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Legal Force of Peace Deed What Notaries Do in Resolution of Land Disputes in NTB Province

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Abstract. *The term written peace is regulated in Article 1851 of the Civil Code. In practice, peace agreements in the settlement of land disputes are usually caused by unlawful acts of one party that can harm a person's civil rights. This dispute can be resolved through litigation or non-litigation. In reality, non-litigation settlements before a notary are made after a court decision, so that the legal certainty of the deed becomes multi-interpretable for most people. The purpose of this writing is to analyze a peace deed that is made authentically as evidence of peace in court and to analyze the legal force of a notarial peace deed in an effort to resolve land disputes. This research is based on normative juridical legal research.Normative legal research is research that is conducted by examining theoretical approaches, concepts, and reviewing laws and regulations related to the research..Data analysis methodsdescriptive-qualitative by examining the regulations governing the power of notarial peace deeds. Data collection methods include interviews, document studies or library materials. The data analysis method used is the qualitative analysis of the Miles and Huberman model. The author's findings are that non-litigation peace can be made authentically before a notary so that it has perfect evidentiary power or its truth cannot be denied when proven in court. However, peace based on a notarial deed only has binding power and evidentiary power. Non-litigation dispute resolution can be done through negotiation, mediation, conciliation and arbitration. Meanwhile, a peace deed based on a court decision has binding legal force (permanent legal force), evidentiary power and executorial power.*

Keywords: *Certainty; Deed; Notary; Peace.*

1. Introduction

The Republic of Indonesia is a country based on law according to the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia. As a country based on law, Indonesia has a variety of legal professions that play an active role in resolving state administrative affairs. One of these legal professions

is the Notary/PPAT who is referred to as the government's right hand in assisting in resolving state land administration affairs.

The position of a notary as an official who makes authentic deeds who is authorized by the government to carry out part of the state's duties in making valid written evidence in the form of authentic deeds based on obtaining information from the parties who appear before him. In addition, a notary is not only bound by his oath of office which must keep the contents of the deed and all information obtained from the parties confidential. The notary profession is regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary.

The general authority of a notary is regulated in Article 15 paragraph 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, namely to make authentic deeds regarding all acts, agreements and determinations required by laws and regulations and/or desired by the interested party to be stated in an authentic deed.

The role of a notary in making an authentic deed for the settlement of land disputes through efforts to reconcile the parties, then a deed is made with the term peace deed (van dading). Peace agreements can be made verbally or in writing. Written peace agreements are usually included in a private agreement or attached to an authentic deed containing the rights and obligations of the parties who bind themselves before an authorized official.

A peace deed as a dispute resolution process should be in writing to prevent the same dispute from arising again in the future. However, a peace deed can be sued for cancellation if its contents are contrary to the Law, because a peace deed is made based on the will of the parties for the sake of certainty, order and legal protection for the parties.

The term peace in Islamic law has a meaning and significance that is usually interpreted as a comfortable atmosphere without any disturbance, be it from hostility, hatred and any behavior that disturbs others, as taught by the Prophet Muhammad SAW who defined the ideal Muslim as those who are able to provide peace and tranquility to society through their actions and communication, as stated in the following hadith:

وَيَدِه لِسَانِه ۔ مِن ۔ سَلِمِالْمُسْلِمُون ۔ مَن ۔ الْمُسْلِم

“A true Muslim is one who is able to give a sense of peace to other Muslims through his tongue and hands.”

Settlement of land disputes can be done peacefully outside the court or in the court. Settlement outside formal courts is usually done through arbitration institutions, consultation, negotiation, consensus, mediation, and conciliation as explained in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute

Resolution. The initial step in resolving the dispute is a form of peace that is passed by the parties to reach a written agreement stated in a peace deed (van dading).

In the final agreement of the peace deed made by the parties before a notary, there is usually a provision that states "if a dispute occurs, the parties will first take peaceful means which are carried out through deliberation to reach a consensus or if peace is not achieved, the parties can resolve the dispute or conflict through the competent court at the place of legal domicile of the parties."

Settlement of disputes through litigation is regulated in the provisions of Article 1851 of the Civil Code. Based on the provisions of Article 1851 of the Civil Code, a peace must be made in writing, namely in practice in society, this written form is usually made in a private deed or authentically before a notary.

Regarding the peace agreement, the author found several disputes in the land sector based on the transfer of inheritance rights, sale and purchase, exchange, endowment, grant, will, gift-will and others. This legal act can cause a loss of a person's civil rights because one party commits an unlawful act.

The following are several peace deeds (van dading) that the author will study and analyze in this writing, namely the Peace and Release of Rights Deed, Number: 42 in 2012, Peace Deed Number: 11 in 2019 made before Notary/PPAT Dr. Masyhuda Nur'ahsan, SH, MH in Mataram City, NTB and Peace Deed (Van Dading) Number: 08 in 2023 made before Notary/PPAT Hj. Sri Subekti, SH Denpasar City, Bali. The making of these deeds is a form of peace agreement between the parties for the loss of their rights before taking formal legal action through the judicial institution (litigation).

The form of legal action of making a notarial peace deed according to the provisions of Article 1851 of the Civil Code can be carried out on cases that are ongoing in court or before the case is registered in court. However, it is not uncommon to find that notarial peace deeds are made after a peace decision by the court, so that the legal certainty of the peace deed becomes multi-interpretable according to most people.

2. Research Methods

The research method used in this writing is the normative legal research method. Normative legal research is a research conducted by examining the approach of theories, concepts, reviewing laws and regulations related to the research. The specifications of this research use descriptive-qualitative, namely in-depth research is carried out related to regulations governing the power of peace deeds (van dading) in resolving land disputes through litigation or non-litigation. Data sources come from primary data and secondary data. Data collection methods include interviews, document studies or library materials. The data

analysis method used in the analysis is the qualitative analysis of the Miles and Huberman model by reducing data, presenting data and then drawing conclusions.

3. Results and Discussion

3.1. Legal Certainty of Notarial Peace Deeds as Documentary Evidence in Court

Based on the authority of a notary in accordance with the provisions of Article 15 paragraph (1) of Law Number 30 of 2004 which has been amended to become Law Number 2 of 2014 concerning the Position of Notary, a notary is authorized to make authentic deeds regarding all acts, agreements and determinations required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and extract of the deed, all of which as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

The deed is divided into 2 (two) parts, namely:[1]

1) Authentic deed

According to the provisions of Article 285 RBg/165 HIR and Article 1870 of the Civil Code, it is concluded that an authentic deed is a binding and perfect evidence. The perfect evidentiary force of an authentic party deed (deed partij) only applies between the two parties and their heirs and those who receive rights from it. Meanwhile, against other people or third parties, the deed does not have perfect evidentiary force but is only a free evidentiary force, meaning that the assessment of its evidentiary force depends on the judge's consideration. Unlike an authentic deed made by an official (acte ambtelijk), this deed also has the force of evidence as an official statement from the official concerned, namely a statement about what he experienced.

2) Private deed

Article 288 RBg and Article 1875 of the Civil Code stipulate that if the signature of a private deed has been recognized or deemed recognized according to the Law, the deed for the signer (acknowledger), heirs, and persons who receive rights from them, is perfect evidence like an authentic deed. The signature of the signatory of the deed provides validation of the truth of the material contents stated (listed) in the deed. A private deed does not have the power of external proof, because the signature can still be denied by the person concerned. Against third parties, this private deed has independent power of proof.

Regarding the deed, the core of the duty of a notary is to write down in writing and authentically the legal relations between the parties who jointly and

[1]Elfrida R Gultom, 2017, Civil Procedure Law, 2nd ed., Jakarta: Mitra Wacana Media, p. 84

unanimously request the services of a notary. The duties and authorities of a notary are basically the same as those of a judge, namely to make decisions regarding justice between the disputing parties. However, if viewed from the Law, the duties of a notary in practice cover broader matters.

As with dispute resolution through the courts, it is regulated in Article 130 paragraph (1) HIR/Article 154 paragraph (1) RBg which explains:[2]"If on the appointed day, both parties come, the district court, with the assistance of the chairman, will try to reconcile them."

Settlement of disputes through lawsuits to the court according to Article 130 paragraph (1) HIR and Article 154 paragraph (1) RBg begins with efforts to reconcile the parties carried out by the panel of judges. These efforts to reconcile are imperative or must be carried out by the judges at the beginning of the trial. The Supreme Court thinks that regarding Article 130 HIR or Article 154 RBg, it would be better if further regulations were made regarding the procedures for its implementation so that it could be more optimal.

Therefore, the Supreme Court Regulation (PERMA) No. 2 of 2003 was born, which states: "That the integration of mediation into the court proceedings can be an effective instrument to overcome the possibility of a backlog of cases in court and mediation is a faster and cheaper process, and can provide access to the disputing parties to obtain justice or a satisfactory resolution of the dispute faced."

In the Supreme Court Regulation (PERMA) No. 2 of 2003, it regulates the steps that must be taken by the panel of judges when making efforts to reconcile the two parties. This Supreme Court Regulation also regulates who can be a mediator, namely a judge who has been certified as a mediator and a non-judge mediator registered with the local District Court or Religious Court. Therefore, the parties can choose a judge mediator or a non-judge mediator themselves by agreement of the parties.

Based on Supreme Court Regulation No. 2 of 2003 regarding who is the mediator, the author asked a question to an Advocate in Mataram, West Nusa Tenggara. According to the Advocate at the Law Firm Al-Habsyi & Partners, in most District Courts and Religious Courts in Lombok, West Nusa Tenggara, in general, the two parties to the case tend to have the mediator judge always be appointed directly by the court itself.

In addition, according to Advocate FUAD, SH, MH, CLA: because there is no code of ethics for the mediator profession, until now there has been no standard cost that must be paid by the parties if they use a non-judge mediator. Therefore, the researcher believes that in principle every

[2]H. Riduan Syahrani, 2004, Basic Material Book of Civil Procedure Law, PT. Citra Aditya Bakti, Bandung, p.71.

professional organization must have a code of ethics as a guideline for each member in carrying out their profession, and in the code of ethics also regulates the obligations and provides legal protection to each member in carrying out their duties and profession in serving the community. "[3]

The mediation agreement in court in the object of the land case will be subject to a local inspection of the object of the lawsuit, then executed and followed by the implementation of the execution seizure of goods as regulated in civil procedure law. For that, the peace agreement before the mediator will be determined by the panel of judges examining the case in a peace deed (van dading), so that the deed is evidence that has complete and perfect evidentiary force, is irrefutable and becomes the basis for the obligations and rights of the parties in the legal relationship of a peace that has executory power as a final decision that is final and binding to end the parties' case.

Every peace agreement must end the case completely and completely, and nothing should be left behind. Peace must bring the parties free from all disputes. There is nothing more disputed because everything has been regulated and its resolution formulated in the agreement. As long as there is still something that has not been resolved in the agreement, the peace decision that confirmed in the form of a peace deed containing formal defects because it is contrary to the requirements stipulated in Article 1851 of the Civil Code.[4]

In the court decision based on the peace deed, there is one case of filing a lawsuit, namely case No.203/Pdt.G/2024/PA.Mtr which was registered on April 19, 2024 regarding the Lawsuit of the Plaintiff NARGIS Binti H. MUHAMMAD for Joint Property against the Defendant IDRUS, ST Bin M. SALEH which until now, July 10, 2024, has been examined on site by the panel of judges of the case accompanied by a substitute clerk and witnessed by the attorneys of each party. The on-site examination of the case was carried out on 5 (five) objects of the case being sued, one of which is on Jalan Langko No. 80, Dasan Agung Village, Selaparang District, Mataram City, NTB for 1 (one) unit of permanent 3 (three) local/3 (three) door Shophouse (Ruko) building which is a 2 (two) story building.

The implementation of the division of joint assets will be carried out after the sale of all objects of joint assets, the sale of which is carried out together by the parties and their respective attorneys. For case No.203/Pdt.G/2024/PA.Mtr, the decision to determine the peace deed (van dading) will be carried out by the Mataram Religious Court on July 17, 2024.

[3]Interview with Fuad, Managing Partner/Advocate at Al-Habsyi & Partners Law Firm, West Lombok, NTB, July 11, 2024.
[4]M. Yahya Harahap, 1995, Scope of Execution Problems in the Civil Sector, Gramedia, Jakarta, p. 275.

After the dispute ends, the panel of judges is assisted by the clerk to make a certificate of reconciliation between the disputing parties containing the contents of the peace, and then the panel of judges orders the parties to comply with and fulfill the contents of the peace. The certificate of peace through a court decision has binding force (binding force of execution) and is carried out the same as a judge's decision (Article 130 Paragraph (2) HIR or Article 154 Paragraph (2) RBg).

The difference between a peace deed by a court judge and a peace deed by a notary is that a peace deed made before a notary is a form of agreement between the parties to end or prevent a dispute that is made in writing or usually made authentically, so that a dispute does not continue to court, so that by agreement the parties can bind them in a peace. However, the deed made before a notary will only bind the parties, but it does not rule out the possibility that in the future one of the parties will file a lawsuit in court. This is different from the decision to determine peace by the court which is final and binding, so the parties cannot make an appeal when the decision to determine peace has permanent legal force.[5]

1. Implementation of the Peace Decision

In the implementation of a peace decision based on a judge's decision in the form of a peace deed (van dading) that has been read out in court, the dispute or conflict that has occurred between the parties is declared to have ended and henceforth the peace deed that becomes the decision is binding and must be implemented in good faith and cannot be appealed.

Based on the findings of the author's data in the field by the Legal Counsel of the Al-Habsyi & Partners Law Firm on the case related to the peace decision based on the Mataram Religious Court Decision, dated April 19, 2018, Number: 97/Pdt.P/2018/PA.Mtr concerning the Determination of the Heir of the late Abdullah Aljaidi, the Denpasar Religious Court Decision, dated March 9, 2020, Number: 491/Pdt.G/2019/PA.Dps concerning the Lawsuit of the Heir of the late Abdullah Aljaidi and based on the Appeal Decision of the Mataram High Religious Court, dated June 29, 2020, Number: 0037/Pdt.G/2020/PTA.Mtr. The emergence of the peace deed after the parties agreed to end the dispute that occurred, so that with the court's decision, the peace agreement has permanent and binding legal force.

Thus, immediately after the verdict is issued by the judge, the execution power is immediately attached to the verdict above. If one party does not comply with or carry out the fulfillment specified in the peace agreement voluntarily, then an execution can be requested to the religious court, upon that request, the

[5]M. Yahya Harahap, Op.Cit., p. 277.

head of the religious court carries out the execution in accordance with the provisions of Article 195 HIR.

Therefore, every peace decision that has binding force to be obeyed and implemented according to the provisions of Article 1858 paragraph (1) of the Civil Code that peace between the parties has the same force as a judge's decision in other cases. This is emphasized in the last sentence in Article 130 paragraph (2) HIR that the decision of the peace deed has the same force as a decision that has legal force as a judge's decision that has obtained permanent legal force and also has executory force (executory kracht).[6]

A peace agreement based on a judge's decision will have legal force if it meets the following requirements:[7]

a. Peace agreement to end the case; the peace agreement/deed must end the case completely and entirely. There is nothing more disputed because everything has been regulated and its resolution formulated in the deed.

b. The peace agreement is made in written form; this is stated in Article 1851 of the Civil Code and Article 11 paragraph (1) of Supreme Court Regulation Number 1 of 2016 which states "An agreement is not valid unless it is made in writing". Based on this article, a peace agreement is not permitted to be conveyed verbally.

c. The party making the peace agreement is the person who has the authority; this is based on Article 1852 of the Civil Code, namely "To be able to make a peace, a person must have the authority to release his rights to the things stated in the peace."

The legal force of a peace deed is regulated in Article 1858 of the Civil Code and Article 130 paragraphs (2) and (3) HIR. According to Article 1858 of the Civil Code, it is explained that peace between parties has the same force as a final judge's decision. This is also emphasized in the last sentence of Article 130 paragraph (2) HIR, that a peace deed has the same force as a decision that has permanent legal force so that legal remedies are closed against it.[8]

2. Principles of Justice in Peace Deeds in Litigation and Non-Litigation Dispute Resolution

Justice is defined as a constant and continuous distribution to give everyone their rights. Justice demands that each case be weighed on its own. The

[6]M. Yahya Harahap, 1995, Scope of Execution Problems in the Civil Sector, Gramedia, Jakarta, pp. 279-280.
[7]Abdul Manan, 2016, Implementation of Civil Procedure Law in Religious Courts, Prenada Media Group, Jakarta, p. 162.
[8]Supreme Court, 2014, book 2, Guidelines for the Implementation of Duties and Administration of Religious Courts, Supreme Court, Jakarta, p. 123.

essence of justice is the assessment of a treatment or action by examining it in a norm that according to subjective views exceeds other norms.

In the concept of justice, the legal adage that states that the maxim justice delay is justice denied reflects the importance of procedural law. Many judicial processes take so long to complete because the parties are defending their respective interests. The length of the case resolution process is basically detrimental to the interests of the parties themselves, starting from costs, time and energy. This makes the principle of simple, fast and low-cost justice difficult to realize, in addition to the objectives of the law which include justice, benefits and legal certainty are also delayed.

Substantive and procedural justice in the peace deed can be reviewed from the judge's decision. The content of the peace deed is to punish the parties to submit and obey and implement the contents of the agreement that has been agreed upon and to charge the court costs jointly and severally by the parties. Based on the decision, the substantial justice contained therein is the formulation of the contents of the agreement agreed upon by the parties is the will of each so that the peace agreement contains good faith from the parties.[9]This is in accordance with Article 1338 paragraph (3) of the Civil Code which states that all agreements must be carried out in good faith.[10].

Procedural justice in a peace deed can be reviewed from the case resolution process. A peace deed is issued after a peace agreement is reached and made by the parties before a mediator, so that the case resolution process can be carried out effectively and efficiently. The justice given will not be meaningful if it is born from a slow, complicated and convoluted process. Therefore, through a peace deed, the principle of simple, fast and low-cost justice can be realized. Because in a peace deed, all legal efforts are closed and immediately have executive power since it was decided.[11]

According to Gustav Radbruch's theory as quoted in E. Ultrech's book, there are two kinds of understanding of legal certainty, namely certainty due to law and certainty in or from law. Law that successfully guarantees a lot of certainty in social relations is a useful law. Legal certainty provides two other legal tasks, namely guaranteeing justice and the law must remain useful. Meanwhile, legal certainty is achieved if the law is as many laws as possible, in the law there are no contradictory provisions (laws based on a logical and practical system), the law is made based on rechtswerkelijkheid (a real legal situation) and in the law there are no terms that can be interpreted differently.

[9]Abdul Manan, Op., Cit, p. 166.
[10]Article 1338 of the Civil Code
[11]M. Yahya Harahap, 2017, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence and Court Decisions, Sinar Grafika, Jakarta, p. 291.

Legal certainty is also based on judges (courts) who are independent and impartial in applying legal rules consistently whenever the disputing parties resolve their disputes in court and the court's decision can be concretely implemented.

3. Notarial Peace Deed in Land Dispute Settlement

According to the provisions of Article 1338 paragraph (1) of the Civil Code, it states that: "all agreements made legally apply as laws for those who make them." From the text of this article, it can be concluded that anyone can make anything and the consequences are binding on the party who makes it so that it becomes a law. An agreement is valid if there is agreement on the main points and no formalities are required.[12]

Book III of the Civil Code regulates engagements. An agreement is born because of an agreement. An agreement is an event where a person promises another person to carry out something, then an agreement arises. So an agreement is a legal relationship (regarding property) between two people, which gives one the right to claim it.[13]

Dispute resolution outside the court (non-litigation) can be done through:[14]

a. Negotiation;In its development, negotiation is used as an alternative to resolving disputes outside the court without involving third parties such as mediators, arbitrators and judges.[15]

b. Mediation; mediation is a process of resolving disputes between two or more parties through negotiation or consensus with the assistance of a neutral party who does not have the authority to decide (mediator).

c. Conciliation; conciliation is an effort to resolve a dispute by involving a third party who has the authority to force the parties to comply with and carry out what has been decided by the third party.

d. Arbitration; an arbitration institution is an institution that functions as a tool to resolve disputes that are occurring between parties.

In the explanation of Article 3 paragraph (1) of Law No. 14 of 1970, it is stated that the settlement of cases outside the court on the basis of peace or through arbitration is still permitted, however, the arbitration decision only has executory power after obtaining permission or an order for execution from the court. The main requirement that must be carried out by the parties to be able

[12]Subekti I, Op., Cit, p. 15.
[13]Subekti, 1980, Principles of Civil Law, 15th Edition, PT. Intermasa, Jakarta, p. 123.
[14]Jimmy Joses Sembiring, 2011, How to Resolve Disputes Outside the Court, Visimesia, Jakarta, p. 2.
[15]Sri Mamudji, 2004, Mediation as an Alternative to Dispute Resolution Outside the Court, Law and Development, p. 196.

to use arbitration as a settlement of disputes that may occur or have occurred is that there is an agreement between the parties in advance which is made in written form and approved by the parties.

When connected with the provisions of Article 1868 of the Civil Code, the notary law does not contain strict sanctions against notaries who make deeds that are not in accordance. For that, the provisions of Article 1868 of the Civil Code apply, which means that the deed does not meet the requirements as an authentic deed because its form does not comply with that determined by the Law or can be declared defective so that it only has the power of proof as a private deed if signed by the parties.[16]

The evidentiary force of a deed made before a notary:

1) External evidentiary power (uitwendigebewijskracht); What is meant by external evidentiary power is also called external evidentiary power, namely an evidentiary power based on the external circumstances that a document that looks like a deed is accepted or considered like a deed and treated as a deed, as long as the opposite is not proven.

2) Formal evidentiary force (formelebewijskracht); What is meant by the formal evidentiary force of a deed is the evidentiary force based on the truth or otherwise of the statement signed on the deed.

3) Material evidentiary force (materielebewijskracht); What is meant by the material evidentiary force of a deed is an evidentiary force based on the truth or falsity of the contents of the statement signed in the deed, that the legal event stated in the deed has actually occurred.

The peace deed made by a notary will be used by the parties to the dispute for the benefit of their respective rights. The authentic nature of the peace deed, even though it has a valid and definite legal basis, is not completely binding.Thus, it is very different from a peace decision (van dading) made by a court which has permanent and binding legal force, so that the contents of the peace agreement cannot be prosecuted or objected to at a later date because the peace decision has Permanent Legal Force (BHT).

The making of a peace deed made before a notary is regulated in Article 1851 of the Civil Code, that peace is made before a dispute occurs and/or when the dispute is examined in court and the deed is made in writing. In writing in this case it can be made in a private form or made authentically.

In the case of inheritance dispute resolution, the dispute was finally resolved at the Denpasar Religious Court by giving full power to the Al-Habsyi & Partners Law Firm in West Lombok, NTB. Although they had previously made a peace

[16]Sjaifurrachman and Habib Adjie, 2011, Aspects of Notary Accountability in Making Deeds, Mandar Maju, Bandung, p. 112.

agreement between the heirs in accordance with the peace deed Number: 08, dated August 28, 2023 which was made before Notary/PPAT Hj. Sri Subekti, SH in Denpasar City, Bali. The authentic peace agreement made by the parties before the notary did not resolve the dispute between the heirs. This means that the peace that had been agreed upon by the parties was set aside and not used properly, so that for disputes that did not find a bright spot for peace again, one of the parties filed an inheritance lawsuit in court.

Land disputes themselves can be grouped into 3 (three) types, namely:

a. Land dispute between residents

Land disputes between residents can arise from the transfer of rights or assignment of rights. This land dispute between residents is in accordance with the case explained by the managing partner of Al-Habsyi Law Firm \Advocate FUAD, SHMH, CLA regarding the civil lawsuit currently being handled. This civil case concerns Joint Property (HB) and Advocate FUAD, SHMH, CLA as the attorney of the Defendant/ex-husband (IDRUS, ST) of a husband and wife who were legally divorced in 2022 with the Plaintiff/ex-wife (NARGIS). In this case, the panel of judges has advised the parties to reconcile. However, until now, June 20, 2024, the Plaintiff and Defendant have not yet agreed to reconcile. Although at the beginning of the mediation the Plaintiff had accepted a peace offer from the Defendant, however, when the third mediation continued, the Plaintiff through his attorney again asked for another offer from the Defendant's attorney regarding the division of joint property objects in the form of movable and immovable objects (land and buildings), so that according to the Defendant's attorney Advocate FUAD, SHMH, CLA will continue/fight at the court table. "However, at the final conclusion on July 10, 2024, the joint property case had reached a point of peace agreement from the parties and on July 22, 2024 a court decision was determined in the form of a peace deed agreement (van dading) from the Mataram Religious Court.

b. Land dispute between local government and local residents

One of the disputes that is still being discussed in Kuta, Central Lombok, NTB is related to land acquisition for the development of the Mandalika Special Economic Zone (KEK). Many people do not accept the government's land acquisition even though it is for the sake of generating and growing the economy of the country and the local area (commercial).

Land disputes between local governments and residents usually originate from land acquisition by the local government. This land acquisition is carried out for development purposes theoretically based on certain principles/principles which are divided into two, namely:[17]a) land acquisition by the government

[17]Suriansyah Murhaini, 2018, LAND LAW: Land Conversion and Social Function of Land Rights, LaksBang Justitia Surabaya, Yogyakarta, p. 41.

due to public interest, and b) land acquisition by the government due to non-public interest (commercial).

c. Land disputes related to natural resource management

Disputes in natural resource management usually involve disputes over access, control and use of natural resources. This can be useful in helping communities to clarify their interests and needs and reduce the possibility of injustice or unfairness in the distribution of resources. Such as land disputes that occur generally in the West Nusa Tenggara Province are a conflict of claims to a plot of land, natural resources, and territory owned by residents with business entities engaged in agriculture or production.

The formal procedure for resolving land disputes at the Land Office (BPN) will usually first be clarified by the relevant party whose rights have been violated and the party who is considered a person or entity that has violated the rights of others. Then both parties will be called together to meet in an internal mediation agenda at the local land office to handle the settlement of the disputed objects of the parties.

Mediation in dispute resolution uses several dispute resolution models, including:[18]

a. *settlement mediation,*in order to have the main objective of encouraging the realization of a compromise of the demands of both parties in dispute;

b. *facilitative mediation,*in order to have the aim of avoiding the positions of the disputing parties and negotiating the needs and interests of the parties;

c. *transformative mediation,*in order to find the cause of the dispute;

d. *evaluation mediation*, in order to seek agreement based on legal rights.

In general, the principles that apply to dispute resolution outside the court (non-litigation) are:

a) The principle of good faith, namely the desire of the parties to determine the resolution of the dispute they are facing;

b) Contractual principle, namely the existence of an agreement set out in written form regarding the method of resolving a dispute, for example a private peace agreement or an authentic peace deed between the parties;

c) Abinding, namely the parties are obliged to comply with what has been agreed in an agreement;

[18]Imandia Sulistifani, Case Study: Land Dispute Resolution Through Mediation at the Karanganyar Regency Land Office, Muhammadiyah University of Surakarta, Thesis, 2018, p. 11.

d) Athe principle of freedom of contract means that the parties can freely determine what the parties wish to regulate in the agreement as long as it does not conflict with the law and morality; And

e) USas confidentiality, namely the resolution of a dispute that cannot be witnessed by other people because only the disputing parties can attend the dispute hearing.

The following are several examples of the results of unstructured mediation carried out by the parties and then stated in the form of a notarial peace deed as an effort to resolve disputes outside the court (non-litigation):

1) Deed of Peace and Release of Rights Number 42, dated 13 August 2012 made before Notary/PPAT Dr. Masyhuda Nur'Ahsan SH, MH in Mataram City

The peace deed was made after the decision of the Mataram Religious Court, Number: 288/Pdt.P/2011/PA.MTR, dated January 5, 2011. In essence, the deed explains that based on the decision of the heirs of Mrs. NI WAYAN SUASTI (deceased) who died on December 19, 2007 and Mr. HAJI MUCHDAR (deceased) who died on August 7, 1990. Based on the peace deed, both parties in dispute stated that they jointly agreed to have the right to inherit a plot of land on which a permanent building stands, in accordance with the Certificate of Ownership Number: 2139/Rembiga, covering an area of 511 M2 (five hundred and eleven square meters), Measurement Letter dated 13-04-2007 (the thirteenth of April, two thousand and seven), Number: 1359/07/2007, located in the Province of West Nusa Tenggara, Mataram City, Mataram District, Rembiga Village as stated in Case Decision Number: 139/Pdt.G/2008/PA.MTR, dated April 20, 2009 issued by the Mataram Religious Court, Case Decision Number: 51/Pdt.G/2009/PTA.MTR, dated January 6, 2010 issued by the Mataram High Religious Court and Case Decision Number: 351/K/AG/2010, dated August 13, 2010 issued by the Supreme Court of the Republic of Indonesia.

In relation to matters as outlined above as explained in the contents of the peace deed (dading) which is stated in writing in an authentic deed made by a notary after the decision of the first instance court, appeal and cassation, the author provides another view that if the parties to the case have reached an agreement to reconcile, then they can submit an application or request to the panel of judges that the peace agreement that the parties have agreed to be stated together in the form of a peace deed (van dading) decision of the court.

The peace deed made before a notary is regulated in Article 1851 of the Civil Code, that peace is made before a dispute occurs or when the dispute is examined in court and the deed is made in writing. As long as the peace deed concerns the material evidentiary power of an authentic deed, there is a difference between the statement from the notary stated in the deed and the

statement fromthe parties listed therein. Not only the fact that something is stated as evidenced by the deed, but also the contents of the deed are considered to be proven as something true for every person who orders the deed to be made or made as evidence against him or the deed has material evidentiary force.

In contrast to a notarial peace deed made by the parties after a court decision but not re-registered in the court authorized to adjudicate, the deed is still said to have no executory power even though an authentic deed made before a notary is said to be a deed that has perfect binding power. However, in fact, a peace deed made by a notary still has binding power when used as written evidence in court compared to letters or deeds made privately.

2) Peace Deed Number 11, dated December 21, 2019 by Notary/PPAT Dr. Masyhuda Nur'Ahsan SH, MH in Mataram City.

The peace deed essentially explains that the first party and the second party have mutually agreed to make peace regarding the division of inheritance of 2 (two) plots of land, namely 1) SHM Number: 2345/Ampenan Utara, covering an area of 188 M2, according to Measurement Letter Number 254/AMU/1998, dated 14-12-1998, located in Ampenan Utara Village, Ampenan District, Mataram City, 2) A plot of land covering an area of 4,500 M2, located in Ampenan Utara Village, Ampenan District, Mataram City, according to the Land and Building Tax Payable Tax Notification Letter (SPPT-PBB) Number 52.71.710.007.010-0342.0 and 3) the amount of living expenses and school/college fees amounting to Rp.284,000,000,- which is calculated with compensation money of Rp. 250,000,000,- then the first party no longer needs to pay the compensation to the second party because the amount of living expenses and school/college fees that have been paid and borne by the first party is greater than the amount of compensation that will be paid.

So, the authentic deed made by the parties, although it does not have the executory power like a peace deed based on a court decision, is still said to be a deed that has perfect binding legal force, so that even if a civil or criminal dispute occurs in the future, the notarial deed can be used as valid and strong written evidence by the parties during the trial process in court.

3) Peace Deed (dading) Number: 08, dated August 28, 2023 made before Notary/PPAT Hj. Sri Subekti, SH in Denpasar City, Bali

Based on the case documents obtained by the researcher from the Al-Habsyi & Partners Law Firm in West Lombok, the peace deed essentially explains that peace efforts have been made by the disputing parties in the case of determining heirs for several objects of the case (land and buildings) located in Denpasar District, Denpasar City, Bali. The emergence of the notarial peace deed after the issuance of a court decision, namely the Mataram Religious

Court Decision, dated April 19, 2018, Number: 97/Pdt.P/2018/PA.Mtr concerning the Determination of the Heir of the late Abdullah Aljaidi, the Denpasar Religious Court Decision, dated March 9, 2020, Number: 491/Pdt.G/2019/PA.Dps concerning the Inheritance Lawsuit of the late Abdullah Aljaidi and based on the Appeal Decision of the Mataram High Religious Court, dated June 29, 2020, Number: 0037/Pdt.G/2020/PTA.Mtr.

That the deed was made by the disputing parties before a notary, namely with the intention of ending the dispute both inside and outside the court by resolving it amicably. Which peace agreement was agreed upon by the parties on August 4, 2023 after the case had been processed for years in the local court and there were several conditions, one of which the parties had agreed to, namely to end all disputes/problems that had occurred or that would occur in the future, then it would be resolved amicably/peacefully.

Regarding the above deed, it was disclosed by Advocate Rahmat Andika, SH, MH at the Law Firm "Al-habsyi" which handled this inheritance case until the making of the peace deed (dading) Number: 08 by the heirs. Until the decision of the Denpasar Religious Court, dated March 9, 2020, Number: 491 / Pdt.G / 2019 / PA.Dps regarding the Inheritance Lawsuit of the late ABDULLAH ALJAIDI and based on the Appeal Decision of the Mataram High Religious Court, dated June 29, 2020, Number: 0037 / Pdt.G / 2020 / PTA.Mtr. Advocate Rahmat Andika, SH., MH explained:

"Indeed, this case used to take quite a long time, even from 2018 we handled the case up to the appeal level at the Mataram High Religious Court until it was finally decided in 2020 and currently the object of the inheritance case has not been sold according to the agreement of the heirs based on the peace deed decided by the religious court. In which the examining judge for this case conveyed the aanmaning or the process of summoning the applicant and the defendant for execution around May 2024 yesterday. Therefore, until now we are still waiting for an answer from the defendant for execution."[19]

This is related to the provisions of Article 15 of the UUJN when associated with the making of a peace deed before a dispute occurs, which explains that a notary is an official appointed by the government who obtains attributive authority from the state to serve the needs of the community in the context of legal relations that occur between interested parties, which then the deed he makes can be used as valid evidence and has perfect evidentiary power.

In Article 15 number 2 letter E, a notary can be involved and play a role as a legal advisor for parties involved in a dispute, providing legal advice which is of course accompanied by limitations in order to achieve a peace agreement that can prevent disputes from occurring.

[19]Interview with Rahmat Andika, Advocate Partner at Al-Habsyi & Partners Law Firm, West Lombok, NTB, July 11, 2024.

The author concludes that whether or not a notary-made peace deed can accommodate the interests of the disputing parties depends greatly on the good faith of each party who agrees to resolve their dispute through the peace deed. However, without the good faith and voluntary attitude of the parties to implement and submit to the agreements that have been stated in the peace agreement, it is very impossible for the implementation of the contents of the peace agreement to be realized.

According to Hans Kelsen's theory in pure legal theory, law must be cleansed from elements of ideology, politics, economics, sociology, history, and ethics. Kelsen in his theory of legal responsibility states that a person is legally responsible for a certain act or that he bears legal responsibility when committing an act that is contrary.[20]

Responsibility based on the definition of responsibility is the obligation to be responsible for implementing laws and to repair damage caused by legal subjects. According to the author, it is appropriate to use the term responsibility to be assigned to a notary official. Responsibility itself in this case has a meaning that refers to the responsibility of a notary to carry out his position according to the orders of the law and a notary is also responsible for providing compensation for mistakes he has made, if the mistake is proven to cause losses to the party facing him or a third party.

4. Conclusion

The peace agreement is regulated in Article 1851 of the Civil Code which is made in writing. A non-litigation peace agreement can be made authentically before a notary so that it has perfect evidentiary power or its truth cannot be denied when proven in court. However, a peace agreement based on a deed. The notary will only have binding power and evidentiary power. AgreementPeace in resolving land disputes can be done through litigation or non-litigation. Non-litigation can be done through negotiation, mediation, conciliation and arbitration. A peace agreement in a notarial deed will have binding force and evidentiary force, while a peace deed (van dading) based on a court decision will have legal force like a regular court decision, namely binding force (permanent legal force), evidentiary force and executorial force.

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