JURNAL KONSTATERING
published by Master of Notary Law, Faculty of Law Sultan Agung Islamic University
Volume 2 No. 2, April 2023
ISSN: 2828-4836

The Juridical Implications for Violating the Contents of the Peace Deed Made by the Parties before a Notary in the Conception of Legal Certainty

Della Ochta Diana[1)] & Bambang Tri Bawono[2)]

[1)] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: dellaoddo48@gmail.com

[2)] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: bambang@unissula.ac.id

Abstract. *The settlement of disputes or cases is largely inseparable from the method of settlement through trials in court. However, in reality, disputes or cases that have been filed in court often receive complaints from the public, one of which is a very long settlement process. Therefore there are many ways to resolve disputes outside the courtroom, one of which is through mediation by reconciling the two parties by making peace deed. This research was conducted to find out and analyze the contents of the peace deed according to the concept of legal certainty and the legal consequences for those who violate the contents of the deed. The method used by the author in this thesis research is a normative legal research method using the statutory approach as the basic basis for research and analysis based on literature and other scientific works. The results of the discussion of the thesis research based on the formulation of the problem listed by the author explain that the deed of reconciliation made by a notary outside the court still has the force of law and legal certainty as well as the power of a judge's decision which cannot be changed if the deed has been registered in the form of a lawsuit so that if in the future there are violations committed by one of the parties, the power of the deed cannot be denied anymore and has permanent legal force and cannot be appealed or cassation against it. As well as for violations committed by one of the parties.*

Keywords: *Case; Deed; Notary; Peace.*

1. Introduction

The essence of human beings regarding social beings is basically human awareness regarding their status and position in life together and how their responsibilities and obligations are in togetherness. But there are times when

social life doesn't go the way you want because basically every individual has their own differences.

From these differences, it can lead to disputes which then lead to settlement in court or court. The reality that occurs in the settlement of disputes carried out by the Court often results in many problems ranging from slower settlements, ineffective settlements, and it is considered that many people still doubt it. It is considered that there are many weaknesses in settlement through the Court, therefore it is necessary to have a method or institution for resolving disputes outside the court even though the case has been tried in court.

In Act No. 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution as well as Book 2 of the Civil Law Act article 1851 which states that reconciliation can be carried out on existing cases both those that are ongoing in court and cases that are submitted to court. Any existing disputes need to be resolved. Of course, the best solution is a settlement through peace.

Settlement is an agreement by which both parties, by handing over, promising or withholding an item, end a case that is hanging or prevent a case from arising.[1]This agreement is not valid, unless made in writing. To fulfill this, the peace process outside the court can be carried out by making a deed, namely a peace deed. This peace deed can be in the form of a private deed or an authentic deed drawn up by a notary.

Notary according to his statement in this case is a public official authorized to make authentic deeds and other authorities as referred to in the Notary Office Law.[2]As is well known, one of the duties of a notary is to make written and authentic legal relations between the parties who reach a consensus requesting the services of a notary.[3]

And in this case all forms of deed made by a notary must be signed and known by the notary, the parties and witnesses who know this. No exception to the Peace Deed. In the peace deed there are two terms, namely Acte Van Dading and Acte Van Vergelijk.[4]

[1]Aga Waskitha and Wiryawan, Juridical Review of Notaries Declared Bankrupt Review Based on the Law on Notary Position, Lex Renaissance. Vol 5. Number (1).
[2]Article 1 point 1 Act No. 2 of 2014 concerning the Position of Notary
[3]Supriadi, 2008, Ethics and Responsibilities of the Legal Profession in Indonesia, Sinar Graphic, Jakarta, p. 50.
[4]Retnowulan Sutantio, Mediation and Dading, Arbitration and Mediation Proceedings, (a) cet. 1, (Jakarta: Center for Legal Studies Ministry of Justice and Human Rights, 2003), p.
161

The legal force of a peace deed is set forth in Article 1858 of the Civil Code which states that "between the parties concerned, peace has the power of a judge's decision at the final stage" and is regulated in Article 130 paragraph (2) HIR which reads "The deed of peace has the same power as a decision that has permanent legal force - and cannot be appealed or cassation against it. Because it has permanent legal force, the peace deed immediately has executive power.

Therefore, this research focuses on the views and legal consequences in the event of a breach of the peace deed made before a notary attended by the parties.

2. Research Methods

The method used by the author in this research is the Legislative Approach method, then uses a descriptive analysis technique which is studied systematically. The research specifications that the authors use for the problems that will be discussed in this study and in order to provide useful results, this research is carried out using normative juridical research. Because this research uses a normative juridical approach, the sources and types of data used by the author in this research are secondary data consisting of primary legal materials, namely laws, secondary legal materials, namely scientific works, and tertiary legal materials, namely encyclopedias or other legal dictionaries. And then the data that has been obtained will be analyzed with qualitative analysis methods.[5]

3. Results and Discussion

3.1 Juridical Implications for Violating the Contents of the Peace Deed Made by the Parties Before a Notary in the Conception of Legal Certainty

The authority of a Notary regulated in Article 15 paragraph (1) of Act No. 2 of 2014 Amendments to Act No. 30 of 2004 Concerning the Position of a Notary states that a notary has the authority to make authentic deeds regarding actions, agreements and stipulations regulated in The law desired by interested parties to be stated in an authentic deed. Notaries must comply with the Notary Position Law and the Notary Code of Ethics in carrying out their position.[6]

The role of a notary in the world of law is very important, especially in making authentic deeds. Soebekti's legal experts argue that a deed is a writing that is

[5]Bambang Waluyo, Legal Research in Practice, (Jakarta: Sinar Gafika, 1996), p. 76-77 and Lexy J. Moleong, Qualitative Research Methodology, (Bandung: Young Rosdakarya, 2002), p. 103
[6]Wanis Aisyah Oktavia, "State of the Deed and Legal Consequences for Notaries Who Have Multiple Positions", Journal of Notary Law, Faculty of Law, Padjadjaran University. Volume 3, Number 1, December 2019 p. 19

deliberately made to be used as evidence about an event and then signed.[7]Habib Adjie also believes that the deed made by a Notary is an authentic deed according to the form and procedure stipulated in the Law of the Republic of Indonesia Number 2 of 2014 Amendment to Act No. 30 of 2004 concerning the Position of a Notary.[8]In this discussion, it is no different, the notary is also authorized to make an authentic deed of peace agreement, or it can be called acte van dading.[9]

The Indonesian legal system has regulated that dispute resolution is permitted to be resolved through alternative channels regulated in Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Based on the elucidation of Article 1851 of the Civil Code, reconciliation can be carried out on existing cases, both cases that are ongoing in court and cases that will be submitted to court. If the parties to the dispute have agreed to the settlement and choose to settle the dispute by amicable means, then the parties are obliged to be willing and in good faith to comply with everything regulated in the deed of reconciliation which will be drawn up before a notary.

As an example of a case that the author examines in this case:

Deed of reconciliation made before Notary Anak Agung Ngurah Manik Danendra, SH, with Deed of Peace Number: 2 dated 13 June 2007. In essence, both parties have agreed to end the dispute and declare peace. The parties will not submit claims or lawsuits in any form regarding the dispute or dispute if everything that will be agreed upon by the parties has been fulfilled in a separate agreement, namely the "Deed of Agreement on the Distribution of Inheritance". The intended Deed of Inheritance Distribution Agreement was also drawn up before Notary Anak Agung Ngurah Manik Danendra, SH, with the Deed of Inheritance Distribution Agreement Number: 2 dated 13 June 2007.

Denpasar District Court Decision Number: 273/PDT.G/2008/PN.Dps dated 6 November 2008 (which was corroborated by Denpasar High Court Decision Number: 74/PDT/2009/PT.DPS dated 18 August 2009) in its legal considerations states that : Defendant 1 is not proven to be the heir of the deceased, so he is not entitled to make a letter or deed declaring himself entitled to an inheritance, either in part or in whole, so that the deed of agreement or deed of reconciliation concerning the right to the inheritance of the deceased, stating

[7]R. Subekti, Law of Evidence, Jakarta: Pradnya Paramita, 2008, p. 55.
[8]Habib Adjie, Indonesian Notary Law; Thematic Interpretation of Act No. 30 of 2004 concerning the Position of Notary. PT Refika Aditama, Bandung, 2008, p. 206
[9]Rizki Amalia, "Notary Liability for the Contents of Authentic Deeds That Are Not In Accordance with the Facts", Scientific Journal of Law Vol. 24, No. 1 (May 2021) p. 193

Defendant 1 is the heir/person who has the right to be ruled out because he does not support evidence.

The deed of reconciliation made before the notary, according to the assembly, should be declared to have no legal force and must be cancelled, because the deed of reconciliation was made by the plaintiff at that time in a state of stress, with the report to the police that the plaintiff was accused of making or entering false information. . The matter of the peace concerns the inheritance/inheritance of the deceased, while Defendant 1 is not an heir, so that the Panel is of the opinion that the Deed of Peace should be cancelled. This is because Defendant 1 is not an heir.

Based on the above considerations, the Denpasar District Court decided that the deed of Peace Number: 2 dated 13 June 2007 made before Notary Anak Agung Ngurah Manik Danendra, SH, was declared to have no legal force and had to be cancelled.

But on the contrary, the Supreme Court's Decision in Cassation Number: 1331 K/Pdt/2010 dated 30 September 2010 and in Judicial Review Number: 603 PK/Pdt/2012 dated 24 December 2013, in its legal considerations stated that, Yudex facti had wrongly applied the law of proof with the consideration that: The plaintiff's argument in his lawsuit has been refuted by Defendants I and II, that Defendants I and II are married with the status of "mepanak together" and both have status as purusa (heirs) in their respective homes of origin, so they are entitled to deceased's estate. The defendant's inheritance has been followed up with the Inheritance Sharing Agreement Number: 03 and the Settlement Agreement Number: 02, it is legal which was made by agreement before the Notary and the plaintiff (reconvention defendant),

Based on the considerations as mentioned above, the Supreme Court in cassation decided to cancel the decision of the Denpasar High Court which upheld the decision of the Denpasar District Court, and stated that the Deed of Peace Number: 02 was valid and binding on the parties who made it and must comply with all the contents of the deed.

Thus, seen from the analysis of the case above, the Denpasar District Court Decision, more precisely the Judge may not rule out the fact that there has been a Deed of Agreement made by both parties before the Notary concerned even though in this case the judge decided that there was pressure on the Plaintiff in signing the deed the. Here it can be concluded that in proving at trial the judge must examine more carefully which evidence should be traced carefully and which evidence has the force of law and legal certainty (Deed of Agreement) as stated in the theory of legal certainty. Gustrav Radbruch who stated that the law is certain and must be implemented. Thus the author strongly agrees with the

Considerations and Decisions of the Supreme Court in Cassation as the Considerations of the Supreme Court in Judicial Review because it has applied a definite law and it has been determined that the Notarial Peace Deed made by the parties before Notary Anak Agung Ngurah Manik Danendra, SH has has permanent legal force as stipulated in Article 130 paragraph (2) HIR which states that "a deed of reconciliation has the same force as a decision that has permanent legal force and cannot be appealed or cassation against it. Because it has permanent legal force, the peace deed immediately has executive power." H already has permanent legal force as stipulated in Article 130 paragraph (2) HIR which states that "a deed of reconciliation has the same force as a decision that has permanent legal force and cannot be appealed or cassation against it. Because it has permanent legal force, the peace deed immediately has executive power." H already has permanent legal force as stipulated in Article 130 paragraph (2) HIR which states that "a deed of reconciliation has the same force as a decision that has permanent legal force and cannot be appealed or cassation against it. Because it has permanent legal force, the peace deed immediately has executive power."

The implication of the peace deed made before the notary in terms of the concept of Indonesian law is that the Indonesian legal system has allowed regulations on dispute resolution resolved outside the court as regulated in Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and in Article 1851 of the Civil Code which reads: "Reconciliation is an agreement which contains that by handing over, promising or withholding an item, both parties end a case that is being examined by a court or prevent a case from arising if it is made in writing."This has also been explained in the Law that proof with a deed is the most important way of proof because of its authentic nature which has been recognized by law and cannot be contested unless the plaintiff can prove the location of the untruth.

3.2 Responsibilities of Perpetrators Who Violate the Contents of the Deed of Peace Made by the Parties Before a Notary

Violation is a form of negligence committed by a person towards his obligations consciously, including matters that have been stated in writing and are official in the eyes of the law.

The peace deed decided by the judge has executorial power, which means the same as a judge's decision that has permanent legal force. Based on the violation of the peace, the judge fully surrenders to the parties who will carry out the peace. Then the judge determines or passes a decision in the form of *acte van regelijk or acte van dading* which contains the contents of punishing the parties to carry out the contents of the peace that has been made between them.

The strength of this peace settlement is the same as an ordinary decision and can be implemented like other decisions. But in this case an appeal cannot be made in which case the judge's decision has the power of legal certainty. Not only having legal certainty, in the context of violations committed by violating parties there are laws that are enacted to protect legally harmed parties such as the theory of legal protection outlined by Sadjipto Rahardjo who says that legal protection is the protection of Human Rights (HAM) which harmed by other people and that protection is given to the community so that they can enjoy all the rights granted by law. In the context of this study, the legal protection used by the author in analyzing is repressive legal protection which means that legal protection functions to resolve disputes that have arisen due to violations.[10]

Seeing based on Article 130 paragraph (2) HIR which states that the peace deed has the same power as a decision that has permanent legal force and cannot be appealed or cassation against it. Therefore, because it has permanent legal force, the peace deed already has executorial power, in which the executorial power itself is the power to carry out what has been stipulated in the decision by force by means of the state.

The power of the peace deed drawn up by a notary has the same position as the executorial powers determined by a judge if the peace deed drawn up by the notary is registered in the form of a court suit which in this case punishes both parties so that they can carry out the contents of the agreement in the peace deed.

Expert expert Yahya Harahap is of the opinion that the conciliation decision with the conciliation deed whose contents punish the disputing parties to make their agreement, this decision has executorial power, if one of the parties commits a default or does not carry out the agreement written in the conciliation deed in the conciliation decision, then the conciliation decision the opponent or the aggrieved party can immediately make a request for execution to punish the party who defaults.[11]

In this regard, the theory of legal protection based on Soerdjono Soekanto's description above can be applied to aggrieved parties to obtain legal protection from the state because in essence the aggrieved party is a legal subject who is competent to enforce the law and has legally received legal protection from the state in accordance with with Act No. 8 of 1999 concerning Consumer Protection, in which it concerns legal protection for any party who has been harmed. Thus, disputes that have been drafted in a deed of reconciliation and strengthened by a

[10]Mahyuni, Peaceful Institution in the Process of Settlement of Civil Cases in Court, Journal of Act No. 4 Vols. October 16, 2009: 533 - 550
[11]Yahy Harahap, 2006. Scope of Execution Issues in the Civil Sector, Sinar Graphic: Jakarta, Pg. 302

court decision cannot be filed for a lawsuit again, because the deed of reconciliation is equated with a final decision that has permanent legal force.

It states that Defendant 1 is the heir/person who has the right is set aside because it does not support evidence. As well as considering that the evidence of the notarial peace deed that had been made by both parties was coercion on the Plaintiff's side who was under pressure in signing the peace deed so that the deed was deemed inappropriate by law.

Considerations and Decisions of the Supreme Court in Cassation as Considerations of the Supreme Court in Judicial Review have legally annulled the Decision of the Denpasar High Court which upheld the Decision of the Denpasar District Court because it was proven that the Plaintiff was not under pressure when the deed of reconciliation was drawn up. So that in this case the aggrieved party is obliged to get the rights that have been stated in the contents of the deed which is in the form of dividing the heirs' assets, while the other party or party who has violated the agreement on the contents of the deed according to the case example is obliged to provide inheritance according to what is stated in the in the contents of the peace deed. In this case it can also be referred to as a decision that has executorial power that applies to any party who is harmed in the contents of the peace deed.

Based on the conclusion of the description above, the legal consequences that arise if there is a violation of the contents of the deed made by the parties before a notary are in accordance with Article 130 HIR paragraph (2) which states the strength of the peace deed that has been registered by a notary in court in the form of a lawsuit equal such as a decision that has permanent legal force and against which an appeal or cassation cannot be filed. So for parties who do not carry out the contents of the peace deed properly, the Court can immediately execute the party who violates it and cannot appeal or cassation. The execution can be in the form of direct withdrawal of the object in dispute or cancellation in any form which is the object of the dispute. Therefore,

4. Conclusion

Making a peace deed or *acte van dading* made before a notary is one of the most effective and relatively easy ways of resolving disputes outside the court in the legal system in Indonesia. The peace deed in the eyes of the law has legal force and evidentiary power on the basis of Article 130 HIR paragraph (2) which says that "a deed of peace has the same power as a decision that has permanent legal force - and no appeal or cassation can be filed against it". Regarding the consequences of violating the contents of the peace deed, it will have a negative impact on the violator because the decision of the peace deed has permanent legal force and cannot be appealed or cassation against it. The existence of the

peace deed made by this Notary must be better known by the public in terms of choosing the option of settling cases without a trial in court. Because every civil case is legally obliged to go through mediation first and against it is possible to choose a peaceful path by making a peace deed before a notary.

5. References

Journals:

Aga Waskitha dan Wiryawan, Tinjauan Yuridis Terhadap Notaris Yang Dinyatakan Pailit Ditinjau Berdasarkan Undang-Undang Jabatan Notaris, Lex Renaissance. Vol 5. Nomor (1).

Mahyuni, 2009. Lembaga Damai Dalam Proses Penyelesaian Perkara Perdata Di Pengadilan, *Jurnal Hukum* No. 4 Vol. 16

Rizki Amalia, 2001. "Pertanggung jawaban Notaris terhadap Isi Akta Autentik yang Tidak Sesuai dengan Fakta", *Jurnal Ilmiah Hukum* Vol. 24, No. 1

Wanis Aisyah Oktavia, 2019. "Kedudukan Akta Dan Akibat Hukum Terhadap Notaris Yang Melakukan Rangkap Jabatan", Jurnal *Ilmu Hukum Kenotariatan Fakultas Hukum Unpad.* Volume 3, Nomor 1.

Books:

Bambang Waluyo, 1996. *Penelitian Hukum Dalam Prakte*k, Jakarta: Sinar Gafika.

Habib Adjie, 2008. *Hukum Notaris Indonesia*; Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris. PT Refika Aditama, Bandung.

Lexy J. Moleong, 2002. *Metodologi Penelitian Kualitatif*, Bandung: Remaja Rosdakarya.

R. Subekti, 2008. *Hukum Pembuktian*, Jakarta: Pradnya Paramita.

Retnowulan Sutantio, 2003. *Mediasi dan Dading, Proceedings Arbitrase dan Mediasi*, (a) cet. 1, Jakarta: Pusat Pengkajian Hukum Departemen Kehakiman dan Hak Asasi Manusia.

Supriadi, 2008*, Etika Dan Tanggung Jawab Profesi Hukum Di Indonesia*, Sinar Grafika, Jakarta.

Yahya Harahap, 2006. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Sinar Grafika: Jakarta.