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THE STATUS OF THE LAW OF PEACE IN COMPLETION OF DISPUTES OUTSIDE THE COURT

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ABSTRACT
This study aims to determine the legal strength of the peace agreement outside the court, the peace certificate accommodates the interests of the parties and the legal position of the peace certificate made outside the court. This research is a type of normative legal research. The approach used is the statutory approach. All research materials were analyzed using qualitative techniques. The results of this study conclude that dispute resolution outside the court will have permanent and binding legal force after the agreement is outlined in the form of a peace deed made by a notary public and is an authentic deed that is a deed that has perfect legal force. This means that if it turns out that one party is denying/defaulting, then the other party can ask for what has been promised. Then the peace deed made by the notary public has the force of executive law with the determination issued by the chairman of the District Court containing the request for execution so that the peace certificate can be implemented.

Keywords: **Deed of Peace, Disputes outside the court. Notary Public**

INTRODUCTION

To meet the legal needs of Indonesian society at present 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 which is held in court which takes time, money, energy, and thoughts, is not enough, it is sometimes very physically and physically tiring. Although according to Law Number 4 of 2004 concerning Judicial Power, that settlement of disputes through litigation processes is court-based, it is simple, quick and low cost[1].

The phenomenon that arises at this time, the litigation process or litigation in court is still considered very detrimental to the parties who litigate so that the principle is still felt like a mere slogan[2]. Because of the various weaknesses inherent in the judiciary in dispute resolution, other methods or other institutions are sought. in resolving disputes outside the judiciary. For this reason, an attempt 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 trial, the first thing done by the panel of judges is to reconcile the two parties that litigate. The effort was

[1] Elisabeth Nurhaini Butarbutar, "Sistem Peradilan Satu Atap Dan Perwujudan Negara Hukum RI Menurut UU No. 4 Tahun 2004," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 22, no. 1 (2014): 188–200.
[2] Rahadi Wasi Bintoro, "Implementasi Mediasi Litigasi Di Lingkungan Yurisdiksi Pengadilan Negeri Purwokerto," *Jurnal Dinamika Hukum* 14, no. 1 (2014): 13–24.

carried out by judges following the Circular of the Supreme Court of the Republic of Indonesia No: 1 of 2002 as follows[3]; :

The settlement of disputes outside the court is possible and valid as long as the parties are willing and have good faith to solve a problem. In the case of peace both by the judge as mediator or facilitator as well as the peace carried out outside the court, both will be done in writing, to strengthen the peace.

Article 1851 of the Civil Code states that: Peace is an agreement whereby both parties, by surrendering, promising or holding an item, end a case that is dependent on or prevent a case from arising. The agreement is invalid but if made in writing[4].

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

LITERATURE REVIEW

Understanding of Peace

In the Civil Code in Article 1851 peace has the following elements[5]:

1. The existence of an agreement between the parties

   The agreement of the parties must be considered valid if it meets the elements of the agreement set out in Article 1320 of the Civil Code while the agreement it must be following the provisions of Article 1321 of the Civil Code which states that no agreement or legal agreement has been given if due to:

   a. Errors;
   b. Coercion;
   c. Fraud.

   Furthermore, Article 1859 of the Civil Code states that, however, peace can be canceled if there has been an error concerning the person or the dispute. He can cancel in any case 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:

   a. To deliver an item;
   b. Deliver something goods;
   c. Hold an item.

3. Both parties agree to put an end to the dispute.

[3] Abdul Rokhim, "Mediasi Menurut Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 Tentang Prosedur Mediasi Di Pengadilan," *Masalah-Masalah Hukum* 43, no. 3 (2014): 322–29; AHMAD SODIKIN, "PENYELESAIAN SENGKETA PERDATA MELALUI PERDAMAIAN (STUDI KASUS DI PENGADILAN NEGERI DEMAK)" (Fakultas Hukum UNISSULA, 2018).

[4] S H PNH Simanjuntak, *Hukum Perdata Indonesia* (Kencana, 2017).

[5] Sugeng Prijadi, "PERDAMAIAN SEBAGAI UPAYA DALAM PENYELESAIAN SENGKETA PERDATA" (UNIVERSITAS AIRLANGGA, 2007).

Article 1851 of the Civil Code also says that peace can be carried out on existing cases both in progress in court and those that will be submitted to the court.

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

The substance of peace can be done freely by the parties, but the law has governed various types of peace that cannot be carried out by the parties. The peace that is not allowed is:

a. Peace about the occurrence of oversight regarding the person concerned or the subject matter;
b. The peace that has been carried out using fraud or coercion;
c. Peace concerning an error regarding sitting down a case concerning a void of rights, unless the parties have made a settlement regarding the cancellation with a firm statement;
d. A peace which is held based on letters which are later declared to be false;
e. Peace regarding a dispute that has ended with a decision of a judge who has obtained a definite legal force, but is not known by the parties or one of the parties. However, if an unknown decision is still appealed then the peace regarding the dispute concerned is valid;
f. Peace is only a matter of affairs, whereas from the letters found later it turns out that one of the parties is not entitled to it.

If the sixth thing is done then the peace can be requested for the cancellation to the court[6]. The peace carried out by the parties has the same binding power as the decision of the judge at the final stage, both the decision of the cassation and the review. (Civil Code, Article 1858).

Therefore many factors are derived from choosing peace rather than going through the path of litigation. The benefits to be gained include:

a. The nature of volunteerism in the process

The parties believe that alternative dispute resolution provides a potential solution to the resolution of the problem better than litigation procedures.

b. Quick

procedure Because this procedure is informal, the parties involved can negotiate the terms of use. This will speed up the process of solving the problem to prevent delays and protracted problems, as is usually experienced if the problem is resolved through litigation in court.

c. Non-judicial Decision.

[6] H S Salim, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak* (Sinar Grafika, 2003).

The authority to make decisions remains with the parties involved or not delegated to the decision-makers of third parties. This means that the parties involved have more control and can predict the results of the dispute to be achieved.

d. Flexibility in designing the terms of problem-solving

This procedure can avoid the litigation procedure in court which is very limited in making court decisions based on the narrow point of the law.

e. Save time

In the process of solving problems through litigation processes in court often experience significant delays in waiting for the certainty of the trial date to the verdict.

f. Cost savings

The cost is usually determined by the length of time spent. In many cases, time is money and delays in solving problems are very expensive.

g. Relationship maintenance

This is different from the court's decision to place one party in a winning position and another party in a losing position, to create hostility between them.

h. Decisions that last all the time

This decision usually lasts all the time, if later in the dispute it causes problems, the parties involved take advantage of cooperative forms of problem-solving rather than adopting an adversarial or conflicting approach[7].

From the description above we can learn the benefits obtained from the out-of-court settlement. Based on the definition given by the Civil Code in article 1851, peace is an agreement with which both parties, by surrendering, promising or holding an item end a case that is dependent or prevent the emergence of a case.

Definition of Notary

Article one number 1 of Law Number 30 of 2004 concerning the Position of Notary said, "Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law,"

Notary Institutions in Indonesia originated from notary institutions in the Netherlands On August 27, 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 service, as the first notary in Indonesia[8]..

The appointment of the notary at that time was in the interest of the Dutch people themselves, or for those who were either due to the law or because the provisions were declared subject to laws applicable to the European group in the field of civil law, in terms of meeting their need for authentic deeds as authentic evidence.

Notary Position and Authority The

[7] Christopher W Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (John Wiley & Sons, 2014).
[8] Komar Andasasmita, *Notaris* (Ikatan Notaris Indonesia Daerah Jawa Barat, 1990).

position of a notary public as a functionary in the community is still recognized. The notary is trusted by the community as a place to ask questions in the field of civil law and it is believed by the questioner that he will get answers or advice that can be trusted. The notary's function as a provider of information and advice to the general public is a hallmark of the notary's position. Notaries are trusted because everything is written and determined by the notary is true, and the notary is the maker of documents in a legal process. This is following the provisions in Article 16 paragraph (1) letter of Law Number 30 of 2004. Article one number (1) of Law No. 30 of 2004 concerning Notary Position provides an understanding of the position of a notary, that the main task of a notary is to make authentic deed, as the strongest and most complete evidence, what is stated in the notarial deed must be accepted, not only because it is required by legislation, but because it is also desired by the parties concerned to ensure the rights and obligations of the parties, for certainty, order and legal protection of the parties concerned themselves.

The authority of notary public is generally outlined in Chapter III Article 15 of Law No. 30 of 2004 concerning Notary Position in paragraph (1) reads: Notary is authorized to make an authentic deed regarding all deeds, agreements, and provisions required by legislation and/or desired by the parties concerned to be stated in an authentic deed, guaranteeing the certainty of the date of the deed, giving*goose*, copies, and quotations of the deed, all of them insofar as the deeds of the deed are not also assigned or are exempt from other officials or other people or other persons determined by law.

Paragraph (2): The Notary also has the authority to:

1. To approve the signature and determine the certainty of the letter under the hand by registering in a special book;
2. Booked the letters under the hand by registering in a special book;
3. Make copies of original documents under the form of a copy containing the description as written and described in the relevant letter;
4. To validate the compatibility of the photocopy with the original letter;
5. Providing legal counseling to the making of a certificate;
6. Make a deed relating to land;
7. Make an auction treatise deed.

Definition of Deed

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

This is as stated in Article 1867 of the Civil Code "Proof of writing is done with authentic writings and writings under the hand". According to R. Soebekti[9], "Deed is a writing that was deliberately made to be evidence of an event and signed. Whereas Sudikno Martokusumo

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

said: Deed is a signed letter containing events that form the basis of a right, or an agreement that was made intentionally from the beginning on purpose for proof[10].

Tan Thong Kie[11] argues, "The difference between writing and the action lies in the signature printed under the deed. What is meant by writing under the hand, is writing that is not as characteristic as the deed writing, such as a personal note[12].

RESEARCH METHOD

Method of Approach, which is used in this study is the statutory approach. Sources of Legal Materials in this study consisted of Primary legal materials and secondary legal materials. Primary legal material, in the form of laws and regulations that are relevant to the main problem of research. Secondary Legal Materials include supporting materials such as legal journals, undergraduate opinions, scientific papers and seminar papers by experts relating to the discussion of peace certificates outside the court and their legal position.

The technique of collecting legal materials used depends on the scope and purpose of the legal research undertaken. In this research, the data collection technique is carried out by studying the literature from primary data and secondary data by examining various libraries and legal materials related to the problem under study.

The analysis of legal material in this study was carried out qualitatively normatively supported by grammatical interpretation techniques and systematic interpretation.

RESULTS AND DISCUSSION

Legal Strength of Peace Deed Outside the Courtlegal

One of the functions of the Notary is to meet the needs of the community, by regulating in written and authentic relations between the parties that bind themselves, and the sincerity of the parties that bind themselves, then, in this case, the responsibility Notaries are not only based on law but also based on morals. The authority of the position granted to the Notary is intended for public or public interest and not for purely personal interests. The notary is obliged to not take sides, keep it secret and protect the public by not distinguishing the position of the person concerned in the community, therefore the Notary before carrying out his duties must be sworn in first. The notary also functions as a new lawmaker by following developments or dynamics in society.

Other than based on Article 15 paragraph (1) and paragraph (2) of Law Number 30 the Year 2004 concerning Notary Authority includes four (4) matters, namely:

[10] Sudikno Martokusumo, “Hukum Acara Perdata Indonesia, Edisi Kelima” (Yogyakarta. Penerbit Liberty, 2003).
[11] Tan Thong Kie, “Studi Notariat Dan Serba-Serbi Praktek Notaris,” *Jakarta: Ichtiar Baru Van Hoeve*, 2007.
[12] Ali Afandi, “Hukum Waris Hukum Keluarga Hukum Pembuktian Menurut Kitab Undang-Undang Hukum Perdata (BW),” *Jakarta: Bina Aksara*, 1986.

1. A notary is authorized as long as it concerns the deed made, because not every public official can make all the deeds. But a general official can only make certain deeds, i.e. those who are assigned or excluded from him based on statutory regulations;
2. A notary is authorized as long as regarding persons, for the benefit of whom the Notary is made, the Notary is not authorized to make a deed for the benefit of everyone. Notaries are not allowed to make a deed for themselves, husband/wife, or other people who have a familial relationship with the Notary either due to marriage or relationship blood in a line straight down and/or to the top with no restrictions on the degree, as well as in the lateral line up to the third degree, as well as being a party for oneself, as well as in a position or with the mediation of power. (Article 52 paragraph (1) of Law Number 30 the Year 2004 concerning Notary Position) The purpose and purpose of this provision is to prevent impartiality and abuse of position;
3. A notary is authorized as long as regarding the place, where the deed was made, for each Notary the legal area is determined (the area of his position) and only within the area designated for him he is authorized to make an authentic deed. (Article 19 paragraph (2) of Law Number 30 the Year 2004 concerning Notary Position. To the extent that authority must be held by the public official 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 in. The deed drawn up by a notary outside his jurisdiction (his area of office) is invalid;
4. the notary is authorized as long as he makes the deed, the notary may not make a deed while he is on leave or fired from his position also a Notary may not make a deed before he takes office (before his oath is taken) Notary is authorized to make an authentic deed, only if it is desired or requested by the person concerned, in which case the Notary is not authorized to make an authentic deed on an official basis (*ambtshalve*). A notary is not authorized to make a deed in the field of public law, his authority is limited to making deeds in the field of civil law. The notary gets the authority to constitute in a deed of authentic legal acts and actual actions that are not legal, contractual and statutory acts. The core of the Notary's duty is to regulate in writing and authentically the legal relations between the parties who consensually request the services of a Notary Public, which in principle is the same as the task of the judge who provides decisions about justice among the parties to the dispute. Notary duties charged by the community in practice broader than that imposed by the law, in the core carry out social functions, namely to carry out the work desired by the public notary among others and provide law to the community, provide input in the formation of laws to the government and others- other. According to the researcher, the participation of a Notary in legal formation is very important to realize, considering that the Notary is indeed very vital in his role as a public official who is authorized to make an authentic deed. The notary is not burdened to investigate the material truth of every deed he makes, he is only tasked with recording what was stated to him. Even so, the Notary is obliged to record carefully and critically, even obliging to refuse to make the deed requested for him, if it is known that the actions taken by his client violate the law, harming the state or the people at large. In carrying

out their duties, the Notary must realize his obligations, work independently, honestly, impartially and full of responsibility. Notary in carrying out the duties of his office provides servants to the people who need their services as well as possible. The notary provides legal counseling to his clients to achieve high legal awareness to realize and live out their rights and obligations as citizens and members of the public. In practice a peace agreement is a deed because the agreement was deliberately made by the parties concerned to be used as evidence to resolve disputes, for that 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 provisions, that deed must be made "before" a public official. The word "before" indicates that the deed is classified as partij deed (*partij deen*), and the intended public official is a Notary. In the deed of partij, the parties involved in a dispute agree to settle the dispute outside the court and have successfully reached a certain agreement, then they come to the Notary to make a peace agreement as outlined in the form of an authentic deed.
2. The deed must be made in the form determined by law.

Legal Position of the Peace Deed Created 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 determined by law. This implies that the settlement of the case can be done outside of state justice through peace or arbitration. Peace is a process that must be passed in a civil court as determined in Article 130 paragraph (1) RIB. The panel of judges in deciding a civil case is given the authority to offer peace to the parties who are litigants. The basis of the peace effort is not only as an effort to prevent the emergence of an atmosphere of hostility between the two parties who litigate in the future, as well as to avoid spending costs in a long and protracted judicial process. Peace is not a decision determined by the judge's responsibility, but rather as an agreement between the two parties for their responsibility. Even so, the panel of judges should conduct a study and search for the arguments listed that are the contents of the peace agreement that was decided upon. This is done so that the birth of a peace whose content is contrary to the law can be avoided.

Peace agreements outside the court hearing to get a stronger legal position are carried out in the form of an authentic deed, so that later when filed a lawsuit to the judiciary, the verdict can be immediately dropped (*uit voerbaar bij vooraad*) Because the deed has perfect or irrefutable evidence, the contents of the deed are considered correct and the judge must believe what is written therein. The deed can only be weakened if there is strong evidence of opposition (for example, the authentic deed can be declared false if when facing a notary the person has died or is abroad, so that person may not be able to sign before the notary at that time). This opinion is true, but it will become simpler if the interested parties submit a*cross* from a peace deed made authentically, with the submission of the *Grosse* deed, the interested

parties can directly submit an application for execution to a district court without going through a judge.

As previously stated, the *Grosse* of an authentic deed has in some ways been as powerful as a judge's ruling. Article 23 of the Notary Position Regulation states that the notary has the authority to provide the *Grosse*, copy, and quote of the minutes of the deed he made. So, if one party does not comply with the peace agreement that has been made, the injured party can ask the *Grosse* of the peace agreement made in an authentic form to the notary, so that the *Grosse* has the power *executorial* same as a judge's decision, then the district court is obliged to immediately execute so that the problem will be resolved more quickly.

According to the researcher, based on legal action, the parties submitted a letter of request to the Chairperson of the State Court of Negotiation, which in essence made the appointment of the confiscated collateral as the contents of the peace deed agreed upon by the litigants. Furthermore, based on the request letter through the determination of the District Court in its consideration based on its decision and notarial peace deed, stating that based on the application of the parties who have made peace which in principle agreed to carry out the sale and purchase of land in the case in question, then the confiscation of the guarantee of the land need not be maintained anymore and must be appointed because the petition is reasonably grounded and based on the law and therefore should be granted. Henceforth stipulates to carry out the appointment/revocation of confiscated collateral for the land in question.

The Civil Code clearly distinguishes between agreements that are born from agreements and agreements that are born from the law. The legal consequences of an engagement that were born from the agreement were desired by the parties who agreed. While the legal consequences of an engagement that are born from the law may not be desired by the parties, but the legal relationship and legal consequences are determined by law. If an agreement is agreed with a violation, a breach of contract can be submitted, because there is a contractual relationship between the party that caused 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 against the law may be filed. The purpose of the default lawsuit is to place the plaintiff in a position if the agreement is fulfilled. Thus the compensation is in the form of the expected loss of profits or called the term *expectation loss* or *winstderving.*

Based on the duties and functions of judges in providing decisions on dispute resolution, in the interests of the parties in accelerating the process of dispute resolution, the decision is made based on the decision and the deed of peace. The appointment of the Chairperson of the District Court gives full power to the deed of peace so that confiscation can be carried out and the process of buying and selling land, as the contents of the peace deed. The decision issued by the Chairperson of the State Court of Justice contains an order of execution so that peace can be carried out.

The peace deed in one case provides a very important function in the process of dispute resolution so that a long-term mechanism can be avoided over the execution of the court regarding the procedure. The synergy of a judge and notary in carrying out the legal profession is the responsibility and full trust given by the public so that there is a guarantee of

legal certainty and the ease of obtaining legal benefits, which can be felt specifically for parties who have a close relationship with the general public.

CONCLUSION

The settlement of disputes outside the court will be legally binding and binding after the agreement is outlined in the form of a peace certificate. The Peace Deed outside the court has a legal force that binds both parties to the dispute. The agreement with the peace deed made by a notary public and authentic certificate has perfect strength so that if one of the parties fails to show the agreement, the other party can ask for what has been promised.

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

Suggestions

It is recommended that the contents of the peace deed made between the two parties must be the result of an agreement between the two parties so that their interests are fulfilled and are binding on both parties. It is also recommended to the parties to avoid resolving disputes that require large costs, so resolving disputes outside the court is taken.

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