediation not having good intentions, including the Plaintiff who came during the mediation process, but the Defendant did not come, resulting in procrastination and would hinder the mediation process.

Observing the description of the background, a question arises whether there is good faith in the decision of PERMA Number 1 of 2016 effect on process and success mediation, until the effect on decision judge and if the mediation decision fails and stipulates that one of the parties does not intend good and next on process the judge next is allow sanctions for those who do not have good intentions. Remember in civil law, good faith is the most important thing for judges for determine decision. so that Writer motivated for stage discussion more carry on and deep related "Legal Sanctions Against The Plaintiff And Defendant Not In Good Faith In The Mediation Process Of Civil Cases" The objectives to be achieved in this study are to find out what legal sanctions can be imposed by the mediator judge to the Plaintiff or Defendant who does not have good intentions in the mediation process in civil cases and to find out the legal impact on legal sanctions that have been given by the mediator judge to the Plaintiff and Defendant. who do

not have good intentions in the process of examining the main case.

B. RESEARCH METHODS

The research method used in this study is empirical juridical or sociological, that is, at first researched is secondary data, then next with research on data the primer obtained in the field in the form of direct interviews with resource persons and using a questionnaire with judge mediators and non-judge mediators. The location of the research took place at the Semarang District Court at Jl. Siliwangi No. 512, Semarang City.

C. RESULTS AND DISCUSSION

Law Number 48 of 2009 concerning Judicial Power, has regulated the duties and functions of judges in handling cases in court, including judges whose duties and functions are to examine, hear, and decide cases [5]. In the process of civil cases in court before examining, adjudicating and deciding the subject matter of the case, the judge is obliged to provide the opportunity for the plaintiff and the defendant to mediate, this is in accordance with the provisions of Article 130 HIR (*Herzien Inlandsch Reglement*) and Article 154 RBg (*Rechtreglement Voor de Butengeswesten*) [6]. In addition to the above, the judge must also be responsible for the decisions and decisions he makes and in making legal considerations a judge must be based on appropriate and correct reasons and legal grounds [7]. The principle of applying the law as a unit requires judges to carefully identify each legal right and obligation. Therefore, the judge in solving an existing fact and finally decides the attitude that must be taken, namely to provide justice, sources of law such as laws and regulations, norms, doctrines, customs and court decisions are the basis for the reasoning of their decisions.

The provisions regarding the settlement of problems in the judiciary have been regulated in the *Burgerlijk Wetboek* (BW) which aims to resolve disputes that arise in the community. Procedures in court are regulated in the Civil Procedure Code as a material condition for the judicial process to take place. Civil procedural law regulates how and who is authorized to enforce material law in the event of a violation of material law. According to Wirjono Prodjodikoro, civil procedural law is a series of regulations that contain the ways in which people must act with each other to carry out the course of a civil law regulation. Civil cases, both those that contain disputes and those that do not contain disputes and the task of judges in civil cases is to

⁵Law Number 48 of 2009 concerning Judicial Power

⁶ HIR (*Herzien Inlandsch Reglement*), RBg (*Rechtreglement Voor de Butengeswesten*)

⁷Article 68 A of Law Number 49 of 2009 concerning General Courts

investigate whether there is a legal relationship on which the lawsuit is based, or not [8]. Claims for rights are actions that aim to obtain legal protection provided by the court to prevent "*eigenrichting*" or self-judgmental actions [9].

In the civil case process, before examining the principal case, the panel of judges provides the opportunity for the plaintiff and the defendant to carry out the mediation process first, the panel of judges will give time to the plaintiff or defendant to choose a judge mediator or non-judge mediator who has a certificate from the Supreme Court and has been registered in court, and if a mediator has been appointed, the next trial will be the mediation process, while the legal basis or reference for mediation is Supreme Court Regulation Number 1 of 20016 concerning Mediation Procedures. The stages of the mediation process as stated in the Regulation of the Supreme Court Number 1 of 2016 are the pre-mediation process, the mediation process and the final mediation process. The parties in the mediation process are the mediator, the plaintiff, the defendant, the plaintiff's attorney and the defendant's attorney and are assisted by a substitute clerk.

Before explaining to the stages of the mediation process, the researcher will provide a definition of the parties involved in the mediation process as mentioned above. Based on the results of interviews and some literature, what is meant by the plaintiff is a person who feels his rights have been violated, the defendant is a person who is brought before the Court because he feels he has violated the rights of the plaintiff, the mediator is a judge or other party who has a Mediator Certificate as a neutral party who helps the Parties In the negotiation process in order to find various possible dispute resolutions without resorting to a way of deciding or imposing a settlement, the substitute clerk is the judge's complete organ that assists the judge/mediator in recording everything that happens in court, while the attorney is an individual/advocate who has been appointed as an advocate based on statutory provisions who can accompany or represent the disputing parties in court.

The pre-mediation stage, in the civil case process, the parties are summoned by the panel of judges examining the principal case, if one of the parties is not present then the parties will be summoned again three times in a row. the parties to mediate as regulated in Article 17 paragraph (1) Perma No. 1 of 2020 concerning mediation procedures in court, apart

from that the judge examining the main case also explains the mediation procedure, the meaning and benefits of mediation, and offers the parties to choose a mediator, whether to appoint a mediator judge or a non-judge mediator who has been registered in court, then After that, the judge for examining the case will issue a decision that contains mediation and appoints a mediator that has been agreed upon by the parties. Based on the results of the research, the Semarang District Court lacks mediators, considering that there are so many civil cases handled by the courts, there is even an imbalance between the availability of mediators and the number of cases, the judge mediators have been busy with examining the main cases so that there is a lack of time in the mediation process and this results in the process of mediation. Mediation is not effective, therefore it is hoped that if someone already has a certificate of mediator from an institution that has been appointed by the Supreme Court, he is expected to register with the Court as a non-judge mediator.

Mediation Stage, after the mediator accepts the appointment as a mediator, the mediator requests the assistance of a substitute clerk to summon the parties in the mediation process. 1 of 2020 concerning mediation procedures in court, in practice at the first trial usually the plaintiff's attorney or the defendant's attorney, after which the mediator notifies that the principal in the case must be present in the mediation process. In the next stage it is often found that the mediation process is hampered because the parties do not come or are not present at the trial of the mediation process, sometimes the plaintiff is not present, sometimes the defendant is not present so that the mediation process is hampered while the mediation period is 30 (thirty) days from the appointment of the judge mediator.

If the plaintiff is present, the defendant is not present or vice versa, the mediator may state that the parties obstructing the mediation process can be considered to have no good intentions as regulated in Article 7 paragraph (2) of Perma No. 1 of 2020 concerning the mediation procedure in court which states "one of the parties or the parties and/or their legal representatives can be declared to have no good faith by the mediator in the matter concerned; a) not present after being properly summoned 2 (two) times in a row in a mediation meeting without a valid reason, b). attended the first mediation meeting but never attended the next meeting despite being properly summoned 2 (two) times in a row without valid reasons, c). Repeated absences that interfere with the mediation meeting schedule without a valid reason, d). Attending mediation meetings, but not submitting and/or not responding to other party's case resumes, e). Not signing the draft peace agreement that has been agreed without a valid reason.

⁸Retnowulan Sutantio and Iskandar Oeripkartawinata, 1992, Civil Procedure Law in Theory and Practice, Bandung: MandarMaju, p. 53.

⁹ Sudikno Mertokusumo, 2010, Indonesian Civil Procedure Code, Yogyakarta: Atma Jaya University, Fifth Printing, p. 2-3.

That the legal sanctions that can be imposed on the parties who do not have good faith in the mediation process is as stipulated in Article 22 paragraph (1), paragraph (2) and Article 23 paragraph (1) of Perma No. 1 of 2016 on the mediation process in court. As for the sound of Article 22 paragraph (1) "If the plaintiff is declared not in good faith in the mediation process as referred to in Article 7 paragraph (2) of the lawsuit is declared inadmissible by the examining judge. Article 22 paragraph (2) "The plaintiff who is declared not in good faith as referred to in paragraph (1) is also subject to the obligation to pay mediation fees. Meanwhile, for the defendant who does not have good faith, the legal sanction is regulated in Article 23 paragraph (1) of Perma No. 1 of 2020 on the mediation process in court "the defendant who is declared not in good faith as referred to in Article 7 paragraph (2) is subject to the obligation to pay mediation fees.

In the mediation process, if all of the parties are present, the parties must make a resume, whether the plaintiff or defendant or other parties continue to make a resume, the resume is submitted to the mediator and submitted to the parties who are used to make a response to the parties' resume, as stipulated in Article 24 paragraph (1) Perma No. 1 of 2020 regarding the mediation process in court. Meanwhile, regarding the period of time in the mediation process, it is regulated in Article 24 paragraph (2) and paragraph (3) of Perma No. 1 of 2020 concerning the mediation process in court, "the mediation process lasts a maximum of 30 (thirty) days from the date of the order to mediate. Then paragraph (3) explains "based on the agreement of the parties, the mediation period can be extended no later than 30 (thirty) days from the end of the period as referred to in paragraph (2).

The final stage of the mediation process, this stage is divided into two, namely mediation to reach an agreement as stipulated in Article 27 paragraph (1) and mediation is not successful or cannot be carried out as stipulated in Article 32 paragraph (1), paragraph (2) and paragraph (3). In judicial practice, if mediation reaches an agreement, usually the parties have made an agreement and then made a notarial agreement, some are made under the hands and then the agreement is read out at the mediation session, and then the mediator will report to the judge examining the main case, and the peace that has been concluded. It was agreed that it would be strengthened by a deed of reconciliation (deed of *van dading*) and then the plaintiff would withdraw his lawsuit. However, if the mediation is not successful or cannot be carried out, the mediator is obliged to state that the mediation failed to reach an agreement and notify it in writing to the examining judge of the case as stipulated in Article 32 paragraph (1) paragraph (2) and paragraph (3) of Perma Number 1 of 2020 concerning mediation process in court. In practice in court, mediators often only make failed mediation reports and

do not mention clear reasons, whether the reason is because the parties or one of the parties do not have good intentions or other reasons, so that legal sanctions regarding the plaintiff or defendant not having good intentions in the mediation process cannot go well.

After the mediator makes a written report to the examining judge of the case about the failure of a mediation, then the judge examining the main case reads the failure of the mediation and continues the examination of the main case in accordance with civil procedural law, namely the reading of the lawsuit, answers, replicas, duplicates, evidence, conclusions and decision. In practice, if the civil case process has entered the process of examining the subject matter of the case, then matters that occur during reconciliation cannot be related to the examination of the principal case, even parties who do not have good intentions and then proceed to the examination of the principal case cannot be subject to sanctions as stated in Article 22 paragraph (1), paragraph (2) and Article 23 paragraph (1) Perma No. 1 of 2016 concerning the mediation process in court, so that in order for these sanctions to be applied, it is hoped that the mediators are willing to state the reasons for the failure of the mediation process whether the parties did not have good intentions or for other reasons.

Based on the description above, it can be concluded that the legal sanctions that can be imposed by the mediator in civil cases in the mediation process if the parties (plaintiff and defendant) do not have good intentions are as follows:

1. The plaintiff and the defendant do not have good intentions, the sanctions that can be imposed are as follows:
 - For the plaintiff, it is regulated in Article 22 paragraph (1) of Perma No. 1 of 2020 concerning the mediation process in court, it reads "If the plaintiff is declared to have no good faith in the mediation process as referred to in Article 7 paragraph (2) the lawsuit is declared unacceptable by the judge examining the case. And Article 22 paragraph (2) reads "Plaintiffs who are declared not to have good intentions as referred to in paragraph (1) are also subject to the obligation to pay mediation fees. Article 23 paragraph (1) Perma No. 1 of 2020 concerning the mediation process in court, it reads "a defendant who is declared not to have good intentions as referred to in Article 7 paragraph (2) is subject to the obligation to pay mediation fees.
 - For the defendant, it is regulated in Article 23 paragraph (1) of Perma No. 1 of 2020 concerning the mediation process in court, "the defendant who is declared not to have good intentions as referred to in Article 7 paragraph (2) is subject to the obligation to pay mediation

fees.

2. The legal impact for the plaintiffs and defendants who do not have good intentions if the case is continued in the process of examining the principal case is that there is no legal impact in the process of examining the principal case, because when the mediation report was declared failed, the mediator did not mention in detail the reasons for the failure of the mediation process. Reports only mention failed mediation. Did it fail because there was no agreement or failed because the parties did not have good intentions, so that the legal sanctions listed in Article 22 paragraph (1), paragraph (2) and Article 23 paragraph (1) of Perma No. 1 of 2016 concerning the mediation process in court, has not yet been implemented.

D. CONCLUSION

With the legal research conducted by the Internal Research Team from Unissula Semarang, it is hoped that legal sanctions will be imposed on the parties/plaintiffs and defendants who do not have good intentions as stated in Article 22 paragraph (1), paragraph (2) and Article 23 paragraph (1) of the Supreme Court Law. No. 1 of 2016 concerning the mediation process in court can be carried out properly, because with this research it is known the obstacles to the implementation of the legal sanctions.

The legal impact for the plaintiffs and defendants who do not have good intentions if the case is continued in the process of examining the principal case is that there is no legal impact in the process of examining the principal case, because when the

mediation report was declared failed, the mediator did not mention in detail the reasons for the failure of the mediation process. reports only mention failed mediation. Did it fail because there was no agreement or failed because the parties did not have good intentions, so that the legal sanctions listed in Article 22 paragraph (1), paragraph (2) and Article 23 paragraph (1) of Perma Number 1 of 2016 concerning the Mediation Process in court, can't run yet.

BIBLIOGRAPHY

- M. Ngalim Purwanto, 2000, *Educational Psychology*, Bandung: PT. Rosdakarya
- TeensMuktiDawnND and Yulianto Ahmad, 2010, *Dualism Study Lawnormative and Lawempirical*, Yogyakarta: Referencesstudent.
- Retnowulan Sutantioand Iskandar Oeripkartawinata, 1992, *Law Event Civilin Theory and Practice*, Bandung: Forward Mandar.
- Salim HS and Erloes Septiana Nurbani, 2013, *Application Theory Law on Study Thesis and Dissertation*, Jakarta: Raja Grafindo Persada.
- SudiknoMertokusumo, 2010, *Indonesian Civil Procedure Code*, Yogyakarta:UniversityAtmaJaya, Fifth Printing.
- 1945 Constitution of the Republic of Indonesia Constitution Number 48 Year 2009 About Judiciary General
- Law Number 49 of 2009 concerning Judicial PowerBookCivil Law Act(Civil Code).
- Book Constitution Law Event Civil.
- Court Rulesgreat Republic Indonesia Number 1 year 2016 About Procedure Mediation In the court.