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Juridical Analysis of Deeds of Peace Made in the Presence of a Notary in Resolving Civil Disputes Outside of Court

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Abstract. *In resolving civil disputes, courts are often seen as the only way to achieve justice. However, in some cases, parties involved in a dispute can reach an amicable agreement outside of court through a mediation or negotiation process. One of the tools used to record this peace agreement is a peace deed made before a Notary. The reality that occurs in dispute resolution carried out by the courts is that it is considered slower and ineffective and is still felt to be detrimental by many parties. There are so many inherent weaknesses that it is considered necessary to have methods or institutions for resolving disputes outside of court even though the case has been tried in court. In this case the research focuses significantly and examines and discusses in order to be able to analyze so that one can find out about the Role and Responsibilities of Notaries in Settlement of Disputes Peacefully. In this case the responsibility of a Notary is not responsible for the contents of the deed made before him, but the Notary is only responsible for the formal form of an authentic deed as stipulated by law. This legal research also aims to determine the role of a notary in settlement with conciliation outside the court, the responsibility of a notary in resolving disputes against a deed of reconciliation made before a notary and to analyze research on the strength of law against a deed of reconciliation made before a notary. This type of research is sociological juridical research with an interview study approach, direct observation of several notaries who are experts in their field, as well as looking at the applicable laws and regulations (statute approach) which discuss the position of notary, and a case approach. The legal materials used in this legal research are primary legal materials with the data collection techniques used are interview studies and direct observation in the field.*

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

1. Introduction

One of the powers of a Notary is to make a peace deed. Peace is an agreement between two parties which contains the contents of handing over, promising or retaining an item. The peace agreement resulting from a dispute resolution process must be stated in written form with the aim of preventing the re-emergence of the same dispute in the future.[1]. The peace process outside the court can be carried out by making a peace deed which can be in the form of an underhand deed or an authentic deed drawn up before a notary. A deed of reconciliation can also be made after a court decision has been made with the aim of carrying out the decision of the court's decision so that the decision goes well, however, there are exceptions that allow a deed of reconciliation to be subject to cancellation.[2].

In the context of resolving civil disputes, courts are often seen as the only way to achieve justice. However, in some cases, parties involved in a dispute can reach an amicable agreement outside of court through a mediation or negotiation process. One of the tools used to record this peace agreement is a peace deed made before a Notary. The reality that occurs in dispute resolution carried out by the courts is that it is considered slower and ineffective and is still felt to be detrimental by many parties. There are so many inherent weaknesses that it is considered necessary to have methods or institutions for resolving disputes outside of court even though the case has been tried in court.[3]

Prof. Dr. Jimly Asshiddiqie, SH: Former Chief Justice of the Constitutional Court of the Republic of Indonesia. He stated that the peace deed made before a Notary has strong evidentiary power and can be executed directly without going through a court process. He also emphasized the importance of regulating the mediation process and dispute resolution outside of court strictly in the Law that regulates Notaries.[4]

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[1]Salim, 2006, Contract Law: Theory and Techniques of Compilation, 8th Printing, Sinar Graphic, Jakarta, p. 92.
[2]Ahmad Ramadan, 2022, "The Role of the Honorary Council of Notaries in the Confiscation of Deed Minutes by Police Investigators", Sultan Agung Notary Law Review (SANLaR), Volume 4 No. 3, p. 833,http://lppmunissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536
[3]Ibnu Adi Prasetyo, Bambang Tri Bawono, and Nanang Sri Darmadi, 2022, "The Role and Responsibilities of Notaries in Making Certificates of Inheritance Rights for Disbursement of Time Deposit Savings Funds by Heirs", Sultan Agung Notary Law Review (SANLaR), Volume 4 No . 3: 896http://lppmunissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536
[4]Asshiddiqie, Jimly, 2019, Out-of-Court Dispute Resolution from the Perspective of Indonesian Civil Procedure Law, Journal of Business Law, vol.7, no.1, p. 33-54.

Peace is one of the options that is available and legal in the dispute resolution process in Indonesia, regulated in Article 130 HIR, peace can be carried out in two ways, namely through the court process and outside the court. Peace through court according to the provisions of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, it is said that those who have the right to carry out the mediation process, while the peace process outside of court can be carried out by the parties to the dispute making a peace deed made in the presence of an public official in this case is the Notary.[5]

Based on the explanation above, in this thesis we will discuss the role of notaries based on position in making peace deeds in civil disputes outside of court and the implications of peace deeds made by notaries in the legal system in Indonesia, because several problems arise related to their role and implications in the resolution of civil disputes regarding peace deeds made before a notary is still widely discussed.

2. Research Methods

The approach method used in this research is a sociological juridical approach, namely legal research that uses secondary data as initial data, which is then followed by primary data or field data, in the form of interviews with several of Notaries, several Mediators who are licensed to look for relationships (correlation) between various symptoms or variables as a means of collecting data consist of document studies, observations (observations), and interviews (interviews). The specification of the research conducted by the writer belongs to the analytical descriptive research. Methods of data collection using library research and interviews. The method of data analysis is descriptive qualitative analysis.

3. Results and Discussion

3.1. The role of a notary based on his position in making a peace deed

The authority of a Notary referred to in Article 15 paragraph (1) of the Law No. 30 of 2004 which has been amended into Law No. 2 of 2014 Concerning the Office of a Notary is that the Notary has the authority to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and/or what is desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, all of that as long as the

[5] Https://Jurnal.Uns.Ac.Id/Yustisia/Article/Download/28720/20092Accessed March 15, 2023 at 22:00

making of the deed is not also assigned or excluded to other officials or other persons stipulated by law.[6]

The essence of a Notary's duties is to express in writing and authentically the legal relationships between the parties who jointly and by consensus request the services of a Notary. The duties and authority of a Notary in principle are the same as those of a Judge, namely to provide decisions regarding justice between the parties to a dispute. Although if you look at the law, the duties of a Notary in practice cover broader matters.[7]

The role of a Notary in legal formation is very important, considering that the Notary has a vital role as a public official who has the authority to make authentic deeds. The Notary is not obliged to examine and investigate the material truth of every deed he has made, but the Notary is obliged to record it carefully and carefully so that there are no errors in the deed. If necessary, the Notary is obliged to refuse to make the deed requested from him if he is aware of the actions taken by the client it violates applicable regulations.

Subekti believes that a deed is a writing that is deliberately made to be used as evidence of an event and is signed.[8] The difference between the writing under the hand and the deed lies in the signature listed under the deed[9]. Underhand writing is writing that does not have the same character as deed writing, for example a personal note.[10]Meanwhile, according to Sudikno Martokusumo said that the Deed is a letter that is signed which contains events that form the basis of a right, or an agreement made from the beginning on purpose for proof.[11]

Habib Adjie added that the deed made by a Notary is an authentic deed according to the form and procedure stipulated in the Law No. 30 of 2004 which has been amended into Law No. 2 of 2014 Concerning the Position of Notary[12]. Provisions regarding deeds are regulated in Article 38 paragraph (1) of Law No. 30 of 2004 which has been amended to Law No. 2 of 2014 concerning the Position of Notaries which states that every Notarial deed consists of the beginning or head of the deed, the Deed Body, and End or closing deed.

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[6] Https://Rahmanjambi43.Wordpress.Com/2015/02/06/Makalah-Teori-Justice/Accessed June 10 2020 at 09:50

[7]Interview with Dwi Satmoko, Notary in Rembang Regency, on July 14 2023

[8]R. Subekti, 2008, Law of Evidence, Pradnya Paramita, Jakarta, p. 55.

[9]Tan Thong Kie, 1994, All-round Notary Study of Notary Practice, Ichtiar Baru Van Hoeve, Jakarta, p. 233.

[10]Ali Afandi, 2004, Inheritance Law, Family Law and Evidence Law, Rineka Cipta, Jakarta, p.199.

[11]Sudikno Mertokusumo, 1998, Indonesian Civil Procedure Code, Liberty, Yogyakarta, Matter. 89.

[12]Habib Adjie, 2008, Indonesian Notary Law, Thematic Interpretation of Law no. 30 of 2004 concerning the Position of Notary, PT Refika Aditama, Bandung, p. 206.

In accordance with the explanation of Article 39 paragraph (2) of Law No. 30 of 2004 which has been amended into Law No. 2 of 2014 concerning the Position of Notary Public which states that the presenter must be known to the Notary or introduced to him by 2 (two) identifying witnesses who is at least 18 (eighteen) years old or married and capable of carrying out legal acts or introduced by 2 (two) other presenters13. The body of the deed also contains the premise, namely the preliminary statement that has been submitted by the appearer, for the peace deed it is explained that there is a dispute that has occurred and the articles that must be obeyed by the parties.

A notary who draws up the deed only has the authority to draw up the deed assigned to him, because there are several deed which are not under the authority of a notary to draw up. An example is the provisions of article 55 paragraph (1) of the Law No. 30 of 2004 which has been amended into Law No. 2 of 2014 Concerning the Office of a Notary Public which states that a Notary is not allowed to make deeds for himself, his wife/husband, or other persons. others who have a family relationship with the Notary either by marriage or blood relationship in a straight downward and/or upward line without degree restrictions, as well as in a sideways line up to the third degree, as well as being a party for themselves, as well as in a position or by proxy.[14]

The peace deed has two terms, namely acte van dading and acte van vergelijk. The term acte van dading is used by Retnowulan Sutantio[15]. The term acte van vergelijk is used by Tresna[16]. In essence, peace can be made by the parties in front of or by the judge examining the case. Peace can also be made by the parties outside the court and then brought to the relevant court to be confirmed.[17]

Acte van vergelijk is a deed that has received confirmation from a judge. Many judges tend to choose to use acte van dading to enforce peace. Every society has various ways to obtain agreement in resolving disputes. Increasingly, society is starting to abandon customary methods of resolving disputes and switching to methods recognized by the government. This is where the law is built to mediate disputes with rules that must be obeyed by discipline. In enforcing the law, there

[13]*ibid.,*p 17
[14]Interview with Nurul Asmahani, Notary / PPAT in Rembang Regency, on July 14 2023
[15]Retnowulan. Sutantio, 2003, Mediation and Dading, Arbitration and Mediation Proceedings. First printed: Center for Legal Studies, Ministry of Justice and Human Rights, Jakarta, p. 161.
[16]MR Tresna, 1975, HIR Comments, Pradnya Paramita, Jakarta, p. 130.
[17]Puslitbang, 2003, Law and Justice, Academic Paper Concerning Court Dispute Resolution, Puslitbang Law and Judiciary MARI, Jakarta p. 164.

are three elements that must be taken into account, namely legal certainty (rechssicherheit), expediency *(zweckmassiigkeit*), and justice (*gerechtikeit*).[18]

Making a peace deed by a notary must be followed by a notary issuing the deed grosse. Article 55 paragraph (1) of Law No. 30 of 2004 which has been amended to Law No. 2 of 2014 concerning the Position of Notary Public states that the Law provides for Notaries to issue grosse deeds and make notes in the minutes of the deed regarding recipients grosse deed and date of issuance as well as notes are signed by the Notary.[19]

Paragraph (2) of this article regulates the executorial power of the grosse deed. Grosse deed apart from having executive power, also has other benefits, namely in terms of proof as stipulated in the provisions of Article 1889 number 1 of the Indonesian Civil Code, that is, if the original basis for rights is no longer there, the first copy provides the same evidence as the original deed.[20]

The phrase at the head of the deed above the title of the deed is added with words according to the provisions of Article 55 paragraph (3) of Law No. 30 of 2004 which has been amended into Law No. 2 of 2014 concerning the Position of Notary which reads grosse Deed as referred to in paragraph (2) in the head of the deed contains the phrase "FOR JUSTICE BASED ON THE ALMIGHTY GOD", and at the end or closing of the deed contains the phrase "given as the first grosse", by stating the name of the person requesting it and for whom the grosse is issued and date of issue.[21]

Based on this statement, if one of the parties does not fulfill the peace agreement that has been made into a peace deed, then the party who feels aggrieved can request a grosse for the peace agreement made in the form of an authentic deed from the Notary. So that the grosse has the same executive power as a judge's decision, then the district court is obliged to immediately carry out the execution so that the problem will be resolved more quickly.

3.2. Implications of a deed of peace made in the presence of a notary in resolving civil disputes outside the court in Rembang Regency

In general, according to legal provisions in Indonesia, mediation can be divided into 2 (two) forms, namely: mediation in court and mediation outside of court. In the court process, where the parties to the dispute (plaintiff and defendant) face

[18]R. Subekti and R. Tjitrosudibjo, 2003, Civil Code, Praditya Paramita, Jakarta, Article 1858
[19]Interview with Nurul Asmahani. Notary/PPAT in Rembang Regency, On the stairs; July 14, 2023
[20]Herlien Budiono, 2013, Basic Techniques for Making Notarial Deeds, PT Citra Aditya Bakti, Bandung, p. 41.
[21]Interview with Nurul Asmahani, Notary/PPAT in Rembang Regency, July 14 2023

each other, each tries to defend their rights before the court. The final result of the dispute resolution process through the court is a win-lose solution. Dispute settlement procedures in such courts are more formal in nature and highly technical. As stated by J. David Reitzel, "there is a long wait for litigants to get trial", let alone to get a decision that has permanent legal force, to resolve it at just one judicial agency, you have to queue up and wait.[22]

The final result of dispute resolution obtained from the court is the issuance of a judge's decision. The judge's decision actually reflects expediency, when the judge does not only apply the law textually and/or only pursues justice, but also directs it to the benefits and interests of the litigants, even for the interests of society in general. Judges in applying the law, should consider the end result, whether the judge's decision can bring benefits or uses for all parties. Meanwhile, LJ Van Apeldoorn said that justice should not be seen as synonymous with equality, justice does not only mean that everyone gets an equal share. This means that justice demands that each case must be weighed separately, meaning that fair to one person is not necessarily fair to another. The purpose of the law is to regulate the association of life in peace, towards fair rules, there is a balance between the interests that are protected, and everyone gets as much as possible which is his part.[23]

The implementation of mediation in court on the basis of deliberation to reach consensus has been regulated in a number of laws and regulations in Indonesia. The origin of mediation in court is based on the provisions in Article 130 HIR which states:[24]

a. If on the appointed day both parties come, the District Court will try, through its chairman, to reconcile them.

b. If such a reconciliation occurs, then at the time of the trial, a deed will be drawn up, with the names of both parties obliged to fulfill the agreement made, then the letter (deed) will have force and will be executed as a normal judge's decision.

The enactment of PERMA Mediation has fundamentally changed judicial practices related to civil cases. Before the Supreme Court regulations came into existence, the panel of judges only made efforts to reconcile the parties as a mere formality, but now efforts to reconcile the parties are given the opportunity to the mediator, while the examination of the main case must be postponed by the panel of judges. The mediator is given separate time and space to carry out

[22]Arwono, 2012. Civil Procedure Law Theory and Practice, Jakarta, Sinar Graphic, p. 5
[23]Krisna Harahap, 2015. Civil Procedure Law, 4th ed. Bandung: Grafitry, Pg. 63.
[24]Ibid.

mediation for the parties. This peace effort is not just a formality, but requires them to negotiate for a maximum of two working days to select one or more mediators who are recorded in the court's list of mediators. If they do not agree in determining the mediator according to the specified time, then the panel of judges has the authority to immediately determine by appointing a mediator on the list of mediators in court. In this case, the judge examining a case is obliged to postpone the trial and give both parties the opportunity to undergo mediation. This is in accordance with the contents of Article 20 paragraph (1) to paragraph (7) of the Perma Mediation.[25]

The mediator is obliged to make a written report regarding the success of the mediation addressed to the examining judge who is examining the case for the first time, as well as attaching a peace agreement, as stipulated in Article 27 paragraph (6) of Perma Mediation. In the next stage, the case examining judge is obliged to study and examine the peace agreement material within 2 working days. If the peace agreement has complied with the provisions referred to in Article 27 paragraph (2), then the case examining judge can issue a stipulation of the trial time for the reading of the peace deed (acte van dading).[26]

Out-of-Court Mediation

Meanwhile, out-of-court mediation is mediation carried out by mediators, either individuals or by institutions or institutions outside the court, one of which is mediation carried out by institutions such as the National Mediation Center. Based on Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, mediation is an alternative form of dispute resolution outside of court, apart from arbitration or other methods. Mediation can also be intended as a process of continuing activities as a result of failed negotiations previously carried out by the parties. This is in accordance with what is meant in Article 6 paragraph (3) of Law No. 30 of 1999, namely:[27]

"In the event that the dispute or difference of opinion as referred to in paragraph 2 cannot be resolved, then based on the written agreement of the parties, the dispute or difference of opinion is resolved through the assistance of one or more expert advisors or through a mediator".

The process of carrying out mediation outside the court, the provisions are also regulated in Article 58 and Article 60 of Law No. 48 of 2009 concerning Judicial

[25]Retnowulan Sutantio, 2003, Mediation and Dading, Arbitration and Mediation Proceedings," in the Center for Legal Studies of the Department of Justice and Human Rights (Center for Legal Studies of the Department of Justice and Human Rights), Jakarta, p. 161.
[26]Ibid.
[27]Interview with Yusuf Setyo Nogroho, Legal Office Mediator Ershie, S, H And Pather Sidoarjo, on July 21 2023

Power, Chapter XII concerning Dispute Settlement Outside the Court. Article 58 stipulates that: "Efforts to resolve civil disputes can be made outside the state court through arbitration or alternative dispute resolution". Meanwhile, Article 60 determines that:

a. Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment.

b. Dispute resolution through alternative dispute resolution as intended in paragraph (1) results are stated in a written agreement.

c. The written agreement as intended in paragraph (2) is final and binding on the parties to be implemented in good faith.[28]

3.3. The role of a Deed of Peace made before a Notary in resolving civil disputes outside of court

Basically the task of a Notary is to make authentic deeds where the deed can become valid evidence in the event of a dispute, the Notary in carrying out his duties must be normatively guided by the legal rules related to all actions to be taken and then set forth in a deed. Acting based on the applicable legal rules will give the parties that the deed to be made "before" or "by" a Notary is in accordance with the applicable legal regulations, so that if a problem occurs, the Notary's deed can be used as a guide by the parties.[29]

1) Elements of Article 1313 of the Civil Code:

"An agreement is an act by which one person or more binds himself to one or more other people".

2) Elements of Article 1320 of the Civil Code:

The conditions for the validity of an agreement according to Article 1320 of the Civil Code are: The agreement of those who bind themselves, The ability to make an agreement, A certain thing, A lawful cause.

3) Elements of Article 1338 of the Civil Code.

[28] Interview with Yusuf Setyo Nogroho, Mediotor of Ershie, S,H and Fatnher Sidoarjo Law Firm, on 21 July 2023
[29]Habib Anjie (a), 2009, Indonesian Notary Law, Temanik's Interpretation of Law no. 30 of 2004 concerning Notary Positions, Refika Aditama, Bandung, p.37

"All agreements contained are legally binding on the parties as law."

Notaries are not only authorized to make peace deeds in the sense of Verlijden, namely drafting, reading and signing and Verlijkden in the sense of making deeds in the form determined by law as intended by Article 1868 of the Civil Code, but also based on the provisions contained in Article 16 paragraph (1) letter d UUJN, namely the obligation for Notaries to provide services in accordance with the provisions of this Law, unless there is a reason to refuse. Notaries also provide legal advice and explanations regarding the provisions of the Law to parties in dispute.

Abdul Kadir Muhammad as quoted by Abdul Ghofur Anshori,[30] Notaries in carrying out their duties and positions must be responsible, meaning:

1. A notary is required to make a peace deed properly and correctly. This means that the peace deed made fulfills the will of the law and the request of interested parties because of their position.

2. Notaries are required to produce quality peace deeds. This means that the peace deed he made was in accordance with legal regulations and the wishes of the interested parties in the true sense, not making it up. The notary explains to interested parties the truth of the contents and procedures of the peace deed he has made.

3. It has a positive impact, meaning that anyone will admit that the Notary's peace deed has perfect evidential power.

Regarding the responsibilities of a Notary according to Article 60 of the Notary's Position Regulations for a deed drawn up by or before a notary. .

1. In matters that are expressly determined by the Notary's Position Regulations;

2. If a deed, because it does not meet the requirements regarding the form, is canceled in court or can only be considered valid as a private deed.

3. In all cases, where according to the provisions in Articles 1365, 1366 and Article 1367 of the Civil Code there is an obligation to pay compensation.

Looking at the case above, a deed which is an authentic deed (notarial deed) which has perfect evidentiary strength, can be meaningless as evidence in a civil case, if the act is carried out not in accordance with applicable legal principles and contradicts with the regulations of the Notary position. Notary as a public

[30]Abdul Ghofur Anshori, Op.Cit, p. 49.

official authorized to make authentic deeds, can also be prosecuted by the parties if the deed he made has resulted in losses to the party.

4. Conclusion

The Deed of Settlement drawn up before a Notary is an authentic deed that has the force of law as perfect evidence because the deed is drawn up by a public official and the form is determined by law. The peace deed was made because it was desired by the interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for the interested parties. The deed of peace is one of the legal products made by a Notary in carrying out his duties and functions of providing legal services to the public in his position as a public official, who adheres to his profession, namely as an impartial mediator, services are provided to all parties, and tries to resolve all problems.

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