

The Principle of Good Faith in Settlement of Default Disputes Through Judicial Mediation

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Article history:

Received 20 23-04-15

Revised 2023-06-24

Accepted 2023-08-01

Keywords:

Good Faith; Dispute Resolution; Judicial Mediation.

DOI:

10.26905/idjch.v14i2.10863.

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Abstract: Mediation based on good faith is one of the characteristics of the Indonesian nation to resolve disputes that occur, starting from the smallest scope, namely the family, to the large scope, such as in government and statehood. With the birth of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court. Focus on this article on the nature and implications of the principle of good faith in resolving default disputes due to the non-implementation of agreements through judicial mediation. So it is hoped that the mediation process can overcome the problem of case accumulation. If a dispute can be resolved through mediation, there is no need for further legal remedies such as appeals, cassation, and even judicial review, which leads to the Supreme Court, so there is a buildup of cases. In addition, the mediation process, which is a non-litigation process, is a faster settlement process and has low costs compared to the litigation process through trial.

1. Introduction

Laws are made and implemented to protect the community. In its implementation, the law can work properly according to its provisions, but violations of the law can also occur. A well-known adage in law enforcement, namely, *Fiat Justitia Ruat Caelum* (the law must be upheld even if the sky falls), is an expression that upholds the law and refers to justice that must be upheld no matter what. Law enforcement and application in Indonesia often encounter obstacles related to community development. The existence of law is needed to be respected and upheld legal principles that function as the protection of the interests of society. The expectation to obey the law in practice should work well.¹

The development of society is marked by the rapid progress of globalization, which causes an increase in the potential for disputes. It is realized that law enforcement requires a settlement method that adheres to the norms and principles that live and grow in the social order of life. The law's role as a means of social change can be seen in people's mindsets or the formation of new mindsets in that society. In the name of law, the court has become a means of solving certain prob-

¹ Niru Anita Sinaga, "PERANAN ASAS ITIKAD BAIK DALAM MEWUJUDKAN KEADILAN PARA PIHAK DALAM PERJANJIAN," *Jurnal Ilmiah M-Progress*, (May 26, 2015), <https://doi.org/10.35968/m-pu.v8i1.186>.

lems or actions that are taking place in society. In addition, courts are often intended for indirect purposes, such as simply to attract public attention, increase public awareness or dramatize problems so that what the litigation carrier wants to go to court is no longer the outcome/decision from the court.

The principles of justice are carried out in a simple, fast and low-cost way to achieve an effective and efficient trial. However, the implication of the rapid development of economic and business activities is not matched by the court institution as a means of resolving disputes expected by the community.² Even court decisions rejecting community demands are often better for the community concerned because the problem in question can attract more attention and win the sympathy of many people. It is better for a movement for long-term change. Some of the causes that bring people's problems to court have the hope that the court can carry out its functions, namely to obtain things, including Equality before the law, namely to be treated equally regardless of skin color, position and status of the community; Opportunity to be heard, namely getting the opportunity to hear their complaints and defenses; and Law enforcement, which is a matter for every citizen to ask the authority to carry out the law and court decisions.

Judicial institutions, as institutions created by the legal system, function as a means of fair dispute resolution through a simple, fast and low-cost judicial process. The principle that the judicial process is carried out simply, quickly and cheaply is manifested in achieving an effective and efficient trial. However, the implication of the rapid development of economic and business activities is not matched by the court institution as a means of resolving disputes expected by the community. This is because the court institution, which concretely carries out the task of upholding law and justice when receiving, examining, adjudicating, and settling any disputes submitted, is considered a place to settle disputes which are not effective and efficient. With the time it takes to settle a case, all parties consider the cost very expensive, especially if it is associated with the time to settle a case. The longer the completion of a case, the higher the costs that must be incurred. This is, of course, very unprofitable for the business community, which can result in investor reluctance to invest.

Until now, the community still trusts the court as an institution to resolve disputes. The existence of a court institution is an institution that functions to coordinate disputes that occur in justice seekers who believe in litigation. Mediation based on PERMA 1 of 2016 is carried out before the disputing or conflicting parties. In other words, mediation is not carried out in cases that are decided by default or with an invalid decision. The presence of the parties is to comply with summons or notifications that are legally and correctly conveyed by the bailiff of the court examining the case. If the summoned party is domiciled outside the jurisdiction of the court examining the case, the head of the court will ask for the head of the court where the party is domiciled to carry out the summons for delegation.³

Integrating mediation into court proceedings can be an effective instrument in overcoming the problem of accumulating court cases and strengthening and maximizing the function of non-

² Indriati Amarini, "Penyelesaian Sengketa Yang Efektif Dan Efisien Melalui Optimalisasi Mediasi Di Pengadilan," *Kosmik Hukum* 16, no. 2 (November 3, 2017), <https://doi.org/10.30595/kosmikhukum.v16i2.1954>.

³ Rizky Ramadhan Baried and Abdul Jamil, "JUDGE'S ATTITUDE TOWARDS THE MEDIATOR'S RECOMMENDATION REGARDING THE BAD FAITH PARTY AND MEDIATION FEES ISSUE," *Jurnal Bina Mulia Hukum* 7, no. 2 (March 31, 2023): 259-71, <https://doi.org/10.23920/jbmh.v7i2.793>.

judicial institutions for dispute resolution in addition to adjudicative (deciding) court proceedings. Mediation in courts in various countries has been developed, one of the objectives of which is to provide citizens with access to justice, cost savings, etc. As explained in *National Standards for Court-Connected Mediation Programs*: “courts across the country are seeking ways to provide a better quality of justice for various kinds of litigation, improve citizens access to justice, save court and litigant costs and reduce delays in the disposition of cases....”

In realizing the goal of a simple, fast and low-cost trial through an effective and efficient court institution, the Supreme Court, the highest judicial administrator in Indonesia, has begun to initiate several methods to shorten the process of resolving disputes in court. One quite progressive idea is the integration of mediation in court. One of the efforts to strengthen non-litigation in dispute resolution is mediation.⁴ Mediation is a process of resolving disputes through negotiation or consensus of the parties assisted by a Mediator who does not have the authority to decide or enforce a settlement. The main feature of the mediation process is negotiation which is essentially the same as deliberation or consensus. Under the nature of negotiations, deliberations, or consensus, there should be no coercion to accept or reject an idea or settlement during mediation. Everything must obtain the consent of the parties.

*“The process was claimed to be quicker and cheaper than litigation, confidential and the mediation’s award was final and binding on the parties with virtually no grounds of appeal to the courts”.*⁵

The mediation process is a faster and cheaper process when compared to the litigation process in conventional courts. The nature of the case is not announced as in cases that are settled in court in general, and the decision is final and binding on the parties.⁶ The procedural law regulates how and who has the authority to enforce material law in the event of a violation of material law. Civil procedural law, in general, namely legal regulations governing the process of settling civil cases through judges (in court); since the lawsuit is filed, the lawsuit is carried out until the judge’s decision is implemented. According to Wirjono Prodjodikoro, civil procedural law is a series of regulations that contain how people must act before and before a court and how the courts must act with each other to carry out civil law regulations. Civil procedural law is also called formal civil law, namely all legal rules that determine and regulate how to carry out civil rights and obligations as stipulated in material civil law.⁷

According to Sudikno Mertokusumo, civil procedural law is a legal regulation that regulates how to guarantee compliance with material civil law with the intermediary of judges. Civil procedural law is a legal regulation that determines how to guarantee the implementation of material civil law. Civil procedural law regulates how to file claims for rights, examine and decide and

⁴ Putri Anggun Puspasari, Ni Luh Made Mahendrawati, and Desak Gede Dwi Arini, “Penerapan Mediasi Dalam Penyelesaian Sengketa Wanprestasi Hutang Piutang Di Pengadilan Negeri Gianyar,” *Jurnal Preferensi Hukum* 2, no. 1 (March 19, 2021): 182–187, <https://doi.org/10.22225/jph.2.1.3065.182-187>.

⁵ Ian Trushell, Bryan Clark, and Andrew Agapiou, “Construction Mediation in Scotland,” *International Journal of Law in the Built Environment* 8, no. 2 (July 11, 2016): 101–122, <https://doi.org/10.1108/ijlbe-09-2015-0014>.

⁶ Abdurrahman Konoras, “Aspek Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan,” OPAC Perpustakaan Nasional RI, n.d., <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1138873>.

⁷ Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek*, Cetakan ke sebelas, (Bandung: Mandar Maju, 2009), 5.

implement the decisions. In this case, claims for rights are nothing but actions aimed at obtaining legal protection granted by the court to prevent "*eigenrichting*" or self-judgment.

If in a legal relationship in the community, someone violates the norms or rules of civil law as specified in material law, for example, a violation of a contractual relationship where the seller does not deliver the goods for which the price has been paid, which of course results in a loss to the buyer. So to recover the losses suffered by the buyer, the material law that has been violated must be maintained or enforced utilizing civil procedural law. So a buyer whose rights have been harmed due to a violation of the buyer's obligations may not recover his civil rights by judging himself but must go through the provisions stipulated in the civil procedural law.

In civil relations, the process of making a contract begins with negotiations up to the preparation of the contract at the initial condition. This is the most important part of negotiating based on good faith. It is not enough for someone to say verbally about drafting a contract based on good faith without the negotiation process taking place during the drafting of the contract. Settlement of disputes arising from contracts made by the disputing parties, of course, requires professional ways to handle this dispute resolution. It must be believed that in order to be able to resolve the problems encountered, it is good to do it alone in good faith in the settlement process or to use a third party to assist the dispute resolution process professionally so as not to cause harm.

Until now, there is no single meaning of good faith in the contract, so there is still debate about what good faith means. Where the doctor's good faith is accepted, there is a difference of opinion in interpreting the good faith. Without a clear meaning of good faith, the application of good faith is often based more on court intuition, the results of which are often unpredictable and inconsistent. Misuse of contractual relations that are not based on good faith will result in default. The concept of good faith must exist since the contract has not been agreed upon and signed by the parties.⁸

Since ancient times, Indonesian people have practiced mediation in conflict resolution because they believe that making peace efforts will lead them to a harmonious, just, balanced life and create strong values of togetherness in social life. Resolving societal conflicts or disputes refers to the principle of "freedom" that benefits both parties. The parties can offer dispute resolution options with community leaders as intermediaries. The parties are not fixated on proving the right or wrong of their dispute, but they are more concerned about solving the problem for the future by accommodating their interests in a balanced manner. This form of dispute resolution is often referred to as deliberation or consensus.

Deliberation and consensus are the philosophies of Indonesian society in every decision-making, including dispute resolution. This deliberation and consensus have been recorded in Indonesian philosophy in the fourth precept, the 1945 Constitution, and other laws and regulations. In the history of Indonesian legislation, the principle of deliberation and consensus, which ends peacefully, is also used in the judicial environment, especially in settling civil disputes. This can be seen in several laws and regulations since the Dutch colonial period.

Mediation based on deliberation towards a peace agreement has received recognition in several Dutch East Indies and current Indonesian legal products. Alternative arrangements for dispute resolution in the rule of law are very important because Indonesia is a constitutional state.

⁸ M.alfa Ridho, "*Pelaksanaan Mediasi Terhadap Perkara Wanprestasi Di Pengadilan Negeri Pekanbaru*," Repository Universitas Islam Riau," n.d., <http://repository.uir.ac.id/id/eprint/17991>.

Mediation as a dispute resolution institution can be carried out by judges in court or other parties outside the court; as a result of that, the existence of mediation requires the rule of law.

Mediation is an appropriate alternative for dispute resolution because the institutionalization and empowerment of mediation in court cannot be separated from the philosophical basis that originates from Pancasila, especially the Fourth precept, which states, “populist led by wisdom in deliberations/representation,” and boils down to on the ultimate goal as stated in Pancasila, on the fifth precept, namely, “social justice for all Indonesian people.”

Mediation, in essence, can be interpreted as having a third party (three) or what is also called a mediator presented by the disputing parties to assist the process and reach an agreement. In the Big Indonesian Dictionary, the word mediation is defined as “the process of involving a 3rd (three) party (as a mediator or advisor) in resolving a dispute”. In the English – Indonesian dictionary created by John M. Echols and Hasan Shadily, the word mediation in English is called mediation, which means resolving disputes by mediating. In contrast, the word mediator means (person) intermediary, intermediary. From these two references, an understanding of mediation can be drawn, namely the method of resolving disputes mediated by an intermediary or mediator. However, it is necessary to emphasize the function of the mediator again mediating the case, so the question arises whether the mediator/mediator as a referee has the authority to give a decision or vice versa. In this case, Laurence Boulle defines mediation as namely⁹: “*Mediation is a decision-making process in which the parties are assisted by a third party, the mediator attempts to improve the process of decision-making and to assist the parties reach an outcome to which each of them can assent, without having a binding decision making function*”.

Mediation is a decision-making process. The parties are assisted by a mediator/mediator as a third party which does not have a breaker function. However, the third party helps improve the decision-making process to achieve results agreed to by each party. The Civil Procedure Code also wants and even requires mediation before the trial continues under Article 130 *Herzien Inlandsch Reglement* (in the future referred to as HIR) and Article 154 *Rechtreglement Voor de Buitengeswesten* (in the future referred to as RBG). It is hoped that mediation at the beginning of the trial can be successful and reduce cases that go to the Supreme Court.

Arrangements regarding mediation are not only in Article 130 HIR and Article 154 RGB. The Supreme Court (in the future referred to as MA) issued Supreme Court Regulation Number 1 of 2016 (in the future referred to as PERMA No. 1 of 2016) concerning Mediation Procedures in Courts where there were several changes from the previous PERMA. The most fundamental changes are as follows: First, the mediation time limit is shorter, within 30 days from the date of the order to conduct mediation. Second, there is an obligation for the parties (in person) to attend the mediation meeting in person with or without being accompanied by a lawyer unless there is a valid reason, such as a health condition that makes it impossible to attend the mediation meeting based on a doctor’s certificate; under guardianship; has a residence, domicile or domicile abroad; or carry out state duties, professional demands or jobs that cannot be abandoned.

⁹ Dorcas Quek Anderson, “The Evolving Concept of Access to Justice in Singapore’s Mediation Movement,” *International Journal of Law in Context* 16, no. 2 (June 1, 2020): 128-145, <https://doi.org/10.1017/s1744552320000105>.

2. Method

This research is normative, meaning that it examines the side of the legislation itself, not social phenomena due to existing laws and regulations. The approach method used in this study is the statutory approach. This approach is used because the discussion in this study will refer to the law. The legal materials used in this paper can be divided into primary legal materials and secondary legal materials. Primary legal material is material in the form of laws and regulations that regulate and relate to the issues discussed in this study. Meanwhile, secondary legal materials are used to clarify primary legal materials.

Secondary legal material is obtained from literature, scientific texts, especially on the principles of Good Faith, legal writings in the form of articles and books, journals and papers, as well as legal research to find out actual legal issues, which the author considers to be closely related to the subject matter this research. Legal Material Collection Methods. There are several ways to obtain data used in this paper, including primary legal materials collected, inventoried, and interpreted to be categorized further systematically and then analyzed to answer existing problems. Secondary legal materials are used to support primary legal materials. From the collection of legal materials, processing, and analysis are carried out, and the results are presented argumentatively. Analysis of Legal Materials The analysis used by the author is deductive analysis, and this analysis is based on recognized legal norms, principles, and values, then interpreted in a separate legal system to be associated with the problems in this study.

3. The Essence of The Principle of Good Faith in Resolving Disputes Through Judicial Mediation

In Civil Procedure Code and under Article 130 HIR and 154 RGB. To perfect the arrangements regarding mediation in court, the Supreme Court issued its Regulation, namely Supreme Court Regulation Number 1 of 2016, concerning Mediation Procedures in Courts. The regulations regarding mediation, as stated in the Supreme Court Regulation Number 1 of 2016, use good faith in their formal requirements. Moreover, with these conditions, the Supreme Court hopes that the success rate of mediation at the first level can increase to reduce the number of accumulated cases at the supreme court level. Good faith as an obligation for the parties in Supreme Court Regulation Number 1 of 2016 is explained in Article 7 Paragraph 1, where there are legal consequences for parties who are deemed not in good faith by doing the things stated in Article 7 Paragraph 2, namely Article 22 for the plaintiff and Article 23 for the defendant.

Judicial mediation in the Indonesian contest is the process of conciliating a civil dispute (mediation) in court where the person acting as a mediator is a panel of judges examining the case or members of the trial court or during the examination of the case before the fall of the decision of the panel of judges examining the case.¹⁰ Several elements of the notion of judicial mediation in Indonesia need to be elaborated in more detail to be compared with implementation in other countries, namely, in the peace process (mediation), the Judge as a mediator does not have the authority to decide on a case like in a trial court (litigation). The role of the mediator in the mediation process

¹⁰ Fatahillah A. Syukur, *Mediasi Yudisial di Indonesia*, (Bandung: Mandar Maju, 2012) 34.

is then divided into two: is it only as a facilitator who manages the smooth running of the mediation process (facilitative approach) or can provide advice and legal considerations (evaluative approach)? Under the jurisdiction of mediation in court, only civil cases can be tried to be reconciled. Judicial mediation can only be carried out within the court's scope to maintain the authority of the Judge and the court's integrity. Judges or other parties who have Mediator Certificates as neutral parties assist the Parties in the negotiation process to find various possibilities for dispute resolution without using a way of deciding or forcing a settlement. The mediator can be a member of the panel of judges examining the case or not the case examiner. Most of the mediation that takes place during the examination of cases is carried out by members of the panel of judges examining the case. This dual role can disrupt the neutrality of judges. Conducted before the trial or during the examination of the case.

The duties of the mediator in carrying out its functions include; introduce yourself and provide an opportunity for the parties to introduce themselves to each other; explain the purpose and nature of mediation to the parties, explain the position and role of the neutral mediator and do not make decisions to make mediation rules with the parties; explain to the parties that the mediator can hold a meeting with one of the parties without the presence of the other party to arrange a mediation schedule with the parties to fill out a mediation schedule form; provide an opportunity for parties to present cases and seek solutions; taking inventory of cases and scheduling discussions based on priority scale; facilitate and encourage the parties to explore interests; finding the best solutions and working together to reach a solution; assist the parties in formulating a peace agreement; submit a report on the success or failure of mediation; stated that one of the parties did not have good faith and handed it over to the Judge.¹¹

The challenges experienced in carrying out mediation in court occur both internally and externally, including the lack of support from the Supreme Court as a policy maker in the justice system, the lack of motivation for judges to carry out and succeed in mediation, the quality of mediators who have received little mediation training, low support from external parties such as advocates, religious leaders and prominent figures, as well as the community. The principle of good faith is very important in carrying out mediation. Good faith is divided into two types: relative good faith and absolute good faith. In relative good faith, people pay attention to the real attitudes and behavior of the subject, while in absolute good faith, the judgment lies in common sense and fairness. An objective measure is made to assess the situation (impartial judgment) according to objective norms. In relative good faith, people pay attention to the real attitude and behavior of the subject. In absolute confidence, judgment rests on common sense and fairness, and objective measures are made to assess the situation (impartial judgment) according to objective norms.¹²

According to Wirjono Prodjodikoro, in carrying out any action, it must be based on honesty and walk in the heart of a human being, so whatever humans do as members of society must be far from harming others and benefiting themselves. As referred to above, good faith means that

¹¹ Sukaenah Sukaenah and Rusli Rusli, "The Effectiveness of Indonesia Supreme Court Regulation Number 1 Year 2016 Concerning Mediation of Marriage Disputes," *International Journal of Contemporary Islamic Law and Society* 2, no. 1 (August 1, 2020): 63–80, <https://doi.org/10.24239/ijcils.vol2.iss1.15>.

¹² Moh. Saleh and Rochmad Bayu Setyo Waluyo, "Application of The Principle of Good Faith In Selling Disputes of Selling Buying Using Pre Project Selling," *Yurisdiksi: Jurnal Wacana Hukum Dan Sains* 18, no. 2 (September 9, 2022): 210–219, <https://doi.org/10.55173/yurisdiksi.v18i2.143>.

the parties are obliged to do good to each other. Good faith in mediation is regulated as a formal requirement in PERMA Number 1 of 2016 concerning Mediation Procedures in Court Article 7, paragraph 1: "The Parties or their attorneys are required to mediate in good faith."

The principle of good faith is contained in Article 1338 of the Civil Code, which states that agreements must be implemented in good faith. This principle relates to the implementation of agreements and applies to debtors and creditors. The definition of good faith in Article 1338 paragraph (3) of the Civil Code is that implementing the agreement must comply with the norms of decency and decency. This article's provisions also give judges the power to supervise the implementation of an agreement so that the implementation does not violate decency and justice. The principle of good faith, in general, has become a fundamental basis for making and executing contracts because, without the good faith of the parties involved, the agreement cannot run as mutually agreed. The emergence of the principle of good faith originates from an agreement or conformity of will made by the parties to implement the principle of consensual in the agreement/contract.

"Broadly speaking, good faith is a concept of honesty, which means to act without any malice or the desire to defraud others. However, good faith is a subjective concept and it should be applied and enforced on a case by case basis".¹³

Good faith is a concept of honesty, which means acting without rancor or the desire to deceive others. Good faith is a subjective concept and must be implemented and enforced case by case. This is indeed a new thing regarding good faith because it was not stated in the previous regulations. Referring to the mediation process going on so far, the parties are not in good faith, which results in mediation always failing. So good faith is also important in the mediation process under PERMA Number 1 of 2016. The Civil Code, article 1338, paragraph (3) regulates the principle of good faith. In this article, there are 2 (two) forms of good faith, namely subjective good faith, the meaning of which is honesty. Honesty must exist before the parties implement the agreement. Good faith objectively means propriety, which contains rights and obligations that must be carried out in good faith.

4. The implication of the Principle of Good Faith

Good faith in Roman law refers to the behavior of the parties. The parties must adhere to their words, must not take advantage of actions that mislead one of the parties, and must comply with their obligations and behave as honorable and honest people even though the obligation was not expressly agreed upon. This is related to the principle of Bona Fides. This concept originally was religious, meaning a belief given by one person to another or a belief in honor and honesty towards other people. That good faith has not been recognized "as an obligation implied by law"; for several reasons. The analysis used to support implications based on shared norms is less precise.¹⁴ Black's Law Dictionary explains that good faith is: "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable com-

¹³ Pedro Barasnevicius Quagliato, "The Duty to Negotiate in Good Faith," *International Journal of Law and Management* 50, no. 5 (September 12, 2008): 213-225, <https://doi.org/10.1108/17542430810903896>.

¹⁴ J.W. Carter and Wayne Courtney, "GOOD FAITH IN CONTRACTS: IS THERE AN IMPLIED PROMISE TO ACT HONESTLY?," *Cambridge Law Journal* 75, no. 3 (August 9, 2016): 608-619, <https://doi.org/10.1017/s0008197316000507>.

mercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage”.

Indonesia, as a country that adheres to the Civil Law System, also regulates the existence of the principle of good faith in its contractual law. The principle of good faith in contract law in Indonesia is reflected in the provisions of Article 1338, paragraph (3) of the Civil Code.¹⁵ Good faith is the newest thing in the mediation process and has legal consequences for parties who do not have good faith in the mediation process. Perma No. 1 of 2016, Article 7 states that: “(1) The Parties or their attorneys are required to take Mediation in good faith; (2) One of the parties or the Parties or their attorney may be declared not having good faith by the Mediator in the case concerned: a. is absent after being duly summoned 2 (two) times in a row at the Mediation meeting without a valid reason; b. attend the first Mediation meeting but never attend the next meeting even though they have been duly summoned 2 (two) times in a row without any valid reasons; c. repeated absences that disrupt the Mediation meeting schedule without a valid reason; d. attending the Mediation meeting, but not submitting or not responding to the other party’s Case Resume, or e. does not sign the draft Peace Agreement that has been agreed upon without a valid reason.

If the plaintiff is declared not to have good faith in the Mediation process as referred to in Article 7 paragraph (2), then based on Article 23, the lawsuit is declared unacceptable by the examining judge. This is confirmed in Article 22 PERMA No. 1 of 2016. The plaintiff declared not having good faith, as referred to in paragraph (1), is also subject to the obligation to pay Mediation Fees. The Mediator submits a report of the plaintiff not having good faith to the Examining Judge of the Case accompanied by a recommendation for the imposition of the Mediation Fee and the calculation of the amount in the report on the failure or non-implementation of the Mediation.

Based on the Mediator’s report, as in paragraph (3), the Examining Judge of the Case issues a final decision declaring the claim unacceptable, accompanied by a penalty for payment of Mediation Fees and court fees. The act of default has consequences for the rights of the aggrieved party to sue the party who committed the default to provide compensation so that, by law, it is hoped that no party will be harmed because of the default. The initial default stage is carried out by giving subpoenas; creditors have made at least three subpoenas. The creditor can take the matter to court if the subpoena is not heeded. Moreover, it is the court that will decide whether the debtor defaults or not. Summons is a reprimand from the creditor to the debtor to fulfill the achievements under the agreement agreed upon between the two. This subpoena is regulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code.

Legal anthropologists express their opinions on ways of resolving disputes that occur in society, both in traditional and modern societies. Laura Nader and Harry F. Todd Jr. explained 7 (seven) ways of resolving social disputes, one of which is Mediation, a third party that helps both parties in disagreement to find an agreement. This third party can be determined by both parties to the dispute or appointed by the party authorized to do so. Whether the Mediator is the result of the choice of both parties or because it is appointed by someone who has power, both parties to the dispute must agree that the services of a mediator will be used to find a solution. In a small com-

¹⁵ Deviana Yuanitasari, “PENGEMBANGAN HUKUM PERJANJIAN DALAM PELAKSANAAN ASAS ITIKAD BAIK PADA TAHAP PRA KONTRAKTUAL,” *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3 (2), (June 29, 2020): 292-304. <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/228>.

munity, it is possible that figures who act as mediators also act as arbitrators and judges. Included in dispute resolution using ADR are negotiation, Mediation, and arbitration. These three methods are contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Options while settling disputes in court is known as procedural law. A decision that cannot be executed certainly does not reflect the value of benefits and also does not reflect justice. Because even though the decision has gone through the proper procedures, it will be useless if it cannot be implemented.¹⁶

5. Conclusion

Theoretically, the view is that the rule of law is subject to the rule of law, and the court's position is considered as the executor of judicial power, which acts as a pressure valve for all law and public order violations. Therefore, the court is still relevant as the last resort or the last place to seek truth and justice, so theoretically, it is still relied upon as a body whose function and role is to uphold truth and justice, including resolving disputes. However, the bitter experience that has befallen the community shows the ineffectiveness of the court system. Completing cases through the courts takes decades, a long process entangled with legal remedies, namely appeal, cassation, and judicial review. After the decision has permanent legal force, the execution is challenged again with *verzet* efforts in the form of *verzet* and *derden verzet* parties.

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