

The Existence of Notaries in the Drafting of Peace Deeds as A Dispute Resolution Process: Case Study in East Lombok, Indonesia

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Abstract. This study aims to determine the authority of a notary in making a peace deed and the legal force of the peace deed made by the notary. The research method used is normative and empirical legal research with a statutory, conceptual, and sociological approach. The types of data used are secondary data and primary data. Secondary data is library data sourced from primary, secondary and tertiary legal materials. Primary data is field data sourced from interviews regarding the existence of a peace deed. The conclusion obtained from the research conducted is that a Notary has the legal authority to make a peace deed because a peace deed is one form of authentic deed where the position of a notary is a state official who has the authority to make authentic deeds as regulated in Article 2 § 1 of Law No 2 of 2014 concerning Amendments to Law No 30 of 2004 concerning the Position of Notary. However, the law does not specifically regulate the making of peace deeds by notaries; notaries can make their peace deeds because peace deeds are authentic.

Keywords: Authentic Deed, Peace Deed, Dispute Settlement.

INTRODUCTION

Disputes are unavoidable in running a social life. Disputes, conflicts, or cases often occur when adjusting to modern life. Disputes can be resolved through formal means that develop into an adjudication process consisting of a process through the courts and arbitration or informal methods based on the agreement of the disputing parties through negotiation and mediation [1].

Conflict is a situation (condition) where two or more parties fight for their respective goals that cannot be united and where each party tries to convince the other party of the truth of their respective goals. Conflict is a disagreement or incompatibility between parties who will and are having a relationship or cooperation. Disputes occur because there is no meeting point between the disputing parties. Two parties with different positions/opinions can move to a dispute situation. In a dispute, differences of opinion and

Prolonged debates usually fail to reach an agreement. This situation usually ends with the

breakdown of healthy communication channels, as each party seeks a way out without considering the fate or interests of the other party [2].

In Indonesia, a legal basis allows a dispute to be resolved through an alternative dispute resolution mechanism, namely Law No 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Also, in the Civil Code, Article 1851 emphasises that peace can be made for existing cases, both ongoing in court and cases submitted to the court [2]. This is possible and legitimate if the parties are willing and have good intentions to resolve a problem. In the case of peace, whether a judge acts as a mediator or facilitator or peace made outside the court, both will be done in writing to strengthen the peace [3].

A peace deed is a binding agreement made by two or more people before an authorised body (judge) that is requested in court. In PERMA of 2008, a Peace deed contains the contents of a peace agreement and a judge's decision that strengthens the peace agreement, which is not

subject to ordinary or extraordinary legal efforts [4].

The peace deed has executorial power as described in Article 1858 of the Civil Code. In contrast, there are still parties who do not implement the peace deed, and there is a dispute with the same object as agreed upon in the peace deed. By producing a mutually beneficial decision, the parties should be able to implement it properly. The rules for implementing the peace deed must be clearer and firmer so that no one denies the peace deed by the agreement made by the parties and the mediator [5].

Based on the background description above, the author formulates two *main problems*: What is a notary's authority in making a peace deed, and what is the notary's legal force in making the peace deed?

METHODS

The type of research conducted by the author is normative-empirical research. Normative-empirical legal research (applied law research) is the enforcement or implementation of normative legal provisions (codification, laws, or contracts) in action on every specific societal or legal event. The implementation in action is an empirical fact and is useful for achieving predetermined goals. Implementing action is expected to occur perfectly if the formulation of normative legal provisions is clear, firm and complete.

The methods used are a) Statutory Approach, b) Conceptual Approach, c) Conceptual Approach, d) Sociological Approach. Secondary data collection techniques are carried out through literature studies of primary, secondary and tertiary legal materials related to the Preparation of Peace Deeds as a Dispute Resolution Process. Primary data was collected by interviews with the parties involved in preparing the Peace Deed as a Dispute Resolution Process, namely the notary as an informant.

After collecting data, the author organises it systematically, logically, and legally. Then, the author conducts a normative legal analysis, which begins by analysing primary, secondary, and tertiary legal materials based on legislation and conceptual approaches. Then, the author conducts a qualitative analysis based on the primary data from the study's results through direct interviews with respondents and informants. The

analysis is carried out to find answers and conclusions to the problems that have been formulated.

RESULTS AND DISCUSSION

Notary's Authority in Making Peace Deeds. The peace process does not always have to be carried out in court; it can also be carried out outside the court. The peace process outside the court can be carried out by making a deed, namely, in this case, a peace deed. The peace deed can be made privately or authentically, in which case the peace deed is made before a notary. This is then regulated in Article 9 §§ 1, 2 of law No 30 of 1999 concerning Arbitration and Dispute Resolution, which reads [6]:

1. If the parties choose to resolve the dispute through arbitration after it has occurred, the agreement must be in a written agreement signed by the parties.

2. If the parties cannot sign a written agreement, as referred to in § 1, the written agreement must be made as a notarial deed.

Disputes that can be made into a peace deed are disputes that have been resolved through mediation, and the parties have reached an agreement to make peace. A peace deed is made as a sign of the end of the dispute, and the disputing parties agree to make peace. The peace deed is binding where not only one party carries it out, but both parties and the disputing parties [5].

Procedure for Making a Peace Deed By Notary in East Lombok Regency

A peace deed is a form of authentic deed in which its creation is subject to the Civil Code; the conditions for a valid agreement are contained in Article 1320 of the Civil Code, namely: 1) Agreement of the parties; 2) Competence of the parties; 3) A certain thing; 4) For lawful reasons.

If the peace deed does not fulfil the subjective requirements contained in points 1 and 2, the legal consequence is that the agreement can be cancelled, and if the peace deed does not fulfil the objective requirements in points 2 and 3, the peace agreement can be cancelled by law [7].

Based on research conducted by researchers, several stages were obtained in the procedure for making a peace deed (*Acta Van Dading*), including the following: In general, the making of a peace deed has the same procedure as the mak-

ing of other authentic deeds where the first thing that must be done by the parties who want to make a peace deed is to visit the notary's office where they want to make the agreement, then the parties will be asked to explain in advance the cause of the dispute and the object or property that is the subject of the dispute, then after the parties explain this, the notary will understand the problems that occur between the parties to then be poured into the peace deed where the elements in the peace deed must include the title of the deed, the identity of the parties, a description of the dispute, namely an explanation of the dispute faced, a clause regarding the agreement reached by the parties, a statement of willingness, namely a statement that the parties agree to end the dispute and will not file further claims related to the problem. After the peace deed is made and read to the parties and the parties have agreed to all the contents of the agreement, the parties will then be asked to sign the peace deed that has been made.

This is based on the interview results of researchers with Notaries, namely Notary Hj. Faniyah, SH, M. Kn, as a Notary in East Lombok Regency, stated that: "The parties and the legal representatives of the parties who wish to make the peace deed come to the office bringing the peace concept that will be stated in the peace deed after the parties have explained the concept of the peace deed that will be made, then the deed is prepared after the deed is prepared and read again by the parties and the legal representatives, then the peace deed is signed".

Authority of Notary of Lombok Regency East In Making a Peace Deed. Article 1 of Law No 2 of 2014 concerning Amendments to Law No 30 of 2004 concerning the Position of Notary states that a Notary is a Public Official who has the authority to make authentic deeds and has other authorities as regulated in this law or other laws [8].

Public Official comes from the term "Openbare Ambttenaren", which means Official according to the legal dictionary. So, "Openbare Ambttenaren" means an official with duties related to the community's interests. In this case, a notary, as a public official, performs authentic deeds to serve the community's interests [9].

An Authentic Deed is a letter or deed that was made intentionally and officially from the start to be a means of evidence or proof in the future if a

dispute arises with objects related to what is in the authentic deed [10].

Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia No 1 of 2016 concerning Mediation Procedures in Court states that a peace deed is a deed containing the contents of a peace agreement and a judge's decision that strengthens the peace agreement, which is not subject to ordinary or extraordinary legal remedies. The deed containing this peace agreement can be a private deed or an authentic deed made by a notary [11].

According to Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law by or before a public official authorised to do so at the place where the deed was made.

The purpose of the provisions of other authorities regulated in the laws and regulations in Article 15 § 3 of the Republic of Indonesia Law No 2 of 2014 concerning Amendments to Law No 30 of 2004 concerning the Position of Notary is the position of PPAT (Land Deed Making Official).

Meanwhile, regarding the authority of a Notary as a Land Deed Making Officer (PPAT), it is regulated in Article 4 of Government Regulation No 37 of 1998, which states:

- 1) PPAT only has the authority to make deeds regarding land rights or ownership rights for apartment units located within his/her work area;
- 2) Deeds of exchange, deeds of entry into a company, and deeds of division of joint rights regarding several rights to land and ownership rights to apartment units, which are not all located within the work area of a PPAT can be made by a PPAT whose work area covers one of the plots of land or apartment units whose rights are the object of the legal act in the deed.

Legal Power of Peace Deed Made by Notary in East Lombok Regency. Dispute resolution in civil procedural law is carried out to resolve problems between two parties in a legal act if one does not fulfil the agreed-upon obligations. The resolution can be done in two ways, namely litigation or non-litigation. However, in dispute resolution, it is only natural that if there is a dispute between the parties in the agreement, a consensus will be held first to reach an agreement. Settlement in this way is commonly called a peaceful way (peace) or legally called non-litigation [12]. This

means dispute resolution is done outside the court by presenting the parties. If no agreement is found, the parties decide to go through the competent court or district court according to the legal domicile of the parties.

Under national law, non-litigation or non-trial settlement of disputes has been regulated in the Civil Code, Article 1851 of the Civil Code, hereinafter abbreviated as the Civil Code. Based on the provisions of Article 1851 of the Civil Code, a peace is not valid unless it is made in writing. This means the peace is stated in agreement, either underhand or with an authentic deed. Peace stated in a private deed, made by the parties and then signed, is called a peace agreement. While peace stated in a notarial deed is called a peace deed.

However, after law No 30 of 1999's issuance concerning Arbitration and Alternative Dispute Resolution, dispute resolution was renewed outside the court. Law No 30 of 1999 determines that dispute resolution can be carried out through Alternative Dispute Resolution (ADR). Law No 30 of 1999 regulates that the settlement of disputes by the decision of the peace agreement of the disputing parties is made in writing, is final and binding on the parties, and is carried out in good faith.

In several disputes, it was found that resolving disputes through peace was considered more effective and efficient, whether done in court or out of court. This effective and efficient category is interpreted as the parties' freedom to equally align their desires, which are then expressed privately or through a Notary's legal opinion, stated in a notarial deed. However, although both seem vague, their boundaries are very different, especially in terms of evidence.

The services provided by Notaries to the public are related to the making of authentic deeds. In addition, Notaries have the authority to make deeds to settle a civil case, which then constitutes perfect evidence. The authority of Notaries in this regard is expressly stated in Article 1 Number 1 of the Notary Law. Making authentic deeds is required by laws and regulations in the context of legal certainty, order and protection for the community that needs it [13].

An authentic deed contains formal truth based on what the parties have informed the notary. However, the notary must include that what is contained in the Notarial Deed has been truly under-

stood and is by the wishes of the parties, namely by reading it so that the contents of the notarial deed are clear and providing access to information, including access to related laws and regulations for the parties signing the deed. Thus, the parties can freely agree or disagree with the contents of the notarial deed they will sign.

An authentic deed is perfect evidence as regulated in Article 1870 of the Civil Code; this deed has such evidentiary power because it is considered attached to the deed itself so that it does not need to be proven again, and for the judge, it is mandatory evidence. Therefore, anyone who states that the authentic deed is fake must prove the falsity of the deed. Therefore, the authentic deed has evidentiary power externally, formally and materially [14]. One of the important things in a legal act is the existence of evidence that can truly be a reference for everyone involved in the legal act so as not to violate the things outlined together.

Evidence in civil cases differs from evidence in criminal cases, which follow the negative system of evidence according to laws and regulations to achieve material truth. In civil cases, what is sought is only formal truth, and the judge is sufficient to be passive. Authentic deeds as perfect evidence have three types of evidentiary power, namely [13]:

External or external evidentiary power is the formal requirement for a notarial deed to be valid as an authentic deed.

The formal evidentiary force is the certainty that an event and the facts stated in the deed were carried out by the notary or explained by the parties before him.

The power of material evidence is the certainty that what is stated in the deed is valid evidence for the parties who made the deed.

As an authentic deed, the notarial deed has complete evidentiary power. Complete evidence is evidence such that the judge obtains sufficient certainty to grant the legal consequences demanded by the plaintiff without reducing the possibility of evidence to the contrary. Therefore, a notarial deed is authentic with three types of evidence [15].

The Power of External Evidence. The external ability of an authentic deed is the ability of the deed itself to prove its validity as an authentic deed or, in Latin, *acta publica*, meaning that if seen from the outside or its birth as an authentic deed and

by the legal rules that have been determined regarding the requirements for an authentic deed, then the deed is valid as an authentic deed until proven otherwise, meaning until someone proves that the deed is not authentic in appearance.

This external evidentiary power means the ability of the deed itself to prove itself as an authentic deed. According to Article 1875 of the Civil Code, this ability cannot be given to a deed made underhand; a deed made underhand is only valid, namely, as one that truly comes from the person against whom the deed is used, if the person who signs it acknowledges the truth of his signature.

Suppose a deed appears authentic, indicating itself from the outside, from its words, as coming from a public official. In that case, everyone considers the deed authentic until it can be proven that it is not authentic. Regarding the power of external proof, which is complete proof without reducing the proof to the contrary, party deeds and official deeds, in this case, are the same.

A deed that appears authentic from the outside is valid as an authentic deed for every person; the signature of the relevant Official (notary) is accepted as valid. This external evidentiary force does not exist in private deeds. The evidentiary value of a notarial deed from the external aspect is that the deed must be seen as it is outwardly. It does not need to be contradicted by other evidence. If someone considers a notarial deed does not meet the requirements as an authentic deed, then the person concerned must prove that the deed is outwardly not authentic.

Strength Formal Proof. A notarial deed must provide certainty that an event and fact in the deed was carried out by a notary or explained by the parties appearing at the time stated in words by the procedures determined in the deed's proof Formally to prove the truth and certainty of the day, date, month, year, hour or time of appearing, and the identity of the parties appearing comparator, initials and signatures of the parties appearing, witnesses and notary, as well as the place where the deed was done, and prove what was seen, witnessed, heard by the notary. For that, if a party questions the formal aspects of the deed, then the party must be able to prove the untruth. If unable to prove the untruth, then the deed must be accepted by anyone.

Strength Material Proof. Regarding the material evidentiary force of an authentic deed, there is a

difference between the statement of the notary stated in the deed and the statement of the parties stated therein. Not only is something stated to be proven by the deed but the contents of the deed are also considered true for every person who orders the deed to be made as evidence against him or what is called "prevue reconstitutes". The deed has material evidentiary force. This evidentiary force is in Articles 1870, 1871 and 1875 of the Civil Code between the parties concerned and their heirs and recipients of their rights. The deed provides complete evidence of the truth of what is stated in the deed, except what is stated therein as merely a notification and which has no direct relationship to the subject of the deed.

Like an authentic deed, a notarial deed has complete or perfect evidential force and binding power. It fulfils the minimum limit of valid evidence without needing other evidence in a civil dispute.

According to Article 1870 of the Civil Code, an authentic deed provides perfect evidence between the parties and their heirs or those who receive their rights regarding what is contained therein. An authentic deed is binding evidence in that what is written in the deed must be believed by the judge; that is, it must be considered true as long as its untruth is not proven.

A notarial deed as an authentic deed provides perfect evidence that it no longer requires additional proof. An authentic deed proves that the parties have explained what is written there and that what is explained is true. A notary is authorised to state all acts, agreements, and determinations desired by the party or parties who deliberately come before a notary to confirm the information in an authentic deed so that the deed he makes has complete evidential force and validity [16].

A peace deed is an agreement made by two or more parties before an authorised body that is requested for its level in court and is binding. Supreme Court Regulation (PERMAI No 1 of 2008), a peace deed is a deed that contains the contents of the peace agreement and the judge's decision that strengthens the peace agreement, which is not subject to ordinary or extraordinary legal efforts. In a different reference, a peace deed is a deed made in a form determined by law. or before a public official with the authority where the deed is made.

Every product a judge or court issues in resolving a problem submitted to him is an authentic deed [17]. The legal basis attached to this peace deed has been explained by PERMA No 1 of 2008 Article 17 which states that: 1) If mediation results in a peace agreement, the parties with the assistance of a mediator, are required to formulate in writing the agreement reached and signed by the mediator and the parties; 2) The parties are required to return to the judge on the appointed trial day to notify the peace agreement; and 3) The parties may submit a peace agreement to the judge to be strengthened in the form of a peace deed.

The peace decision has executorial power as described in Article 1858 of the Civil Code, Article 130 HIR/154 RBg, as follows:

- Article 1858, § 1 of the Civil Code states that all peace agreements between the parties have the same force as a judge's decision at the final level;
- Article 130 § 2 HIR: if such a peace can be achieved, then at the time of the trial, a deed is executed regarding it, in which both parties are sentenced to comply with the promise made, which letter will have force and will be executed as a normal decision;
- Article 130, § 3 HIR: such a decision cannot be appealed.

If these articles are summarised, then the explanation is as follows:

- A peace decision is equated with a court decision that has obtained permanent legal force, and a peace decision is equated with a court decision that has obtained permanent legal force. What attaches permanent legal force to a peace decision is the law itself;
- Against the closed peace decision, appeal and cassation efforts;

REFERENCES

1. Usman, R. (2003). *Pilihan Penyelesaian Sengketa di Luar Pengadilan* [Out-of-Court Dispute Resolution Options]. Bandung: Citra Aditya Bakti (in Indonesian).
2. Zaini, A. (2020). Mediasi Sebagai Salah Satu Bentuk Alternatif Penyelesaian Sengketa [Mediation as an Alternative Form of Dispute Resolution]. (2020). *Al Qisthas : Jurnal Hukum Dan Politik*, 9(2). doi: 10.37035/alqisthas.v9i2.1573 (in Indonesian).
3. Andang, P. S. P. (2008). *Akta Perdamaian Di Luar Pengadilan Dan Pelaksanaannya* [Out-of-Court Deed of Settlement and Its Implementation]. Retrieved from http://eprints.undip.ac.id/16418/1/ANDANG_PERMATI_SIH_PALUPI.pdf (in Indonesian).

- The peace decision has the power of execution, and every peace decision is attached to the binding legal force, the legal force of execution. Land cases are a conflict of interest, such as a concrete example between individuals and individuals, individuals with legal entities, legal entities with legal entities, and so on. In connection with the above, to ensure legal certainty as mandated by the UUPA, then between can respond or react (society and government).

A land dispute occurs between two or more parties who feel or have been harmed by the parties' use and control of their land rights. It is resolved through deliberation or the courts.

CONCLUSIONS

Notaries have the legal authority to make a peace deed because a peace deed is a form of authentic deed where the position of a notary is a state official who has the authority to make authentic deeds as regulated in Article 2 § 1 of Law No 2 of 2014 concerning Amendments to Law No 30 of 2004 concerning the Position of Notaries. Although the law on making a peace deed by a notary has not been specifically regulated, a notary can make a peace deed themselves because a peace deed is an authentic deed.

The peace deed (*Acta Van Dading*) is binding. It has the same legal force as a permanent court decision. It cannot be appealed because the provisions have made it and meet the formal requirements by Article 130 § 2) HIR, which states that the peace deed has the same force as a decision with permanent legal force and cannot be appealed or cassated against. Because it has permanent legal force, the peace deed immediately has executory force.

4. Salim, H. S. (2015). *Teknik Pembuatan Akta Suatu (Konsep Teoritis, Kewenangan Notaris, Bentuk dan Minuta Akta)* [Deed Making Techniques (Theoretical Concepts, Notary Authority, Deed Forms and Minutes)]. Jakarta: Raja Grafindo Persada (in Indonesian).
5. Sulistianingsih, D., & Fibriani, I. (2023). Problematik Akta Perdamaian Pada Penyelesaian Sengketa Keperdataan Melalui Mediasi [Problematics of Deed of Peace in the Settlement of Civil Disputes through Mediation]. *Jurnal Suara Hukum*, 5(1) (in Indonesian).
6. Mandagie, A. (2002). *Tinjauan Implikasi Yuridis Terhadap Akta Perdamaian Yang Dibuat Dihadapan* [A Review of the Juridical Implications of the Deed of Settlement Made Before the Court]. *Jurnal Lex Privatum*, 10(1), 5–15 (in Indonesian).
7. Tjirosudibio, S. (2003). *Kitab Undang-Undang Hukum perdata* [Civil Code]. Jakarta: Pradnya Paramita (in Indonesian).
9. Ngadino. (2019). *Tugas dan Tanggung Jawab Jabatan Notaris di Indonesia* [Duties and Responsibilities of the Office of Notary in Indonesia]. Semarang: UPT Penerbit Universitas PGRI Semarang Press (in Indonesian).
10. Habib, A. (2008). *Hukum Notaris Indonesia* [Indonesian Notary Law]. Bandung: Refika Aditama (in Indonesian).
11. Mertokusumo, S. (2002). *Hukum Acara Perdata Indonesia* [Indonesian Civil Procedure Law]. Yogyakarta: Penerbit Liberty (in Indonesian).
12. Hariri, W. M. (2011). *Hukum Perikatan dalam Islam* [Law of Engagement in Islam]. Bandung: Pustaka Setia (in Indonesian).
13. Agung, A. (2016). *Makna purusa dan pradana dalam putusan hakim mengenai sengketa waris adat Bali* [The meaning of purusa and pradana in judges' decisions on Balinese inheritance disputes]. Denpasar: Universitas Udayana Pers (in Indonesian).
14. Anand, G. (2018). *Karakteristik Jabatan Notaris di Indonesia* [Characteristics of the Office of Notary in Indonesia]. Jakarta: Prenadamedia Group (in Indonesian).
15. Notodisoerjo, R. S. (2003). *Hukum Notariat di Indonesia: Suatu Penjelasan* [Notarial Law in Indonesia: An Explanation]. Jakarta: Raja Grafindo Persada (in Indonesian).
16. Tobing, G. (1983). *Peraturan Jabatan Notaris* [Notary Position Regulations] (Vol. 3). Jakarta: Gelora Aksara Pratama (in Indonesian).
17. Suhardjono. (2005). *Sekilas Tinjauan Akta menurut Hukum* [Overview of Deeds under the Law]. *Varia Peradilan*, 123 (in Indonesian).
18. Harahap, Y. (2018). *Hukum Acara Perdata* [Civil Procedure Law]. Jakarta: Graha Pustaka (in Indonesian).