



The Role and Position of the Notary Deed in the Conviction of the Defendant

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Abstract.

This study aims to determine the role and position of an authentic deed in the form of a peace agreement between the parties referring to the case study of Decision Number 69/Pid.B/2022/PN Smg. The research method used is a normative juridical approach (library research), which examines existing legal problems by linking laws and regulations, books, official documents, publications, and research results, which are discussed using secondary data which includes principles, norms, rules, and laws and regulations in accordance with the research. The result of this research is that an authentic deed in the form of a peace agreement between the parties in a criminal case can be used as the main consideration in mitigating the defendant. The peace agreement in verdict number 69/Pid. B/2022/PN Smg implemented by the parties is a manifestation or implication of ADR which has fulfilled the elements of out-of-court case settlement / Afdoening Buiten process. In this discussion, the public prosecutor and judge in decision number 69/Pid.B/2022/PN Smg were very concerned about the existence of a peace agreement between the parties (perpetrator and victim). This is evidenced by the lenient charges from the Public Prosecutor against the defendant in the form of a conditional sentence, namely imprisonment for 5 (five) months with a probationary period of 10 (ten months). The judge in his decision also handed down a lenient sentence against the defendant, namely imprisonment for 5 (five) months with a probationary period of 10 (ten months) or the same as the charges of the public prosecutor.

Keywords: Agreement; Authentic; Justice; Restorative.

1. Introduction

Article 1868 of the Civil Code (KUHPerdata) defines authentic deeds, namely "deeds made in the form determined by law by/or before an authorized public official for that purpose, at the place where the deed was made". The interpretation of this article on the nomenclature of 'public official' is a notary. This is in accordance with Article 1 point 1 of the Notary Office Law (UUJN) Number 2 of 2014 which states that a notary is a public official who has the authority to make authentic deeds and has other powers as stipulated in this law or based on law.

Authentic deed essentially contains formal and material truths between the parties concerned in accordance with what was conveyed before a notary. Therefore, in the process of resolving disputes between parties, an authentic deed has strong evidentiary power, so that judges can use it as a consideration in deciding cases. In decision Number 69/Pid.B/2022/PN Smg, the judge made an authentic deed containing a peace agreement between the parties as one of the factors mitigating the defendant OJ bin LJ, who was found legally proven guilty of committing the crime of "participating in committing an act of fraud." So the judge sentenced him to a sentence in the form of a conditional sentence, namely imprisonment for 5 (five) months with a probation period of 10 (ten months).

The birth of a peace agreement between HS and the defendants OJ bin LJ and JT bint TT (the defendant in a separate file) as stated in the Deed dated January 19, 2022 made before Bunga Melliana, SH, M.Kn., Notary in Pemalang (which will henceforth be referred to as the "Peace Agreement"), occurred when the investigation process was still ongoing for the alleged criminal act of fraud at the Central Java Regional Police which was reported by HS. At that time, the wife of the defendant OJ bin LJ named JT binti TT (the defendant in the separate file) came to meet HS (the reporter) to discuss the matter of resolving the case amicably, and then amicable settlement of the case took place outside the court (*Afdoening Buiten* process)) by using a restorative justice approach in the form of a peace agreement,

Referring to the Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated 14 December 2009 concerning Handling of Cases Through ADR (Alternative Dispute Resolution) referring to the Chief of Police Regulation Number 7 of 2008 concerning Community Police, this case should have been stopped by the Central Java Regional Police. However, when HS (the reporter) informed the Director of General Criminal Investigation of the Central Java Regional Police that the peace agreement had been signed, the case file turned out to have been transferred to the Central Java High Prosecutor's Office and declared complete (P-21), so that the Central Java Regional Police could not apply the provisions in the Letter of

the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS by issuing an Investigation Termination Warrant (SP3). The High Court of Central Java is also unable to apply the provisions as stated in the Attorney General's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, because the provisions of article 5 paragraph (1) letter c which require the value of losses due to criminal acts not to exceed IDR 2,500,000.00 (two million five hundred thousand rupiah).

2. Research Methods

The specifications in this study are analytical descriptive. In this study the author will describe the applicable laws and regulations (positive law), which are associated with legal theories and the practice of implementing positive law relating to the problems studied. While analytical means that the writer will classify, connect and analyze what has been described by using legal theories, legal principles, and applicable laws and regulations.¹

Data collection was carried out using library research methods by means of library research. Library data is obtained through library research which originates from laws and regulations, books, official documents, publications, and research results.² The data collected through a literature study consists of primary legal materials and secondary legal materials related to the object of this research study.

3. Results and Discussion

Case Position and legal facts in decision Number 69/Pid.B/2022/PN Smg with the defendant OJ bin LJ will be described in the following points:

- a. The defendant OJ bin LJ is the husband of JT bint TT (defendant with a separate file);
- b. HS (the complainant/victim witness) has been a business partner of the defendant OJ bin LJ since 1981;
- c. The defendant OJ bin LJ is the manager of the Yamaha Main Dealer, with the business entity PT. ISM for the former Pekalongan Residential area (Tegal, Pemasang, Pekalongan and its surroundings). Then in the Pemasang area and its surroundings there are already Yamaha Sub-Dealers managed by PT. YWM;

¹Zainudin Ali, (2018). *Metode Penelitian Hukum*, Jakarta: Sinar Grafika. p.17-18.

²Amiruddin and Zainal Asikin, (2010). *Pengantar Metode Penelitian Hukum*, Jakarta: Rajawali Pers, p. 25.

d. HS (reporter/victim witness) is the manager of the Suzuki dealership with the business entity CV. AM. In early 1990, the manager of the Yamaha Sub-Dealer in Pemalang and its surroundings (PT. YWM) died, so it was necessary to find a replacement, and then the defendant OJ bin LJ took the initiative to offer (recommend) HS as a Yamaha Sub-Dealer in Pemalang and its surroundings. . The basis for his consideration was that HS already had experience as a Suzuki dealer, besides that the two of them already knew each other well. The defendant OJ bin LJ fighting for HT to become the sole Sub-Dealer in the Pemalang area and its surroundings, even though the principal in Jakarta had previously rejected him. Thanks to the persistence of the defendant OJ bin LJ's struggle, finally HT succeeded in becoming the sole Yamaha Sub-Dealer in the Pemalang area and its surroundings until now;

e. In 2012, the defendant OJ bin LJ experienced financial difficulties in running his business. To overcome these financial difficulties, then the defendant OJ bin LJ borrowed money from HS as his business partner on the basis of mutual trust, so that the debts were owed without a written agreement, with interest rates of 2% to 4%. As collateral for the debt for HS's holding, the defendant OJ bin LJ issued a demand deposit slip, with an agreed payment system made in cash or by transfer, and after it was paid off, the demand deposit slip was returned to the defendant OJ bin LJ. The loan transaction between the defendant OJ bin LJ and HS initially went smoothly, where the defendant always fulfilled his obligation to pay debts and interest every time he borrowed money from HT from 2012 to 2014. Then in 2015, the payment of the defendant's debt to HT became substandard due to unfavorable economic conditions, which resulted in a decline in the defendant's business. In 2016, after the defendant met with HS to discuss settlement of his debt, it was mutually agreed between the defendant and HS regarding the amount of debt owed by the defendant OJ bin LJ as stated in the acknowledgment of debt, amounting to IDR 5.350.000.000,- (five billion three hundred and fifty million rupiah), HS visited the dealer owned by the defendant OJ bin LJ who was in Tegal and met with a finance staff named TAO and asked for 3 (three) demand deposit slips to be prepared/issued in accordance with the acknowledgment of debt signed by the defendant OJ bin LJ. At that time the defendant OJ bin LJ was not present and HS insisted that the giro slip be signed by the wife of the defendant OJ bin LJ whose name was JT binti TT, who actually had no right to sign the giro slip (this was known and realized by HS). Under these urgent conditions, the demand deposit slip had to be signed by JT binti TT. Some time later, the demand deposit slip signed by the wife of the defendant OJ bin LJ named JT binti TT, without the permission of the defendant OJ bin LJ was disbursed to Bank Central Asia (BCA), However, it was rejected by the bank on the grounds that the signature specimen was inappropriate and expired. On the basis of the rejection by Bank BCA, HS reported the defendant OJ bin LJ and the defendant's wife named JT binti TT (defendant with separate files) to the Central

Java Regional Police, on the basis of the report being an alleged crime of FRAUDas referred to in Article 378 of the Criminal Code, based on Police Report Number: LP/B/139/III/2020/Jateng/Ditreskrim dated 23 March 2020, which was subsequently named a suspect until he was proposed as a defendant and sentenced based on decision Number 69/Pid. B/2022/PN Smg;

Based on decision Number 69/Pid.B/2022/PN Smg with the defendant OJ bin LJ, the notary deed regarding the peace agreement turned out to have a very important role and position, namely in the context of sentencing (sentence) against the defendant OJ.

Authentic deed in English is referred to as authentic deed regulated in Article 1868 of the Civil Code and other laws and regulations that regulate this matter.³The definition of an authentic deed in Article 1868 of the Civil Code is: "a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made". Referring to the definition of the authentic deed, there are 3 (three) elements in it which include:⁴

- a. Made in a certain shape;
- b. In the presence of an authorized official to do so; And
- c. The place where the deed was made.

An authentic deed is a legal product issued by a notary as an authorized official and has legal force which can be used as evidence in a trial. The making of an authentic deed is constructed as a written instrument made in accordance with the format and formalities that have been determined by law. The substance of an authentic deed includes: the interests of the parties, rights and binding obligations of several or more people.⁵ Therefore, an authentic deed is a deed that has perfect evidentiary power.

An authentic deed is said to have perfect evidentiary power because it has (three) elements in it, namely:⁶

- a. The power of proof is born.

³H. Salim HS, (2016). *Teknik Pembuatan Akta Satu (Konsep Teoritis, Kewenangan Notaris, Bentuk, dan Minuta Akta)*, Jakarta: PT Raja Grafindo. p. 17.

⁴Loc City.

⁵Ibid., p. 19.

⁶Ibid., p. 29-30.

What is meant by an authentic deed having the power of proof of birth is that the deed itself has the ability to prove itself as an authentic deed. This is in line with the statutory basis, namely in Article 1875 of the Civil Code which reads: "an underhanded writing whose truth is acknowledged by the person presented to it or legally deemed to have been justified by it, giving rise to complete evidence such as an authentic deed for the person who has signed it, his heirs as well as the people who get the rights from them; the provisions of Article 1871 shall apply to that writing". The power of proof of birth cannot be obtained by an agreement or deed under the hand alone.

b. The power of formal proof.

The formal aspect of an authentic deed contains the truth of the parties carried out by a notary as a public official in carrying out his position. An authentic deed in the formal sense guarantees the existence of 3 (aspects), namely: the correctness of the date of the deed, the truth contained in the deed, the truth of the identities of the parties, and the truth of the place where the deed was made.

c. Strength of material evidence.

The substance of the authentic deed is considered as true to the parties. The meaning of this statement is that the contents or information contained in the authentic deed shall apply as true according to the provisions of Article 1870, Article 1871 and Article 1875 of the Civil Code. If an authentic deed is used before a court, then it is sufficient for the judge without having to ask for other evidence because the deed is made in writing, the parties are complete, the object is clear, and there is the date the deed was made.⁷

Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) explains that there are 5 (five) valid pieces of evidence, namely: "witness statements, expert statements, letters, instructions, and statements of the accused". In Indonesia, the evidentiary system in criminal procedural law adheres to the negative wettelijk system.⁸ The meaning of this statement is that in the Indonesian criminal procedural law evidentiary system, only valid evidence according to statutory provisions can be used. This confirms that other than the provisions regarding the classification of evidence in Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP), it cannot be used as legal evidence.

⁷Loc, Cit.

⁸Martiman Prodjohamidjojo, (1983). *Sistem Pembuktian dan Alat Bukti*, Semarang: PT Ghalia Indonesia. p. 19.

The notary deed regarding the peace agreement in decision Number 69/Pid.B/2022/PN Smg has the position or qualifications as proof of letters according to Article 184 paragraph (1) of the Criminal Procedure Code (KUHP), and because it is in the form of an authentic deed it has perfect proving power. This statement is in accordance with the definition of a letter according to article 187 letter (a) which refers to article 184 of the Criminal Procedure Code, namely: "minutes and other letters in an official form made by an authorized public official or made before him, containing information about events or circumstances heard, seen or experienced by himself accompanied by clear and firm reasons for that statement.

ADR (Alternative Dispute Resolution) is a dispute resolution which was originally only used in the civil domain. Along with the development of law in Indonesia, ADR can be used in criminal law settlements. This is because the people in Indonesia demand a settlement of criminal cases which in theory can satisfy all parties without having to go through a criminal imposition by a judge. Therefore, ADR is seen as an alternative settlement of criminal cases and has an important meaning, namely the settlement of cases with the concept of a win-win solution, which means that the settlement of criminal cases focuses more on the interests of the victim/victim's interest.⁹

ADR (Alternative Dispute Resolution) or what can be called in terms of the criminal law system is called penal mediation has an important role in criminal law enforcement, because this method pays more attention to the elements of justice and usefulness and solutions for litigation settlements that require a long time. ADR (Alternative Dispute Resolution) according to Barda Nawawi Arief has a restorative "soul" in it. The purpose of this statement is that when the parties agree to carry out ADR efforts, then the situation has returned to how it was before the crime occurred.¹⁰

The peace agreement between the two parties in decision number 69/Pid.B/2022/PN Smg as outlined in the form of an authentic deed has fulfilled the elements in Article 187 letter (a) which refers to Article 184 of the Criminal Procedure Code as proof of a valid document and can be used in the judge. Therefore, the peace agreement is used as the basis by the parties in charge of handling cases (prosecutors and judges) as the main consideration in mitigating the defendant.

⁹Barda Nawawi Arief, (2000). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang: Badan Penerbit Universitas Diponegoro. p. 169-1971.

¹⁰Adam Prima Mahendra, (2020). *Mediasi Penal pada Tahap Penyidikan Berlandaskan Keadilan Restoratif*, *Jurist-Diction*, Vol. 3 No. 4. p. 4-5.

Prosecutors as government institutions that carry out state power in the field of prosecution must prioritize restorative justice in order to create justice that is as fair as possible to the parties. This is contained in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2000 concerning Termination of Prosecution Based on Restorative Justice in point Considering letter (b) which states that:

"Settlement of criminal cases by prioritizing restorative justice emphasizing restoration to its original state and balancing the protection and interests of victims and perpetrators of crimes that are not oriented towards retaliation is a legal requirement of society and a mechanism that must be built in the implementation of prosecution authority and renewal of the justice system".

The peace agreement implemented by the parties in decision number 69/Pid.B/2022/PN Smg is an embodiment or implication of ADR which has fulfilled the elements of an out-of-court settlement of cases (*Afdoening Buiten* process). This should have been the main concern of the Public Prosecutor to stop the prosecution of cases in order to create a sense of justice and benefit for the parties. The author's statement is based on the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2000 concerning Termination of Prosecution Based on Restorative Justice CHAPTER II Article 3 paragraph 2 letter (e) which reads: "closing of cases in the interest of law is carried out in the event that there has been a settlement of cases outside the court (*Afdoening Buiten* process).

The Public Prosecutor is not immediately able to terminate the prosecution of a criminal case even though there has been a settlement of the case outside the court in the form of a peace agreement because of the limitation as stipulated in Article 5 paragraph 1 letter (c) of the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2000 concerning limitations on the amount of losses that can be arising as a result of a crime, namely a maximum of IDR 2,500,000.00 (two million five hundred thousand rupiah). In this case the Public Prosecutor cannot stop the prosecution of the case because the amount of losses incurred as a result of the crime is equal to IDR 5,350,000,000.00 (five billion three hundred and fifty million rupiah). According to the author, this is contradictory in the application and enforcement of restorative justice within the prosecutor's office. Supposedly in these regulations when wanting to uphold the principle of restorative justice, it must focus on an agreement in the form of peace between the parties (perpetrators and victims) that have fulfilled the elements of settlement of cases outside the court (*Afdoening Buiten* process) without limiting the amount of losses so that the Attorney The Public Prosecutor can apply the principles of restorative justice properly and fairly.

Restorative justice can be used as an 'instrument of recovery' in the settlement of criminal cases by judges, although in its implementation there are restrictions regarding the amount of losses arising from criminal acts, namely a maximum of IDR 2,500,000.00 (two million five hundred thousand rupiah)) as stated in Chapter I Article 2 paragraph 2 of the Republic of Indonesia Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits for Misdemeanors and the Amount of Fines in the Criminal Code. In this regulation, the implication of the principle of restorative justice focuses on convicting a person which is transformed into a process of dialogue and mediation involving the perpetrator, victim, family, and other related parties to jointly create an agreement on a fair and balanced settlement of criminal cases for victims by prioritizing restoration to their original state. Based on this elaboration, it is clear that the "judge" as an institution authorized to decide cases must pay attention to the settlement of cases outside the court (*Afdoening Buiten* process) so that justice can be created that does not harm the interests of the victims.

The Public Prosecutor and the judge in decision number 69/Pid.B/2022/PN Smg are very concerned about the existence of a peace agreement between the parties (perpetrator and victim). This was proven by the existence of a mild charge from the Public Prosecutor against the defendant in the form of a conditional sentence, namely imprisonment for 5 (five) months with a probation period of 10 (ten months). In his decision, the judge also handed down a lenient sentence against the defendant, namely in the form of imprisonment for 5 (five) months with a probation period of 10 (ten months) or the same as the demands of the Public Prosecutor, with the consideration that there had been a peace agreement between the parties who then followed up with the revocation of the case from HS (reporter/victim) to the Director of General Criminal Investigation of the Central Java Regional Police.

4. Conclusion

The peace agreement in decision number 69/Pid.B/2022/PN Smg carried out by the parties in the form of a notary deed is an embodiment or implication of ADR (Alternative Dispute Resolution) which has fulfilled the elements of a settlement of cases outside the court (*Afdoening Buiten* process) . ADR (Alternative Dispute Resolution) is seen as an alternative settlement of criminal cases and has an important meaning, namely the settlement of cases with the concept of a win-win solution, which means that the settlement of criminal cases focuses more on the interests of the victim (victim's interest). The Public Prosecutor and the judge in decision number 69/Pid.B/2022/PN were right to prosecute and hand down a light sentence to the defendant because they were very concerned about the existence of a peace agreement as a fair settlement step.

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