

## Legal Implications of Peace Agreement Deeds Made Before a Notary in Resolving Overlapping Land Disputes in The Indonesian Legal System

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**Abstract.** *This study aims to determine and analyze the function of a notary based on his position in making a peace agreement deed, to determine and analyze the legal implications of a peace agreement deed made before a notary in resolving overlapping land disputes in the legal system in Indonesia. The research approach method used in this thesis is empirical legal research with a sociological legal approach method. The specifications of this study use qualitative descriptive. The types of data used in this study are primary data including the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Provisions, Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, as well as secondary data containing books and other supporting documents. Collection of research data using interview techniques and document studies or library materials. The data analysis method used in analyzing data is qualitative analysis. The results of the study show that a Notary is a public official who has a great responsibility in ensuring the validity and fairness in making authentic deeds, one of the legal products made before a notary is a peace agreement deed. In carrying out his/her duties, a notary must be professional, honest, neutral and not take sides with any party in the legal acts he/she carries out. A peace agreement deed made before a notary in the Indonesian legal system is an authentic deed in the eyes of the law which can be used as evidence without relying on a decision, because the authentic deed has permanent legal force. and violations committed by the parties against the contents of the peace agreement can be directly executed based on the strength of legal standing.*

**Keywords:** Authentic Deed; Notary; Peace Agreement Deed.

## 1. Introduction

Land disputes are one of the problems that often occur in Indonesia, especially because land has very important economic, social, and legal values. As a permanent asset, land is often the object of conflict, both between individuals, families, and other parties interested parties. One type of dispute that often arises is an overlapping land dispute, where two or more parties claim ownership of the same plot of land. This problem usually arises due to overlapping certificates, differences in interpretation of boundaries, or other administrative problems in related institutions, such as the National Land Agency (BPN).

Land issues are issues that always arise and are always relevant from time to time, along with the increasing population, development progress, and the increasingly widespread access of various parties who obtain land as basic capital for various interests.<sup>1</sup>Land disputes occur because land has a very important position, which can prove the independence and sovereignty of its owner. Land has a function in the context of state integrity and a function as basic capital in order to realize the greatest possible prosperity of the people.<sup>2</sup>

The results of the land registration process that has been carried out then produce evidence of rights called a land certificate. According to Article 32 paragraph (1) of PP No. 24 of 1997 concerning Land Registration, the function of a land certificate is "A valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the relevant land rights book."

Based on this, it is necessary to have an institution and/or public official who is authorized to make authentic deeds, namely a notary institution. The notary institution emerged from the community's need for an agreement.

Society needs evidence of civil legal relations that arise from trade that occurs, the need for written evidence is increasing in line with the many demands for legal certainty in social and economic relations, both regionally, nationally, and globally so that authentic deeds are used as the strongest and most complete written evidence that can clearly determine rights and obligations, guarantee legal certainty, and are expected to avoid disputes even though the dispute cannot be avoided. In the dispute resolution process, authentic deeds are able to provide real contributions to the resolution of cases easily and quickly.

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<sup>1</sup>Pahlefi, 2014, Analysis of Forms of Legal Disputes over Land According to Agrarian Laws and Regulations, "Forum Akademika Law Magazine, Vol.25, p. 137.

<sup>2</sup>Abdurrahman, 1992, The Position of Customary Law in Indonesian Agrarian Legislation, Akademik Persindo, Jakarta, p. 7.

The increase in legal awareness in society encourages the growth of demand to make official agreements so that society needs a figure who can be relied on, trusted and can provide strong evidence and guarantees for an agreement using his signature or stamp. This figure must also be an expert who is impartial to one side and can maintain the confidentiality of agreement data that can protect it in the future. If an Advocate can defend someone's rights when a difficulty arises, then a notary must try to prevent such difficulties from occurring.

Notary is one of the positions granted by the state through the Minister of Law and Human Rights as an extension of the state.

who carries out some state duties, especially in the field of civil law in accordance with the Notary Law.<sup>3</sup> Based on their role and responsibilities as authentic deed makers, notaries can be called public officials who carry out part of the state's authority in the field of civil law. Their main task is to provide services to the public who need evidence or legal documents in the form of authentic deeds, which are recognized by the state as valid and complete evidence.

An authentic deed itself has three evidentiary powers, namely formal evidentiary power, which proves between the parties that they have explained what is written in the deed. Material evidentiary power, which proves that between the parties the event stated in the deed has actually occurred. Binding evidentiary power, which proves that between the parties and the third party that on the date in the deed in question has appeared before a public official and explained what is written.<sup>4</sup>

One of the duties of a notary is to regulate in writing and authentically the legal relations between parties who have mutually requested the services of a notary.<sup>5</sup> In the out-of-court peace process, the parties can use a peace deed in the form of *Acte Van Dading*. The making of this deed requires the services of a notary, because the deed is an authentic deed.

## 2. Research Methods

The type of research used in this study is empirical legal research, a sociological legal approach method, namely researching and studying law as a study of law in action because it studies and researches the reciprocal relationship between law

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<sup>3</sup>Ibnu Adi Prasetyo, Bambang Tri Bawono, and Nanang Sri Darmadi, 2022, "The Role and Responsibilities of Notaries in Making Certificates of Inheritance Rights for the Disbursement of Time Deposit Savings Funds by Heirs", *Sultan Agung Notary Law Review (SANLaR)*, Volume 4 No. 3, p. 896.

<sup>4</sup>Farman Riantama Budi, Aryani Witasari and Ngadino, 2020 "Notary's Accountability in the Case of Making Authentic Deeds Based on Forgery of Letters by One of the Parties in the City of Makassar". *Sultan Agung Notary Law Review (SANLaR)*, Volume 2 No. 4, p. 693.

<sup>5</sup>Supriadi, 2008, *Ethics and Responsibilities of the Legal Profession in Indonesia*, Sinar Grafika, Jakarta, p. 50.

and other social institutions. The study of law in action is a non-doctrinal social study and is empirical in nature.<sup>6</sup>According to Soetandyo Wignjosoebroto, non-doctrinal research is research in the form of empirical studies to find theories regarding the process of occurrence and the process of how law works in society or is often referred to as socio-legal research.<sup>7</sup>With a sociological legal approach, it is hoped that it will be able to complete and thoroughly examine the function of a Notary in making a peace deed related to the settlement of overlapping land disputes.

### **3. Results and Discussion**

#### **3.1. The Function of a Notary Based on His Position in Making a Peace Agreement Deed in Resolving Overlapping Land Disputes**

A notary is a state official who carries out state duties, the deeds he makes are state documents. So the main task of a notary is to make authentic deeds to serve the public at the request of the community. Notary is a profession that is open to law graduates or graduates of a notary's master's degree. A background in legal knowledge is important because in carrying out his authority and duties, a notary must always be in contact with legal issues. The deeds issued by a notary are strong evidence in a case process. A notary candidate must also be pious to God Almighty, physically and mentally healthy, and have the status of an Indonesian citizen (WNI). In addition to educational and ideological requirements, in order to become a notary, a person must be at least 27 years old, and have an internship at a notary's office for at least 24 months.

Regarding the responsibility of a Notary as a public official related to material truth, it is divided into four points, namely:

- a) The notary's responsibility for the material truth of the deeds he makes.
- b) Notary's responsibilities civil law regarding the material truth in the deed he made.
- c) The responsibility of a notary based on the notary's job regulations regarding the material truth of the deeds he makes.
- d) The responsibility of a notary in carrying out his/her duties is based on the notary's code of ethics.<sup>8</sup>

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<sup>6</sup>Ronny Hanitijo Soemitro, 1988, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, p. 34.

<sup>7</sup>Bambang Sunggono, 2003, *Legal Research Methodology*, Raja Grafindra Persada, Jakarta, p. 42.

<sup>8</sup>Zahren Zukri Alyafie and Amin Purnawan, 2021, "Implementation of Notary's Legal Responsibility for Authentic Deeds Made According to Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2014 Concerning Notary Positions in Kendari City, *Sultan Agung Notary Law Review (SANLaR)*, Volume 3 No. 1, p.81.

Based on Article 15 paragraph (1-3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, it states:

1) A notary has the authority to make authentic deeds regarding all acts, agreements and provisions required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guaranteeing the certainty of the date of creation.

2) In addition, a notary also has the authority to:

a) Validate the signature and determine the certainty of the date of the private letter by registering it in a special book.

b) Record private letters by registering them in a special book.

c) Make copies of private letters in the form of copies containing descriptions as written and described in the letter in question.

d) Doing confirmation of the conformity of the photocopy with the original letter.

e) Provide legal counseling in connection with the making of deeds.

f) Make deeds relating to defense.

g) Make auction minutes deed

3) In addition to the authority as referred to above, a Notary has other authority as regulated in statutory regulations.<sup>9</sup>

Peace is an agreement made by parties to end an ongoing dispute or prevent a case from arising in the future. In this agreement, the parties can hand over, promise, or hold an item as part of the agreement. In order to have legal force, a peace agreement must be made in writing. In dispute resolution, there are often two or more disputing parties, and they can resolve the problem through deliberation without going through the court process, for example by asking for help from a third party such as a family member, community leader, or other mediator. Many disputes can be resolved in this way. However, it is not uncommon for one party to then violate the agreement that has been agreed upon. To prevent the same problem from arising again in the future, a common practice in dispute resolution is to put the peace agreement in written form in the form of a peace agreement deed.

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<sup>9</sup>DanuGirtono, 2020, "Legal Protection for Notaries in Carrying Out Their Duties as Public Officials Based on the Notary Law in the City of Kendari", Sultan Agung Notary Law Review (SANLaR), Volume 2 No. 4, p. 625.

The peace agreement deed made before a notary is an authentic deed that provides perfect evidence in the sense that it no longer requires additional proof. The authentic deed not only proves that the parties have explained what is written there, but also that what is explained is true. The notary is authorized to write down all acts, agreements, and determinations desired by the parties or parties who deliberately come before the notary to confirm the information in the notarial deed, and so that the deed he made has complete evidentiary power and validity.<sup>10</sup>

The peace agreement deed must meet the following criteria:

1) Peace agreement deed in the form of an authentic deed, a peace agreement made in the form of an authentic deed meets the following provisions: the deed must be made "before" a public official. The word "before" indicates that the deed is classified as a deed of the parties (*partij akte*), and the public official in question is a Notary. In a deed of the parties (*partij akte*), the parties involved in a dispute have agreed to resolve the dispute outside the court and have succeeded in reaching a certain agreement, then they come to the Notary to make a peace agreement which is stated in the form of an authentic deed;

2) The deed is made in the form determined by law. Based on Article 1868 of the Civil Code, the form of an authentic deed according to law must meet certain formalities. In notarial practice, the specific form of Notary that is commonly used consists of three parts, namely:

a) Head of Deed

The head of the deed consists of the title of the deed, the day and date of the deed, the name of the notary, the place of domicile, and the comparison (names of the parties, position and place of residence, along with information on whether he is acting for himself or as a representative/proxy of another person and on what authority he is acting, as a guardian or proxy).

b) Deed Agency

The body of the deed contains any provisions or agreements desired by the parties as long as they do not conflict with the Law, public order and morality. The body of the deed consists of premises (preliminary information submitted by the parties, in the case of this peace agreement deed, explaining the existence of a dispute and other information deemed necessary) and clauses (usually stated in the form of articles containing the agreement that must be obeyed by the parties). These clauses are: agreeing to end the dispute, handing over the disputed object, sanctions if one party is in default and the imposition of costs for making the peace deed.

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<sup>10</sup>Joni Emerson, 2001, *Securities Law and its Development in Indonesia*, Palembang. p. 27.

### c) End Deed/Closing

The end of the deed/closing is a form that contains the place where the deed was made and legalized and mentions the names, positions and residences of the additional witnesses who witnessed the making of the deed (instrumental witnesses). Furthermore, in this closing section it is stated that the deed was read to the parties and witnesses, and after that signed by the parties, witnesses and Notary.

3) The notary must have the authority to make the deed. The notary is only authorized to make deeds assigned to him, because not all deeds can be made by a notary. The authority to make a peace agreement deed is indeed in the hands of a notary, because other public officials are not allowed to make the peace agreement deed. A notary is not authorized to make a deed for himself, his wife or husband, blood relatives or in-laws of the notary himself in a straight line without limitation of degrees and lateral lines up to the third degree. In addition, a notary is only authorized to make deeds in the area specified for him as long as he still holds his position as a notary.<sup>11</sup>

The function of a notary is only as a facilitator in the process of making a peace agreement deed, namely: helping the disputing parties to reach an agreement on the boundaries of overlapping land and making a peace agreement deed that includes the agreement that has been reached by the disputing parties. The role of a notary based on his position in making a peace agreement deed in resolving overlapping land disputes is that the notary must act professionally, neutrally and impartially as stated in Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which stipulates that: "In carrying out his position, a Notary must act in a trustworthy, honest, fair, independent and impartial manner. take sides, and protect the interests of the parties involved in legal actions."

### **3.2 Legal Implications of Peace Agreement Deeds Made Before a Notary in Resolving Overlapping Land Disputes in the Indonesian Legal System**

Legal implications are the impacts that are caused or caused in the future from an act that is seen from a legal perspective. Legal implications or legal consequences are also interpreted as something that is caused by the law, regarding matters concerning an act carried out by a legal subject. In addition, legal consequences are also the consequences of actions taken that aim to obtain a result desired by the legal subject. In this case, the consequences referred to are consequences that are regulated by law, while the actions taken are legal actions, namely actions that are in accordance with or not in accordance with applicable law.

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<sup>11</sup>Yanuar Rozi Firmansyah, 2017, Legal Power of Peace Deeds Made Before a Notary and Court Peace Deed Decisions, Vol. 8 No. 2, Jurnal Cakrawala Hukum, p. 225.

Notaries as public officials are required to be able to carry out professional duties as well as possible in accordance with the rules of their religious law and applicable legal regulations. Notaries will receive sanctions not only in the form of positive legal sanctions, but also moral sanctions from the community and spiritual sanctions according to their religious law when they commit acts that violate the law.<sup>12</sup>

The difference between a private deed and an authentic deed lies in the signature affixed under the deed.<sup>13</sup> A private deed is a writing that does not have the same nature as a written deed, for example a personal note.<sup>14</sup> Habib Adjie also believes that the deed made by a Notary has the status of an authentic deed according to the form and procedures stipulated in the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.<sup>15</sup>

Notaries must act professionally in carrying out their duties, as stipulated in Article 16 paragraph (1) letter a of Law No. 2 of 2014, which stipulates that: In carrying out their duties, notaries must act in a trustworthy, honest, fair, independent, impartial manner and protect the interests of the parties involved in legal acts.<sup>16</sup> The Indonesian legal system has regulated that the resolution of cases or disputes may be resolved through alternative channels as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Based on Article 9 paragraph (1) and (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the peace process carried out outside the Court can be implemented by making a deed, namely a peace agreement deed, which reads:

- a) In the event that the parties choose to resolve the dispute through arbitration after the dispute has occurred, the agreement regarding this must be made in a written agreement signed by the parties;
- b) If the parties are unable to sign a written agreement as referred to in paragraph (1), the written agreement must be made in the form of a notarial deed.

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<sup>12</sup>Katinka Dyah Kusumawati, 2021, Budi Santoso, Adya Paramita Prabandari, Legal Consequences of Changes to the Contents of a Notarial Deed Without the Consent of the Parties, NOTARIUS Journal, Volume 14 Number 2, p. 943.

<sup>13</sup>Tan Thong Kie, 1994, Notary Studies: All About Notary Practice, Ihtiar Baru Vann Hoeve, Jakarta, p. 233.

<sup>14</sup>Ali Afandi, 2004, Inheritance Law, Family Law and Evidence Law, Rineka Cipta, Jakarta, p. 199.

<sup>15</sup>Habib Adjie, 2008, Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary. PT Refika Aditama, Bandung, p. 206.

<sup>16</sup>Rizki Amalia, "Notary's Accountability for the Contents of Authentic Deeds that Do Not Conform to the Facts", Scientific Journal of Law Vol. 24, No. 1 (May 2021) p. 193.



The legal implications of a peace agreement deed made before a notary from the perspective of Indonesian legal concepts are that the Indonesian Legal System has permitted and regulated the settlement of disputes outside the Court as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and in Article 1851 of the Civil Code which reads: Peace is an agreement that states that by handing over, promising or withholding an item, both parties end a case being examined in court or prevent the emergence of a case if made in writing.

This has also been explained in the Law that proof with a deed is the most important method of proof because its authentic nature has been recognized by law and its truth cannot be challenged unless the plaintiff can prove where the untruth lies.

The legal implications of a peace agreement deed made before a notary in the legal system in Indonesia based on the description above is an authentic deed in the eyes of the law that is highly recognized and can be attempted in evidence without relying on a decision, because the authentic deed has permanent legal force which is reinforced by the legal basis of Article 130 HIR paragraph (2) which reads "a peace deed has the same force as a decision that has permanent legal force - and no appeal or cassation can be filed against it", and violations committed by the parties against the contents of the peace deed can be directly executed based on the power of legal standing. The peace agreement deed itself has the same power of decision as a judge's decision and this is also reinforced based on the opinion of expert Mr. CW Star Busmann, that to carry out execution against the opposing party does not always require a judge's decision that has permanent legal force, but an authentic deed can be attempted to carry out execution against the opposing party or the party who is in default. Because in this case, an authentic deed made before a public official, namely a notary, according to the form stipulated by law, provides sufficient guarantee of trust to be equated with its executive power with a judge's decision.

#### **4. Conclusion**

1. The notary functions as a facilitator in the process of making a peace agreement deed, namely: helping the disputing parties to reach an agreement on overlapping land boundaries and making a peace agreement deed that includes the agreement that has been reached by the disputing parties. The role of a notary based on his position in making a peace agreement deed in resolving overlapping land disputes is that the notary must be professional, honest, neutral and impartial in any legal act he/she makes. and must ensure that the deed he/she makes is in accordance with the law and does not harm any party. 2. The legal implications of a peace agreement deed made before a notary in the Indonesian legal system is that it is an authentic deed in the eyes of the law

which is highly recognized and can be used as evidence without relying on a decision, because the authentic deed has permanent legal force.

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