THE LEGAL POSITION OF THE PEACE DEED DISPUTE RESOLUTION IN OUT OF COURT

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ABSTRACT

This study aims to determine the legal strength of peace deeds outside the court; peace deeds accommodate the interests of the parties and the legal position of peace deeds made outside the court. This research is a normative legal research type. The approach used is the statute approach. All research materials were analyzed using qualitative techniques. The results of this study conclude that the settlement of disputes outside the court will have permanent and binding legal force after the agreement is stated in the form of a peace deed made by a notary and is an authentic deed, namely an act that has perfect legal force. This means that if it turns out that one of the parties denies/defaults, the other party can ask for what has been agreed. Then the peace deed made by the notary has executorial legal force with a decree issued by the head of the District Court containing a request for execution so that the peace deed can be implemented.

Keywords: *Peace Deed, Out of court dispute. Notary Public*

INTRODUCTION

In order to meet the legal needs of the Indonesian people today and in the future, it is necessary to have conceptions and legal principles that are always developing and we cannot close our eyes to see the reality of legal cases and disputes, especially civil disputes. that is held in court that takes time, money, energy and thought, not enough is sometimes very tiring physically and psychologically. Even though according to Law Number 4 of 2004 concerning Judicial Powers, dispute resolution through a litigation process before the court is based on simple, fast and low cost[1].

The current phenomenon, the litigation process or litigation process in court is still felt to be very detrimental to the parties in litigation so that this principle is still perceived as a mere slogan. Due to the various weaknesses inherent in judicial bodies in dispute resolution, other methods or other institutions are sought. in resolving disputes outside the judiciary. For this reason, efforts to resolve a legal case can be carried out outside the court even though the case has been tried in court because basically in a civil case trial process, the first thing the panel of judges does is reconcile the two parties in a case. Such efforts are made by judges in accordance with the Circular Letter of the Supreme Court of the Republic of Indonesia No: 1 of 2002 as follows [2] :

Out of court dispute resolution is possible and legitimate as long as the parties are willing and have good faith to resolve a problem. In the event that the peace is carried out by the judge as a mediator

[1] Indonesia, Undang-Undang Tentang Kekuasaan Kehakiman, UU Nomor 4 Tahun 2004, LN Nomor 8 Tahun 2004.

[2] Surat Edaran Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2002.

or facilitator as well as peace which is carried out outside the court, both will be carried out in writing, to strengthen the peace.

In Article 1851 of the Civil Code states that: Peace is an agreement in which both parties, by handing over, promising or withholding an object, terminate a case that is pending or prevent a case from arising. The agreement is not valid but if it is written[3].

Based on this, the peace agreement that results from a dispute resolution process must be stated in a written form. This aims to prevent the re-emergence of the same dispute in the future. To fulfill the foregoing, the out-of-court peace process can be carried out by making a deed, namely a peace deed. This peace deed can be in the form of an underhand deed or an authentic deed made by a notary public.

LITERATURE REVIEW

Definition of Peace

in the Civil Code in Article 1851 peace has the following elements[4]:

1. There is an agreement between the parties
   The agreement between the parties must be considered valid if it meets the elements of the agreement regulated in Article 1320 of the Civil Code, while the agreement it must be in accordance with the provisions of Article 1321 of the Civil Code which states that no agreement or agreement is legally given if because:
   a. An error;
   b. Coercion;
   c. Fraud.
   Furthermore, Article 1859 of the Civil Code states that however a peace can be canceled if there has been an error regarding the person or regarding the subject of the dispute. It can cancel in all cases where fraud or coercion has been committed.
2. The contents of the agreement constitute an agreement to do something.
   Article 1851 of the Civil Code limits what legal actions are allowed. These restrictions include[5]:
   a. To deliver an item;
   b. Deliver something of the goods;
   c. Hold an item.
3. Both parties agreed to end the dispute.
   Article 1851 of the Civil Code also said that reconciliation could be made on existing cases, both those that were currently in court and those that would be submitted to court[6].

In Article 1858 paragraph (1) of the Civil Code, the conciliation held by the parties must be made in writing. (Civil Code, Article 1851). So it can be concluded that the written form of the peace agreement which is meant by law is an authentic written form, namely that which is made before an authorized official, in this case is a notary A written peace agreement made before a notary can be used as evidence for the parties to filed before a judge (court) because the contents of the conciliation are equated with a judge's decision who has permanent legal force.

[3] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Universitas Atma Jaya Yogyakarta, 2010).
[4] Sudikno Mertokusumo, "Penemuan Hukum Sebuah Pengantar," *Yogyakarta: Liberty*, 1996.
[5] Mertokusumo, *Hukum Acara Perdata Indonesia*.
[6] Mertokusumo, "Penemuan Hukum Sebuah Pengantar."

Basically, the substance of peace can be carried out freely by the parties, however, the law regulates various types of peace that the parties cannot carry out. Peace that is not allowed is:

a. The conciliation of an error regarding the person concerned or the subject matter;
b. Peace that has been made by deception or coercion;
c. Settlement regarding errors regarding sitting cases regarding a nullified right, unless the parties have made peace regarding the cancellation with a firm statement;
d. The conciliation which was held on the basis of letters which were later declared to be false;
e. Settlement regarding disputes that have been ended with a judge's decision that has obtained definite legal force, but is not known by the parties or one of the parties. However, if the unknown decision is still being appealed, then the settlement regarding the dispute in question is valid;
f. Peace is only about an affair, while the letters that were found later turned out that one party was not entitled to it.

If these six things are done, then the peace can be requested to the court (Salim, 2006: 94). The conciliation made by the parties has the same binding power as the judge's decision at the final stage, be it a cassation decision or a review. (Civil Code, Article 1858).

Therefore, many factors can be obtained from the choice of peace rather than taking the road of litigation. The benefits that will be obtained include:

a. Voluntary nature in the process
   The parties believe that alternative dispute resolution provides a potential solution for solving the problem better than the litigation procedure.
b. Quick
   procedure Because this procedure is informal, the parties involved are able to negotiate the terms of use. This will speed up the problem-solving process so as to prevent delays and a protracted problem, as is usually the case when the problem is resolved through litigation in court.
c. Non-judicial decisions.
   The authority to make decisions remains with the parties involved or is not delegated to third party decision makers. This means that the parties involved have more control and are able to predict the results of the dispute that will be achieved.
d. Flexibility in designing the conditions for solving problems.
   This procedure can avoid the constraints of litigation procedures in court which are very limited to making court decisions based on narrow points of law.
e. Save time.
   In the process of solving problems through the litigation process in court, there are often significant delays in waiting for a certainty on the trial date until the verdict.
f. Cost effective
   The amount of cost is usually determined by the length of time used. In many cases, time is money and delays in solving problems can be prohibitively expensive.
g. Maintenance of relationship
   This is different from court decisions that place one party in a winning position and the other party in a losing position, which can lead to animosity between them.
h. Decisions that last all the time

These decisions usually last all the time. If later the dispute causes problems, the parties involved take more advantage of cooperative problem solving rather than adopting an adversarial or contradictory approach[7].
From the description above, we can learn the advantages obtained from out of court settlement. Based on the definition provided by the Civil Code in article 1851, peace is an agreement in which both parties, by surrendering, promising or withholding an item, terminate a dependent case or prevent a case from arising[8].

Definition of Notary

Article one number 1 of Law Number 30 of 2004 concerning Notary Position states[9], "Notary is a public official who has the authority to make authentic deeds and other powers as referred to in this law,"
Notary Institution in Indonesia originated from a notary institution in the Netherlands. On 27 August 1620, the Dutch ruler in Indonesia, Jan Pieterzoon Coen, with the position of Governor General appointed a Dutchman named Melchior Kerchem, secretary of the Shipping Bureau, as the first Notary in Indonesia[10]..
The appointment of a notary at that time was for the benefit of the Dutch nation itself, or for those who either because of the law or because the provisions were declared subject to the applicable law for European groups in the field of civil law, in terms of fulfilling their need for authentic deeds as authentic evidence.

Position and Authority of the Notary

The position of a notary as a functionary in society is still recognized until now. Notaries are trusted by the public as a place to ask questions in the field of civil law and are believed by questioners that they will get reliable answers or advice. The function of a notary as a provider of information and advice to the public in general characterizes the position of a notary public. Notaries are trusted because everything written and determined by the notary is true, and the notary is the author of documents in a legal process. This is in accordance with the provisions in Article 16 paragraph (1) letter d of Law Number 30 of 2004[11]. Article one number (1) of Law Number 30 of 2004 concerning the Position of Notary provides an understanding of the position of a notary, that the main task of the notary is to make authentic deed, as the strongest and fulfilled evidence, what is stated in the notary deed must be accepted, not only because it is required by laws and regulations, but because it is also desired by interested parties to ensure the rights and obligations of the parties, for the sake of certainty, order and legal protection of interested parties themselves.
The authority of a notary is generally outlined in Chapter III Article 15 of Law No. 30 of 2004 concerning the Position of Notary in paragraph (1) reads: Notary is authorized to make authentic

[7] Christopher W Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (John Wiley & Sons, 2014).
[8] Herowati Poesoko, "J U R N a L H U K U M a C a R a P E R D Ata," *Penemuan Hukum Oleh Hakim Dalam Penyelesaian Perkara Perdata* 1, no. 2 (2015): 215–37.
[9] Henny Tanuwidjaja, *Pranata Hukum Jaminan Utang & Sejarah Lembaga Hukum Notariat* (Refika Aditama, 2012).
[10] Komar Andasasmita, *Notaris* (Ikatan Notaris Indonesia Daerah Jawa Barat, 1990).
[11] Indonesia,Undang-Undang Tentang Jabatan Notaris, UU Nomor 30, LN Nomor 117Tahun 2004, TLN 4432

deeds regarding all actions, agreements and decisions required by laws and regulations and / or desired by those concerned to be stated in authentic deeds, guaranteeing the certainty of the date of making the deed , provide *groose*, copies and excerpts of deeds, all of which as long as the deed is not assigned or excluded to other officials or other people or other people stipulated by law.

Paragraph (2): The notary is also authorized to:

1. Ratify signatures and determine the certainty of the underhand correspondence by registering in a special book;
2. Record the letters under hand by registering in a special book;
3. Make copies of the original letters under hand in the form of a copy containing the description as to where it is written and described in the letter concerned;
4. To validate the compatibility of the photocopy with the original letter;
5. Providing legal counseling in connection with making notices;
6. Making deeds related to land;
7. Preparing the auction minutes deed.

Definition of Deed

In a country with a European-Continental legal system such as Indonesia, written evidence is known. Writing can be in the form of authentic writing (deed) and under hand writing.

This is as stated in Article 1867 of the Civil Code "Evidence by writing is carried out in authentic writings or under hand writing". According to R. Soebekti[12], "Deed is an article that is deliberately made to be used as evidence about an incident and signed. Meanwhile, Sudikno Martokusumo said: A deed is a letter which is signed and contains the events that are the basis of a right, or an agreement made from the beginning on purpose for proof[13].

Tan Thong Kie argued, “The difference between writing and act is located in the signature which is written under the deed[14]. What is meant by writing under hand, is writing that does not have the same character as deed writing, for example a personal note[15].

METHODS

The approach method used in this research is the statutory approach. **Sources of legal materials in this study consist of** primary and secondary legal materials. Primary legal materials, in the form of laws and regulations that are relevant to the main research problem. Secondary Legal Materials include supporting materials such as legal journals, undergraduate opinions, scientific papers as well as seminar papers by experts related to the discussion of the Out of Court peace deed and its legal standing. **Legal Material Collection Techniques.** The techniques for collecting legal materials that are used depend on the scope and purpose of the legal research being carried out. In this study, data collection techniques were carried out by means of literature study from primary data and secondary data, namely by examining various literature and legal materials related to the problems being studied. **Legal Material Analysis Techniques.** The analysis of legal materials in

[12] R Soebekti, *Perbandingan Hukum Perdata* (Pradnya Paramita, 1986).

[13] Sudikno Martokusumo, “Hukum Acara Perdata Indonesia, Edisi Kelima” (Yogyakarta. Penerbit Liberty, 2003).

[14] Tan Thong Kie, “Studi Notariat Dan Serba-Serbi Praktek Notaris,” *Jakarta: Ichtiar Baru Van Hoeve*, 2007.

[15] Ali Afandi, “Hukum Waris Hukum Keluarga Hukum Pembuktian Menurut Kitab Undang-Undang Hukum Perdata (BW),” *Jakarta: Bina Aksara*, 1986.

this study was carried out in a qualitative normative manner supported by grammatical interpretation techniques and systematic interpretation.

RESULTS AND DISCUSSION

Legal Power of Out of Court Peace Deed legal

One of the functions of a Notary is to fulfill the needs of the community, by regulating in writing and authentically the relationships between the parties that bind themselves, and the sincerity of the parties who bind themselves, then in this case the responsibility Not only based on law, but also based on morals. The authority of the office granted to a notary is intended for the public or public interest and not solely for personal interests. Notaries are obliged to be impartial, keep secret and protect the public without differentiating the position of the person concerned in society, therefore, a Notary must be sworn in before carrying out his duties. Notaries also function as formers of new laws by following developments or dynamics in society.

Apart from being based on Article 15 paragraph (1) and paragraph (2) Law Number 30 of 2004 concerning Notary Authorities, it includes four (4) matters, namely:

1. Notary is authorized as long as the deed is made, because not every public official can make all deeds. . However, a public official can only make certain deeds, namely those assigned to or excluded to him based on statutory regulations;
2. Notary is authorized as long as it is a person, for whose interest it is made, Notary is not authorized to make deeds for the benefit of any person. Notaries are not allowed to make deeds for themselves, husband / wife, or other people who have kinship with the Notary either because of marriage or relationship blood in the line of descent straight down and / or above without degree limitation, as well as in the lateral line up to the third degree, as well as being a party to oneself, as well as in a position or by means of power. (Article 52 paragraph (1) Law Number 30 Year 2004 concerning the Position of Notary Public) The purpose of this provision is to prevent impartial acts and abuse of office;
3. The notary is authorized as long as the place where the deed is drawn up, for each Notary his jurisdiction (area of office) is determined and only within the area determined for him is he authorized to make an authentic deed. (Article 19 paragraph (2) Law Number 30 of 2004 concerning the Position of Notary Public. As long as it is the authority that a public official must have to make an authentic deed, a Notary may only carry out or carry out his position in all areas designated for him and only in the legal area he is authorized. The deed made by a Notary outside his jurisdiction (area of office) is invalid
4. The notary is authorized as long as the deed is drawn up. The notary may not make the deed while he is still on leave or is fired from his position, thus Also Notaries may not make a deed before he takes office (before taking his oath). Notary is authorized to make an authentic deed, only if it is desired or requested by the person concerned, in which case that the Notary is not authorized to make an authentic deed in position (*ambtshalve*). Notaries are not authorized to make deeds in the field of public law, their authority is limited on making deeds in the field of civil law. The notary obtains the authority to constrict in authentic legal acts and real actions which are not legal acts, agreements and regulations. The essence of the notary's duties is to regulate in writing and authentically the legal relations between the parties who agree to request Notary services, which in principle are the same as the duties of the judge who gives decisions on justice between the disputing parties. by the community in a broader practice than that imposed by law, at the core of carrying out social functions, namely to carry out the

desired work of the Notary by the general public, among others as well as provide law to the community, provide input in the formation of laws to the government and others- other. According to researchers, the participation of notaries in the formation of law is very important to realize, considering that notaries have a very vital role as public officials who are authorized to make authentic deeds. The notary is not burdened to investigate the material truth of each deed he makes, he only has the duty to record what is stated to him. Even so, the Notary must record carefully and critically, even obliged to refuse to make the deed requested to him, if he finds out that the action taken by his client violates the law, harms the state or the people at large. In carrying out their duties, Notaries must be aware of their obligations, work independently, be honest, impartial and full of responsibility. Notaries in carrying out their duties provide servants to people who need their services as well as possible. Notaries provide legal education to their clients to achieve high legal awareness in order to realize and live up to their rights and obligations as citizens and members of society. In practice, a peace agreement is a deed, because the agreement is deliberately made by the parties concerned to be used as evidence with the aim of resolving disputes, for this reason a peace agreement must meet the following criteria:

1. A peace agreement in the form of an authentic deed. A peace agreement made in the form of an authentic deed fulfills the following conditions. The deed must be made "before" a public official. The word "in front" indicates that the deed is classified into the deed partij (*partij akten*), and the general official in question is a notary. In a partij deed, the parties involved in a dispute have agreed to settle the dispute out of court and have succeeded in achieving a a certain agreement, then they come to a notary to make a peace agreement as outlined in the form of an authentic deed.
2. The deed must be made in the form prescribed by law.

Legal Position of Peace Deeds Made Outside the Court

Law Number 4 of 2004 concerning Judicial Power states that all courts in the entire territory of the Republic of Indonesia are state courts and are established by law. This implies that the settlement of cases can be carried out outside the state court through peace or arbitration. Peace is a process that must be passed in a civil court as stipulated in Article 130 paragraph (1) RIB. In deciding civil cases, the panel of judges is empowered to offer reconciliation to the litigating parties. The basis for this peace effort is not only to prevent the emergence of an atmosphere of hostility between the two parties who are litigating at a later date, but also to avoid spending money in a long and protracted judicial process. Peace is not a decision made on the responsibility of the judge, but rather as an agreement between the two parties on their own responsibility. Even so, the panel of judges should carry out an assessment and tracing of the arguments that are included as the content of the peace agreement it ruled. This is done so that the birth of a peace whose content is contrary to the law can be avoided.

A peace agreement outside the court session to obtain a stronger legal position is carried out in the form of an authentic deed, so that later when a lawsuit is filed at the judiciary, it candecision immediately (*issue auit voerbaar bij vooraad*) , because the deed has perfect or irrefutable proof strength, the contents of the deed are deemed true and the judge must believe what is written in it. The deed can only be weakened if there is strong evidence of opposition (for example, an authentic deed can be declared false if at the time the person has passed away or is abroad, it is impossible for the person to sign in front of the notary at that time) . This opinion is true, but it will be simpler

if the interested parties file a*grosse* from the peace deed that is made authentically, by submitting apassing through an intermediary *grosse* deed, the interested party can immediately submit a request for execution to the district court without judge.

As previously mentioned, the *grosse* of authentic deeds in some ways has the power of a judge's decision. Article 23 of the Notary Position Regulation states that the notary is authorized to provide *grosse,* copy and excerpt of the minimum deed he makes. So, if one of the parties does not comply with the peace agreement that has been made, then the injured party can ask the notary for a *grosse* against the peace agreement made in authentic form, so that the *grosse* has the power *executorial* same as a judge's decision, then the district court is obliged to immediately execute execution, so the problem will be resolved faster.

According to the researcher, based on legal action, the parties submitted a letter of request to the Head of the State Court, which in essence was to carry out the appointment of collateral confiscation in accordance with the contents of the peace deed that had been agreed by the parties in the case. Furthermore, based on the application letter, through a District Court ruling in its consideration based on its decision and the notarial peace deed, it states that based on the request of the parties who have entered into a settlement which basically agreed to buy and sell land in the case concerned, the collateral for the land no longer needs to be maintained. and must be appointed, because the petition is sufficiently grounded and based on law, therefore it should be granted. Henceforth it is decided to carry out the appointment / revocation of the collateral confiscation of the land under dispute.

The Civil Code clearly distinguishes between an agreement born from an agreement and an agreement born from a law. The legal consequences of an agreement born from the agreement are indeed desired by the parties making the agreement. Meanwhile, the legal consequences of an engagement that are born out of law may not be desired by the parties, but the legal relationship and legal consequences are determined by law. If there is a violation of the agreed agreement, then a claim for default can be filed, because there is a contractual relationship between the party causing the loss and the party suffering the loss. If there is no contractual relationship between the party causing the loss and the party suffering the loss, then a lawsuit can be filed against the law. The purpose of the lawsuit for default is to put the plaintiffs in a position if the agreement is fulfilled. Thus the compensation is in the form of the expected loss of profit or what is called the *expectation loss* or *winstderving.*

On the basis of the duties and functions of judges in providing dispute resolution decisions, for the interests of the parties in accelerating the dispute resolution process, make decisions based on the decision and the peace deed. The stipulation of the Chairman of the District Court gives full power to the peace deed so that the appointment of collateral seizures and the land sale and purchase process can be carried out, as the contents of the peace deed. A decree issued by the Chairman of the State Court is given an order of execution so that peace can be implemented.

The peace deed in a case provides a very important function in the dispute resolution process, so that it can avoid a prolonged mechanism of court execution regarding collateral. The synergy between judges and notaries in carrying out the legal profession is the full responsibility and trust given to the community so that the guarantee of legal certainty and the ease of obtaining legal benefits can be felt specifically for parties in conflict as well as the general public.

CONCLUSION

Conclusion

Settlement of disputes outside the court will be legally binding and binding after the agreement is stated in the form of a peace deed. The non-court Peace Deed has legal force which binds both parties to the dispute. The agreement with the peace deed made by a notary and is an authentic deed has perfect strength so that if one party turns out to be in default, then the other party can ask for what has been agreed.

The legal position of the peace deed outside the court accommodates the interests of the disputing parties as outlined in the contents of the peace deed has permanent and binding legal force as in dispute resolution in court.

Suggestion

It is recommended that the contents of the peace deed drawn up between the two parties must be the result of an agreement between the two parties so that their respective interests are met and binding on both parties. It is also recommended for the parties to avoid dispute resolution which requires a large amount of money to resolve disputes outside the court.

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