

Legal Strength of Peace Deeds Made by Notary in Efforts to Settle Civil Law Conflict in Indonesia

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Abstract

The peace that has been made by the disputing parties, in the presence of a notary with a notarial deed, is expected to end the dispute, provide legal certainty between those who are in dispute. The peace deed is also expected to provide legal certainty, benefit and provide justice between those who are in dispute and for their future descendants. Thus it will create a calm life, peace and harmony between those who are at odds. However, if the peace deed that has been made between them, especially what has been made before a notary with a notarized peace deed, can then be disputed again, the problem raised in this study is the legal force of the peace deed made by a notary in an effort to resolve civil law conflicts in Indonesia. In the example case of the Gianyar District Court decision No. 54/Pdt.G/2015/PN.Gir. To answer these problems, normative juridical legal research methods are used with prescriptive research methods. The results of the analysis and research are that the binding power of a notarial peace deed in proof is a deed that has the power of a judge's decision at the final level. The peace deed that was made was also useless and violated the sense of justice of the parties who made it in good faith. Of course this will also cause doubts both among the parties and in society. Therefore, understanding and clarity are needed regarding the nature of the peace itself and the binding power of the notarized peace deed in proof in court. Extensive knowledge so that the word published does not cause problems in the future for the parties involved.

Keywords: Notary; Peace Deed; Legal Force.

Юридична сила мирових правочинів, укладених нотаріусом із метою врегулювання цивільно-правового конфлікту в Індонезії

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Анотація

У статті розглянуто проблему юридичної сили мирових правочинів, укладених нотаріусом із метою врегулювання цивільно-правового конфлікту. Очікується, що мирова угода, укладена сторонами, які сперечаються, у присутності нотаріуса з нотаріальним актом, завершить суперечку, забезпечить юридичну визначеність між цими сторонами. Водночас мирова угода також буде корисною і забезпечить справедливість між тими, хто перебуває в суперечці, і для їхніх майбутніх нащадків. Отже, це створить умови для спокійного життя, миру і злагоди між тими, хто ворогує. Проте мирову угоду, яку було укладено між сторонами, що сперечаються, особливо ту, яку було укладено з нотаріальним посвідченням, може бути знову оскаржено. Проблема, порушена в цьому дослідженні, полягає в юридичній силі мирової угоди, укладеної з нотаріальним посвідченням, з метою вирішення цивільно-правових конфліктів в Індонезії на прикладі рішення районного суду Гіаньяр № 54/Pdt.G/2015/PN.Gir. Для вирішення цих проблем використовуються нормативно-правові методи дослідження. Результати аналізу та дослідження свідчать про те, що обов'язкова сила нотаріальної мирової угоди має силу рішення судді на остаточному рівні. Укладена мирова угода не мала користі й порушувала почуття справедливості сторін, які добросовісно її уклали. Звичайно, це також спричиняє сумніви як у сторін, так і в суспільстві. Тому необхідні розуміння та ясність щодо природи самої угоди і обов'язкової сили нотаріально посвідченої мирової угоди для доказування в суді, а також упевненість у тому, що друковане слово не створить проблем у майбутньому для залучених сторін.

Ключові слова: мирова угода; нотаріус; юридична сила.

Introduction

Everyone in essence desires a peaceful life. But in reality, disputes or disputes often occur in this life. In living that life, it is inseparable from differences of opinion regarding how to achieve the intended goal, thus causing disputes caused by friction between individuals which therefore makes one party feel disadvantaged. A dispute is a right that occurs between two or more parties, because one party is dissatisfied or aggrieved. Civil disputes are civil cases where there are two or more parties, which are usually referred to in the trial as Plaintiffs and Defendants.

In general, the disputes arise, the parties to the dispute prefer to resolve it themselves by deliberation between the disputing parties without going through or with assistance from third parties. It depends on the *goodwill* of both parties and the complexity of the dispute itself [1].

In relation to the parties binding themselves to an agreement either in a treaty or a peace, known as the principle of *Pacta Sunt Servanda* or the principle of legal certainty, it will basically relate to the effect or peace.

Civil Law in Indonesia regulates the way of peace either non-litigation or litigation. The settlement of the problem of fulfilling obligations in a non-litigation manner with peace has been recognized and regulated for a long time in the Civil Code in Article 1851 of the Civil Code. Under the provisions of Article 1851 of the Civil Code, a peace must be made in writing. In practice in society, the written form is made in a deed under hand or an authentic deed. If the written form of peace is made under the hands it is often called a peace treaty. However, if it is made in the form of an authentic deed, it is called a peace deed that can be made by a notary or court institution

Peace itself must basically end the case, and is stated in written form and must be done by all parties involved in the case. The peace agreement is the beginning of the issuance of a peace deed from the Court which has the same position as a permanent Court decision. The peace agreement can essentially be made by the parties before or by the Judge who examines the case, and it can also be made by the parties outside the Court and then brought to the Court by the person concerned to be confirmed into a peace deed [2].

At In principle, the disputants want it to be resolved quickly, accurately, fairly and cheaply. But the question is, which of these institutions is the most capable to implement the problem. One alternative in the appropriate peaceful dispute resolution is through mediation, mediation is one way of effective resolution and opens wider access to the parties to obtain a satisfactory and fair

settlement. Article 1 paragraph (1) of Supreme Court Regulation Number 1 of 2016 concerning Mediation procedures in Court explains, mediation is a way of resolving disputes through the negotiation process to obtain agreement between the parties assisted by the Mediator [3].

Peace is an agreement by which both parties by surrendering, promising or withholding a thing, end a matter that is hanging or prevent a matter from arising. This Agreement is not valid but is made in writing. In peace both sides pass each other as they demand, in order to put an end to a dependent cause or to prevent a cause from arising [4].

According to Mulyoto in his book explains that the peace deed is one of the legal products made by a notary. Because making an authentic deed is one of the notary's authorities in making a deed. However, the explanation of the notary's authority does not contain provisions regarding the making of peace deeds related to land disputes. In fact, there is a peace deed made by a notary, namely a peace deed [5].

The peace deed is basically made by a notary to resolve conflicts between parties outside the court by fulfilling the conditions for the validity of the agreement, so that a peace deed made by a notary is a deed born from an agreement or agreement of the parties who want peace, which has fulfilled the legal conditions of the agreement and the deed has the power of a judge's decision at the final level [6].

According to the author, the binding legal force of the notary peace deed is made in court evidence, in this article the author analyzes the peace deed which is used as evidence in the trial but the judge does not consider the existence of the deed. As in the decision of the Gianyar District Court Number 54 / Pdt.G / 2015 / PN. Gear. About the sitting of the case, there was a sale and purchase between Soewardi Sastro Admojo as the seller and Tohom Edison Tampubolom as the buyer with the object of land certificate of title number 424 of 1991. On August 9, 2002 Soewardi Sastro Admojo passed away. On January 24, 2014 without the permission of the heirs of the late Soewardi Sastro Admojo and the late Soemilah, the land object of dispute was carried out the sale and purchase transaction process recorded in the Sale and Purchase Deed Number: 16/I/2014 between the Seller Party Soewardi Sastro Admojo and the Buyer Party Tohom Edison Tampubolom before a Notary as the Land Deed Making Officer, namely H. Ainur Rofiq, S.H., (Defendant II), which subsequently by the Land Office of Nganjuk Regency (Defendant III) has been ratified in the certificate of title number 424 of 1991 (land object of dispute) there was a change of owner from the name Soewardi Sastro Admojo to the name Tohom Edison Tampubolom.

The face of the Notary as the Land Deed Making Officer, namely H. Ainur Rofiq, S.H., (Defendant II) who claimed to be Soewardi Sastro Admojo was not the real Soewardi Sastro Admojo, because on August 9, 2002 Soewardi Sastro Admojo had passed away. However, the certificate was resold by Tohom Edison Tampubolon to YusikArianto (Defendant 1). Thus, the heirs filed a lawsuit at the Nganjuk District Court. However, in the Gianyar District Court Number 54/Pdt.G/2015/PN. Gir in the peace deed of his signing did not present several parties related to the case. The ruling cannot be carried out, because there is no legal certainty for parties who are not included in the peace.

The parties are willing to make peaceful efforts. The peace deed is made because it is desired by the interested parties to ensure the rights and obligations of the parties for the certainty, order, and legal protection for the interested parties. The peace deed that is executed is not a court peace deed decision, but a peace deed made by the parties before notary X number 90 in Nganjuk Regency domiciled at Jalan MT Haryono Number 3 which is a form of agreement in general. Based on decision 39/Gn. G/2016/PN. Njk in the peace deed of signing did not present several parties related to the case. The decision cannot be carried out, because there is no certainty and legal protection for parties who are not included in the peace.

According to Soedharyo Soimin, in making peace deeds, Article 1851 of the Civil Code stipulates that peace can be made on existing cases either in court or will be submitted to court. But in fact the peace deed was made after a peace decision by the court. Regarding the authority of notaries in making peace deeds after a court decision is not regulated in law, so in this case there is a legal vacuum [7].

There are related problems regarding the legal certainty of peace deeds made by notaries that do not have executory powers, such as peace deed decisions in civil disputes. So that the notary peace deed can be disputed in the future, if it causes losses to other parties.

The topic presented in this article is to understand the peace deed as a deed that has excutory power in Indonesia so that it can be used as a basis in deciding a conflict that occurs between the parties, but in fact in practice there are still many who consider that the legal force of the peace deed in civil cases is still unclear and has no civil legal force, This is where the author will analyze the effectiveness of the peace deed in deciding a civil conflict that occurs in Indonesia.

The purpose of this study is to analyze the legal strength of the Peace Deed made before a Noatartist in terms of the Civil Code and its usefulness in court decisions in Indonesia The purpose of this paper is to provide knowledge about

the nature and importance of the peace deed in civil cases in court related to the notary's authority in making peace deeds. The legal force of a peace deed made by a notary and the judgment of the court's peace deed in a dispute between the parties

Which is the subject of the first discussion, what is the legal force of the Peace Deed made by a notary in resolving civil conflicts in Indonesian courts? And second, what is the essence of a peace deed made by a notary in resolving civil conflicts in Indonesia?

Materials and Methods

In this study, an in-depth examination was carried out on legal facts which are then used in answering legal issues. Legal issues have a central position in research law as the position of the problem in research others, because it is the legal issue that must be resolved internally legal research as the problems to be answered in non-legal research. This research begins by formulating problem.

The problem arises because there are two propositions that have relationship, both functional, causal, and one confirms another. This type of research is normative legal research Normative legal research is legal research that lays down law as a building system of norms regarding principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).

Normative legal research must be seen from a juris viewpoint, who conduct research with the aim of legal problem solving which ultimately has benefits and benefits for society. Study normative law is done to generate arguments, theories, or new concept as a prescriptive in solving problems that faced. The answer expected in legal research is right (correct), appropriate, in-appropriate or wrong, so that the results obtained already contain value. The nature of this research is descriptive analysis, which is a method used to depict a current condition or situation with the aim of providing data.

The object of this research is to explore ideal aspects and analyze them based on legal theories or regulations in effect. The descriptive analysis method is employed to provide an overview of a phenomenon related to the study of the legal act of borrowing a name. For academic research, it is essential to search for the ratio legis and the ontological basis behind the enactment of the law so that researchers can grasp the philosophical content underlying the law. By doing so, researchers will be able to draw conclusions regarding the existence or absence of philosophical conflicts between the law and the issues at hand [8].

The approach used in this research is the case approach and the statute approach. The case approach is employed to understand the application of legal norms/

principles in legal practice. It involves examining specific cases to analyze how legal rules are applied and interpreted in real-life situations. On the other hand, the statute approach focuses on studying and analyzing legal statutes and regulations themselves to gain insights into their content, intent, and implications. Both approaches contribute to a comprehensive understanding of the research subject from different angles.

The statute approach is conducted by examining all relevant laws and regulations pertaining to the legal issue being addressed. For research purposes, it involves studying and analyzing the entire body of laws and regulations that are applicable to the subject matter. This approach ensures a comprehensive understanding of the legal framework and provides insights into the specific provisions, requirements, and implications of the laws and regulations related to the research topic. By conducting a thorough analysis of the statutes, researchers can gain a deeper understanding of the legal context surrounding the issue being investigated.

The statute approach provides a practical method for researchers to explore the consistency and compatibility between different laws, as well as between laws and the constitution or regulations. By examining these relationships, researchers can identify any inconsistencies or discrepancies that may exist. The findings of such an analysis can serve as arguments or evidence to address the issues at hand. It enables researchers to critically evaluate the legal framework, identify potential conflicts or gaps, and propose solutions or recommendations to resolve the legal issues being studied. This approach contributes to the development of a more coherent and effective legal system.

Results and Discussion

The Legal Force of the Peace Deed Made by a Notary in Resolving Conflicts Civilly in Indonesian Courts

The agreement basically has two elements, namely the first objective element in the form of a certain object (*Clear and definite*), namely the object of the agreement which can be interpreted as the entire rights and obligations arising from the agreement. The object of the agreement must be determinable, tradable (allowed), May be done, Can be valued with money meaning that only tradable goods can be the subject of the agreement, no matter whether the goods already exist or will only exist in the future [9].

The second object element is the substance of the agreement, which is something that is permissible both according to law, custom, decency, decency and public order in force at the time the agreement is made and when it will be implemented [10].

The object of the agreement is regulated in Article 1853 of the Civil Code. The objects of the peace agreement are:

- a) Peace can be held regarding civil interests arising from a crime or violation. In this case, peace does not at all prevent the prosecution from prosecuting the crime or offense concerned;
- b) Every peace concerns only the matters listed in it. While the waiver of all rights and demands is related to the dispute that is the cause of the peace.

From the terms of the peace agreement through the peace deed made before the notary mentioned above have several problems by the first consideration, the Judge's Consideration considers that the peace deed does not meet the requirements of an agreement because its position is not balanced because the defendant at that time was in custody. Second, judging from the Civil Code, the agreement is valid if it has agreed on the main matters and no formalities are needed [10].

In the event of the validity of an agreement, stipulated in Article 1320 of the Civil Code states:

- a) Agree those who bind themselves.
- b) Able to make an agreement.
- c) About a particular thing.
- d) A lawful cause.

The deed of peace made before notary X contained in notarial deed number 03 and number 04 when viewed from the terms of the agreement is a valid deed because it has fulfilled the conditions for the validity of the agreement and for an unequal position because in custody it is contrary to the law because formally civil peace does not affect criminal proceedings.

The judge's consideration that the peace deed does not meet the formal requirements because not all litigants are involved in the peace deed. The formal terms of the peace agreement concern matters in accordance with Article 1851 of the Civil Code in the sense that it is stated in writing and Article 1320 jo 1330 jo 1852 of the Civil Code which explains that the party making the agreement is a person who has authority and all parties involved in the case participate in the peace agreement, then if it is ruled out it will contain defects of the *prulium litis consortium*, namely the incompleteness of the parties Terms. A peace agreement through a peace deed made before a notary must meet certain conditions so that it is included in the juridical formulation of an authentic deed according to Article 1868 of the Civil Code, that is, the deed is made by or before a general official., The deed must be made in the form prescribed by law, The general official must have the authority to make the deed [11].

The peace agreement made in the form of a peace deed made before a notary has fulfilled these requirements because the litigants in the dispute are only the Plaintiff and the Defendant and no other party is a party to the peace deed, so the peace deed is not declared as a formally defective and valid deed and there is evidence that the legal parties have come before the notary.

The peace effort was successful, so a Peace Deed was made which punished both parties to fulfill the content of the peace that had been made between them. If the peace agreement occurs without the intervention of the judge, it is called approval in the form of a peace deed. If the disputed parties have or have not been filed as a lawsuit to the court. For example, the dispute has been filed as a lawsuit to the court, then the intervention of the judge of the parties to the notary makes a peace agreement in the form of a peace deed and with the peace deed the parties withdraw their case from the court and do not ask for approval it is confirmed by a court decision [12].

Written evidence is placed in the first order, this is in accordance with the fact that the type of letter or deed in civil cases plays a very important role. In all activities that concern the field of civil law, deliberately recorded or written in letters or deeds. This is in addition to being determined by law to be made in written form, it is also intended deliberately in written form as an intention to be evidence of legal events that occur if at any time a dispute arises over the event so that the problem and truth can be proven by the relevant deed before the court. In this case, the evidence that is considered the most acceptable is the evidence of letters and writings.

Thus, the author does not agree with the consideration of the Law of Rights in the judgment which has misapplied the law and does not reflect a sense of justice not looking at the legal facts or evidence that emerged in the trial (notarial peace deed). Regarding this matter, the judge's consideration regarding the peace deed as evidence in dispute resolution that the peace deed provides perfect proof because it has absolute legal force so that it must be considered by the judge in examining the case in the application of the law in deciding a case.

According to the author, basically, a peace decision must be made in writing, it is not justified if a peace decision or peace agreement is made orally, meaning it must be stated in a deed, the written understanding here is not only stated in the form of an authentic deed, it could be that the decision or peace agreement is stated in a deed under hand, this Syatat is coercive, in line with Article 1851 of the Civil Code so there is no Peace agreement if executed orally even in the presence of an authorized official.

That the binding power of the peace deed in evidence in court is a deed that has the force of a final judgment, which means that the power of the peace deed has strong legal force as formal and material evidence, because the existence of the peace deed made by agreement of the parties, has mentioned the reasons or considerations of the existence of the peace deed itself. The peace deed has the power of formal proof that proves the parties that they explained what is written in the deed [13].

The requirement for all court decisions to obtain is to have an executory title by inscribed above it which reads "For Justice Based on the Power of the Almighty", as well as including the peace deed if affixed with the title then it has executory power and can also have the power of proof both formal and material.

The Nature of a Peace Deed Made by a Notary in Resolving Civil Conflicts in Indonesia

The legal position of a peace deed made before a notary can be carried out on a case that is currently running in a court trial, as long as there is no permanent legal force on the case. And the legal position of the peace deed is the same as the judge's decision which already has permanent legal force. This is based on the legal position of the peace deed when viewed based on the provisions of the applicable laws and regulations. Such as Article 1858 of the Civil Code and Article 130 paragraphs (2) and (3) of HIR. Peace efforts can be made both before the court proceedings are carried out, and after the judicial hearing is held both inside and outside the court of the court. The notarial peace deed has permanent legal force, and executory power with a determination issued by the chief justice of the district court containing an execution order so that the peace deed can be implemented.

The position of a Notary Deed that has the power of proof as a Deed under hand is the value of an evidence that cannot be claimed with compensation in any form. When the complainant comes to the Notary so that his action or deed is formulated in an authentic Deed in accordance with the authority of the Notary, and then the Notary makes a Deed at the request or desire of the notary, then in this case providing a foundation between the Notary and the facers there has been a legal relationship. A legal relationship is a relationship that consequently is governed by law [14].

The deed made before the Notary is the Deed of the parties who come to face, so the legal relationship between the Notary and the client is not a legal relationship that occurs because of something agreed, as is usually done by the parties in making an agreement.

The notary must guarantee that the Deed made is in accordance with the rules of law that have been determined, so that the interests concerned are protected by the Deed. Notaries in making Deeds must conduct counseling related to legal issues to the face so that the face understands the logical consequences of the Deed he wants. Therefore, Notaries must understand legal issues substantially so that in addition to the Deed they make does not contradict the law, Notaries can also legally account for the existence of the Deed. A substantial understanding of law by a Notary Public will ensure that legal certainty can be applied to provide order and legal protection for the community. Legal certainty is a human condition, both individuals, groups, and organizations, bound and within the corridors outlined by the rule of law (Satjipto Rahardjo, 1998: 25). This certainty means a guarantee from the State that the law is really enforced in accordance with applicable rules.

An agreement made by the parties, so that in the future or in time it can function as valid evidence / meet the requirements of proof, must be recognized its existence by the parties, both orally and in writing But in modern times like today, oral agreements have too many weaknesses so they are not recommended and must be made in writing. Similarly, an agreement made in writing, but made under the hands of the parties, has many disadvantages as well, compared to an agreement made notarially [15].

A treaty made by a notarial deed has a more privileged position than an agreement made under the hand. The privilege of the notary agreement itself is because the nature of the notarial agreement itself is an agreement made with an authentic deed. An authentic deed, (as stipulated in article 1868 of the Indonesian Civil Code), is: a deed made in the form prescribed by the Act by or before a public officer authorized for it at the place where the deed was made).

According to Sudikno, a Notary Deed is an authentic deed made by a notary or made before a Notary who is authorized to make it, according to the forms and procedures stipulated in the Notary Office Law. Whether or not a deed is authentic is not enough if the deed is made by or before an official (notary) only. However, the way to make an authentic deed must be according to the provisions stipulated by the Law. A deed made by an official without any authority and without any ability to make it or unqualified, cannot be considered an authentic deed, but has the power of a deed under the hand if signed by the parties concerned.

The author agrees with Sudikno's views mentioned above. Therefore, according to the author, in order for a deed made to be an authentic deed and not lose its

authenticity, the deed made must meet all that is required for an authentic deed. If the disputing parties want to end a dispute between them, it usually begins with a deliberation to reach a consensus. However, consensus reached by the parties to the dispute is often carried out in a notarial deed. Of course, this is done by the parties in order to be able to realize a legal certainty and as a perfect evidence tool for the parties. Ending disputes between the parties, can be done by entering into a peace agreement / peace treaty or peace treaty.

Peace is an agreement by both parties, which contains that by surrendering, promising or withholding an item, both parties terminate a case being examined in court or prevent a case from arising if it is made in writing, as stipulated in Article 1851 of the Civil Code (Burgelijk Wetboek). Thus, the peace carried out by the parties or both parties aims to prevent disputes / disputes between those who are disputing / disputing. In addition to such purposes, this peace can also be done for the purpose of ending a dispute. As with the conditions for the validity of an agreement based on the Civil Code, this peace agreement is also valid if it fulfills the conditions for the validity of the peace agreement itself, namely fulfilling the four legal conditions of an agreement as stipulated in article 1320 of the Indonesian Civil Code.

According to the author, Notarial peace deed is a deed of agreement / agreement between the parties to prevent disputes / disputes or end a dispute / dispute between those who are disputing / disputing. Notarial peace deeds are made before a notary, who has the authority and ability to make them. Notarial peace deeds must be made in accordance with and fulfill the conditions of the validity of an agreement. Notarial peace deeds are made with procedures and provisions that have been stipulated by the rules and regulations applicable to it. Thus, the essence of a notarial peace deed is a deed of agreement born of a peace agreement or agreement, which has fulfilled the requirements for the validity of an agreement, which is carried out before a notary and the deed has the force of a judge's decision at the final level. But on the contrary, the notarial peace deed will lose its authenticity and only have the power of a deed under hand, if the deed is made not in accordance with the procedures and provisions stipulated by the Law.

Conclusions

Based on the description that has been explained above on the two problems in this study, the conclusion that can be stated is that the peace deed has executory legal force if it contains an executory title as well as in the final decision at the judge level which reads "For Justice Based on the One and Only God", while the essence of a notarial peace deed is a deed of agreement born from an agreement

or peace agreement, which has fulfilled the requirements for the validity of an agreement, which is made before a notary and the deed has the force of a judge's decision at the final level. But on the contrary, the notarial peace deed will lose its authenticity and only have the power of a deed under the hand, if the deed is made not in accordance with the procedures and provisions stipulated by the Law.

Recommendations

The advice that can be given related to this conclusion is that Notaries in making marriage deeds need to pay attention to the customs that apply in the community so that in making deeds for Notary faces have extensive knowledge so that the words issued do not cause problems in the future for the parties concerned. And there needs to be a deeper understanding, among the public, legal practitioners (including: notaries, lawyers), judges and all elements of the State, the nature of a notary peace deed.

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