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The Legal Status of a Peace Deed Determined by a Judge under Decision No.8/PDT.G/2020/PN BNA

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Abstract

In case No.8/Pdt.G/2020/PN BNA, a dispute concerning the sale of joint marital property without the wife's consent was resolved through court-annexed mediation at the Banda Aceh District Court, in accordance with Supreme Court Regulation No.1 of 2016 on Mediation Procedure in Court (PERMA No.1 of 2016). The mediation resulted in a settlement deed (Akta Perdamaian) that was ratified by a judge, thereby acquiring permanent legal force and becoming enforceable. This research aims to analyze and explain the legal standing of the Settlement Deed ratified by the judge based on Decision No.8/Pdt.G/2020/PN BNA. This is significant because there are legal differences and consequences between a settlement ratified by a judge and one that is not. A Settlement Deed ratified by a judge carries the same legal force as a final and binding court decision (*in kracht van gewijsde*).

Keywords: Joint Marital Property, Settlement Deed, Enforceability

1. Introduction

One of the legal consequences of a marriage does not only pertain to the husband and wife themselves, but also concerns the assets owned by both spouses.[1] Indonesian marriage law stipulates that any assets acquired during the course of the marriage constitute joint marital property. Provisions regarding joint property are regulated under Articles 35 to 37 of Law No. 1 of 1974 on Marriage.

The substantive law of marriage within the Religious Courts forms an integral part of the implementation of Islamic law itself, as it is not possible for a judgment rendered by the Religious Court to be made without reference to the laws enacted by the state.[2]

In the event of a divorce, the law provides that matters relating to joint property shall be governed according to the respective applicable laws. The term "respective applicable laws" refers to religious law, customary law, or other legal systems. For individuals married under Islamic law, any disputes concerning joint marital property fall under the jurisdiction of the Relligious Courts. This is because such disputes are considered part of marital disputes, which fall within the authority of the Relligious Courts as stipulated in Article 49 of Law No.7 of 1989, as amended by Law No.3 of 2006 and subsequently by Law No.50 of 2009.

Disputes between parties generally constitute social disputes. These social disputes may arise when the interests or desires of one party conflict with those of the other. If such social disputes occur within the framework of a legal system, they then become legal disputes. When these legal disputes are brought before a court to be resolved through litigation, they become judicial cases.[3]

[1] Andy Hartanto, *Buku Hukum Harta Kekayaan Perkawinan*, Yogyakarta, LaksBang Pressindo, 2017, hlm. 74.
[2] Anwar dkk, *Hukum perkawinan Indonesia dalam perspektif hukum perdata, hukum islam, dan hukum administrasi*, Jakarta, Kencana, 2022, hlm. 233.
[3] Prima Novita, "Penyelesaian Sengketa Tanah Mengenai Sertipikat Ganda Akibat Tindak Pidana Mafia Tanah", *Jurnal PDK*, Vol. 5 No. 1, 2023.

In the case of disputes that arise, in general, the disputing parties prefer to resolve them themselves through deliberation with the parties concerned without going through or with the assistance of a third party. This can depend on the goodwill of both parties or the level of complexity of the dispute itself. If each party has a sincere determination to resolve it, then the dispute will be resolved easily.[4] However, if one party does not have a sincere intention, then the resolution will also experience many difficulties or even be unresolved. The sincerity of the parties greatly determines the success or failure of resolving the dispute. However, if the dispute is impossible or cannot be resolved by the parties concerned themselves, of course a third party is needed to help resolve it. This third party can be an individual, private entity, or government institution.[5]

In general, dispute resolution can be classified into two ways, namely first, dispute resolution through the judicial institution (litigation), and second, through a non-litigation route.[6] The Civil Procedure Law stipulates that when the plaintiff and defendant are present at the hearing, the panel of judges must reconcile the parties in a peace ceremony, and then based on the provisions of PERMA No.1 of 2016, the peace ceremony must be continued through a mediation institution, for which a mediator is appointed to carry out the peace process. The mediation rules above stipulate that if the mediation succeds in reaching an agrement, the parties, assisted by the mediator, can state the peace agreement and submit it to the panel of judges to be determined as a Peace Deed, which has executory power.[7]

In principle, the disputing parties want a quick, precise, fair and cheap resolution. This has become a general principle in dispute resolution. The only problem now is, which of these institutions is most capable of implementing the problem. In general, the disputing parties prefer to resolve it through social institutions in society, whether they are individuals or social institutions (agencies). Related to such dispute resolution, in the business world, Alternative Dispute Resolution (ADR) institutions have begun to develop in various developed countries as an option for channeling business dispute resolution. If these resolution methods reach a dead end, then the dispute is brought to court as the last bastion of dispute resolution.[8]

However, not all disputes must have been tried to be resolved through existing social institutions, but some are brought directly to court. A dispute that is brought to court means that the dispute is resolved through litigation. Basically, a case always consists of 3 (three) components, namely:[9]

1) Legal elements;
2) Dispute elements; and
3) Human elements.

If one of these elements is missing, then there is no more case. Then which element appears first than the others, perhaps the human element is the first to appear before the other elements, because in fact humans are the source of the problem. Because human interests are different, they often clash with other people, which ultimately leads to disputes. The dispute then comes into contact with the law. The three elements finally integrate into one to form a case.[10]

One of the cases related to the sale of jointly owned land occurred in Banda Aceh City, which is listed in the High Court Decision No.65 PDT/2020/PT BNA. In this case, the High Court Judge accepted the appeal, which was originally the plaintiff (Nur Kesumawati), and overturned the Banda Aceh District Court Decision No.8/Pdt.G/2020/PN BNA.

Based on the judge's consideration, it was stated that during the marriage between the Plaintiff and Defendant I, they had joint property in the form of a shop door measuring 79 m² located on Jalan Diponegoro, Kampung Baru Village, Baiturrahman District, Banda Aceh. The shop was purchased by Defendant I from Abdul Muis Manaf on June 28, 2005, as stated in the Deed of Sale and Purchase No.404/2005 made by the Land Deed Making Officer (PPAT) Sabaruddin Salam.

Defendant I married Defendant II on September 18, 2003, but this was only discovered by the Plaintiff in 2006. In 2019, Defendant I and Defendant II sold the joint property to Defendant III, which sale and purchase transaction was stated in Deed of Sale and Purchase Number 144 of 2019 dated July 25, 2019.

The Plaintiff claims that the sale of joint property by Defendant I and Defendant II to Defendant III is an unlawful act, because the object being traded, namely one shop door with an area of 79 m², is still joint property that should not be sold without the Plaintiff's consent. Therefore, the Plaintiff considers the transaction to be an unlawful act.

The Panel of Judges of the High Court, after considering this case, is of the opinion that the Banda Aceh District Court has the authority to examine and adjudicate the lawsuit filed by the Plaintiff against Defendant I, II, III, IV, and Co-Defendant. Therefore, the decission of the Banda Aceh District Court stating that the court does not have the authority to examine and adjudicate this case, as stated in the decision dated July 7, 2020 No.8/Pdt.G/2020/PN Bna, is considered inappropriate and must be annulled.

However, in further developments, on April 27, 2022, a peace deed was agreed upon in the Banda Aceh District Court trial. In the deed, the Plaintiff and Defendant agreed to end this civil dispute by forgiving each other and without any party being blamed. Both parties stated that they had made peace without any element of coercion from any party. Based on this agreement, the judge decided to sentence both parties, namely Plaintiff I, Defendant I, and Defendant II, to comply with the peace agreement that had been mutually agreed upon. The question arises, what are the legal consequences of peace with the confirmation of a judge and peace without the confirmation of a judge.

The question arises, what are the legal consequences of peace with the confirmation of judges and peace without the confirmation of judges. Based on the thoughts expressed

[4] Vani Wirawan, "Rekonstruksi Politik Hukum Penyelesaian Sengketa Tanah Dan Konflik Tanah Di Indonesia", *Jurnal Hukum Progresif*, Vol. 9 No. 1, 2021.

[5] Putu Diva, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah di Indonesia", *Jurnal Ilmu Hukum Sui Generis*, Vol. 2 No. 2, 2022.

[6] Artadi & Asmara, *Implementasi Ketentuan-Ketentuan Hukum Perjanjian Kedalam Perancangan Kontrak*, Bali, Udayana Uuniversity Press, 2017, hlm. 123.

[7] Yahya Harahap, *Beberapa Tinjauan mengenai Sistem Peradilan dan Penyelesaian Sengketa*, Bandung, Citra Aditya Bhakti, 2017, hlm. 162.

[8] *Ibid*. hlm. 166.

[9] Mertokusumo & Sudikno, *Bab-bab Tentang Penemuan Hukum*, Jakarta, Citra Aditya, 2012, hlm. 59.

[10] Hendri Jayadi dkk, "Penyelesaian Sengketa Tanah Berdasarkan Hukum Positif Tentang Penyelesaian Sengketa Di Indonesia", *Jurnal Comunita Servizio*, Vol. 5 No. 1, 2023.

above, the author is interested in discussing the position of the Peace Deed in the judicial system in Indonesia, namely by analyzing the Peace Deed No.8 / Pdt.G / 2020 / PN BNA".

2. Research Method

This study uses a type of normative legal research, namely a method by examining library materials and laws and regulations which are primary legal materials and are also called library research.[11] This study focuses on the Problem of the Position of the Peace Deed No. 8 / Pdt.G /2020/PN BNA.

In the discussion of this study, the author uses the theoretical basis that the author obtained from various laws and regulations, literature or libraries, archives or legal publication documents including textbooks, legal journals.[12]

As an analytical tool, this study uses a case approach which is carried out by reviewing cases related to the issues faced which have become court decisions that have permanen legal force related to the Position of the Peace Deed No. 8 / Pdt.G / 2020 / PN Bna.

The sources of legal research consist of primary legal materials, namely data related to this research, in the form of library materials. Secondary legal material are data related to this research, in the form of library materials. The function of secondary legal materials is to support primary data. Secondary legal material related to this research can be in the form of legal materials and legal documents including legal issues related to the research to be studied. [13] Furthermore, non-legal materials are also used.

Primary data and secondary data after being collected are then processed and analyzed using qualitative analysis methods based on applicable regulations. [14] Qualitative analysis is data processing by going through the stages of data colection, classifying, conecting with existing theoriee and problems. Then drawing conclussions to determine the answer to the problem. This analysis is a step towards all the data that researchers have obtained and by maintaining the legal basis related to the problem being studied.[15]

3. Result and Discussion

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According to Article 3 (1) of PERMA No.1 of 2016, it is stated that every Judge, Mediator, Parties and/or attorney must follow the dispute resolution procedure through Mediation. In resolving disputes through the courts. With this mediation, a peace agrement will be obtained between the parties to the case. In this case, it is a document containing provisions for resolving the case as a form of agreement on the results of the mediation carried out. The mediation document is then signed by the Parties and the Mediator. According to PERMA, it is stated that the results obtained from the peace agreement are then contained in a deed called the Peace Deed. The contents of the Peace Deed are the material of the peace text which is described in writing and the Judge's decision which strengthens the contents of the Peace Agreement in question. After a peace agreement is reached which is evidenced by the Peace Deed, the parties are then required to submit or notify the Peace Deed to the Judge who examines and tries the case on the day or time of the trial that has been determined. This is intended so that the Peace Deed is confirmed by the judge, so that the Peace Deed has the same legal force as the judge's decision and can be executed. This is what is called a Peace Deed having executorial power.

In addition, the peace deed also has a legal basis in Article 1858 KUHPerdata, Article 130 HIR/154 RBg. Currently, the implementation of mediation in the judicial system in Indonesia is based on Perma Number 1 of 2016 which stipulates mediation as part of the procedural law in civil cases, so that a decision will be null and void if it does not go through the mediation process (Article 2 of Perma No.1 of 2016). Although it cannot be compared with the Law, this Perma is seen as an improvement from Law No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution which still considers mediation as a dispute resolution outside the court. Basically, anyone can make peace, but in Article 1852 KUHPerdata it is stated that the person who is authorized to make peace is the person who is authorized to waive his rights to the matters contained in the peace. Meanwhile, people who are not authorized to make peace are:

1. People who are under guardianship (curatele), such as minors or adults who are under guardianship due to mental disorders or other circumstances that cause them to be legally incompetent. They cannot make peace on their own without the consent or representation of their guardian or custodian.
2. Guardians, custodians, and special powers of attorney, who act on behalf of parties under guardianship, can only make peace on behalf of the parties they represent if they are expressly authorized to do so, either by law or by a court or power of attorney.
3. The administrators of a legal entity or organization, who do not have explicit authority from the articles of association or the results of a member/shareholder meeting decision, cannot make a peace that results in a unilateral reduction of rights or recognition of an obligation.

Thus, the authority to make a peace must be reviewed from the perspective of the legal competence and representative authority of the parties concerned. This is important because the peace has binding legal consequences and is final for the parties, so it cannot be canceled except in cases expressly permitted by law, such as if the peace contains elements of fraud, error, or coercion.

The objects of a peace are matters that are disputed or may give rise to disputes in the future. According to Article 1851 KUHPerdata, a peace can be made regarding cases that are being examined in court, or those that have not been submitted to court, as long as the matter is civil in nature and is within the scope of rights that can be released or surrendered by the parties.

Thus, the object of the peace must not be contrary to law, morality, or public order, and cannot include civil rights that are absolute and cannot be transferred, such as personal status, citizenship rights, and rights as husband or wife.

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[11] Ronny Hanitijo soemitro, *Metode Penelitian Hukum dan Jurimetri*, Bogor, Ghalia Indonesia, 1990, hlm. 9.

[12] Peter Mahmud Marzuki, *Metode Penelitian Hukum*, Jakarta, Kencana, 2005, hlm. 141.

[13] *Ibid.*

[14] Ronny Hanijito soemitro, *Metodologi penelitian hukum dan jurimetri* Jakarta, Ghalia Indonesia, 1990. hlm.59.

[15] *Ibid.*

a. Position of the Peace Deed Based on Decision No. 8/Pdt.G/2020/PN BNA

The peace deed stipulated by the judge in case No. 8/Pdt.G/2020/PN BNA is a concrete form of the implementtation of mediation as regulated in PERMA No.1 of 2016. In this case, the disputing parties chose the mediation path as a more efficient and non-confrontational form of resolution. After going through a mediation process facilitated by a certified mediator, the parties succeeded in reaching a peace agrement. The agreement was then submitted to the panel of judges to be confirmed in the form of a peace deed decision (dading deed).

This decision is not only declarative in nature against the wishes of the parties, but is also binding and has executorial power as with ordinary court decisions (executory kracht). This means that if one party does not implement the content of the peace deed, the other party can file an execution application with the court. Thus, the peace deed is not only a result of compromise, but also a valid and strong legal instrument in upholding justice efficiently.

b. Legal Characteristics of the Peace Deed

The peace deed as a product of an agreement between the parties and stipulated by a judge has the following legal characteristics:

Bersifat

1) Final and Binding

A peace deed that has been confirmed through a court decision cannot be appealed or cassated. This is emphasized in Article 130 HIR and Article 1851 KUHPerdata, where peace has the same legal force as a decision that has permannent legal force (inkracht van gewijsde). Thus, the parties are bound by the contents of the peace as they are bound by a regular court decision.

2) Has Executorial Power

As a court decision that strengthens the agreement of the parties, a peace deed has the power of execution. If one party does not voluntarily implement the content of the peace, the other party can file an execution request to the head of the district court in accordance with the provisions of civil procedure law.

3) Is a Form of Lex Specialis in Dispute Resolution

In the context of dispute resolution, a peace deed can be considered a form of lex specialis that sets aside the dispute resolution procedure through a full litigation process. This reflects that the Indonesian legal system supports dispute resolution based on consensus or win-win solutions.

c. Legal Implications for the Parties

The existence of a peace deed has significant legal implications for the parties. Some of these implications include:

1) Permanently Terminating the Dispute Process

With the determination of the peace deed by the judge, the process of examining the case by the court is considered complete and the lawsuit is declared withdrawn. There is no more room to continue the dispute in court as long as the object and parties are the same.

2) Gives rise to New Rights and Obligations

The content of the peace deed can contain new provissions that replace the previous legal position between the parties. Thus, this deed gives rise to legal rights and obligations that must be respected and implemented.

3) Becomes Evidence in Further Disputes

Although final, if a new dispute arises related to the implementation or interpretation of the content of the peace, the peace deed can become authentic evidence before the court.

d. Decision Analysis

The legal standing of the peace deed issued by the judge in the case of a dispute over the sale of joint property as stated in the High Court Decision No.65/PDT/2020/PT BNA has binding, final, and executory legal force. The dispute in this case began with the sale of a shop unit which was joint property between the Plaintiff and Defendant I, which was sold by Defendant I and Defendant II to a third party without the knowledge or consent of the Plaintiff as the legal wife. This action is considered an unlawful act because it violates the basic principles of managing joint property in marriage. Although initially the Banda Aceh District Court stated that it had no authority to try this case, the decision was overturned by the Banda Aceh High Court because it was considered inappropriate, and stated that the lawsuit filed by the Plaintiff could be examined and decided by the court.

However, in the next process, on April 27, 2022, the parties chose to resolve the dispute peacefully at the Banda Aceh District Court through a peace deed that was ratified by the judge. In the deed, the parties agreed to end the case by forgiving each other without blaming each other, and stated that the agreement was made voluntarily without pressure or coercion from any party. Based on this, the judge issued a verdict ordering the Plaintiff, Defendant I, and Defendant II to comply with the peace agreement.

Legally, a peace deed ratified by a judge has binding force as stipulated in Article 1851 KUHPerdata and Article 130 of the HIR, and is reinforced by PERMA No.1 of 2016. This peace deed is final and no further legal action can be taken, unless there is evidence of a defect in will such as fraud, coercion, or error. This is in line with the principple of pacta sunt servanda, which is a fundamental principle in contract law which states that every agrement made legally applies as a law for those who make it. Thus, the parties who have signed the peace agreement are required to implement the contents of the agreement consistently and in good faith. The application of the principle of pacta sunt servanda in the context of this peace deed confirms that ignoring or violating the content of the peace is a violation of fundamental legal principles. In this case, if one party does not comply with the agrement, the injured party has the right to file an execution application with the court. Therefore, a peace deed is not only a symbol of achieving a peaceful dispute resolution, but also becomes a valid and effective legal evidence in guaranteeing legal certainty and protection for the parties.

A problem or case should indeed be resolved peacefully, do not rush to be submitted or resolved by the court, because in any case a peaceful resolution is better than through the court. Moreover, in Aceh Province with Aceh Qanun No.9 of 2008 concerning the Development of Costomary Life and Customs, there are several cases that can be resolved through peace or through customary courts, such as disputes over ownership rights, disputes over joint property and several other disputes. [16] Dispute resolution through customary courts or mediation for the Acehnese people or

[16] Nurdin MH, Dahlan, Suhaimi, Mustakim, Using Mediation Method in Customary Justice of Aceh-Indonesia, *International Asia of Law and Money Laundering,* Vol. 3 No.2 June 2024, pp. 115-120.

Aceh Customary Law is a local wisdom, which must be maintained and preserved. Therefore, if there is any problem or dispute in the community, it should be prioritized to resolve it through customary law, deliberation or customary courts, in this case local wisdom must be prioritized.[17]

The description above shows that peaceful settlement of cases is one of the alternatives used in dispute resolution. Peaceful settlement of cases is the culture of the Indonesian people in general, especially the Acehnese people. So that in Aceh itself, regulations on peaceful dispute resolution are enforced, namely through Aceh Qanun No. 9 of 2008. In this case, there are several cases that can be resolved through peace or through customary courts, such as disputes over ownership rights, disputes over joint property and several other disputes. This is a local wisdom, which must be maintained and preserved. Thus, if a problem or dispute occurs in any field in society, it should prioritize resolution through customary law, deliberation or customary courts, in this case local wisdom must be prioritized.

4. Conclusion

Peace Deed No. 8/Pdt.G/2020/PN BNA is a valid and legaly binding legal instrument, born from the agrement of the parties in the mediation process which was ratified by the judge, in accordance with the provision of PERMA No.1 of 2016, Article 130 HIR, and Article 1851 KUHPerdata. This deed is final, cannot be appealed or cassated, and has executorial power that allows for an execution request if one party does not carry out the contents of the agreement. For the validity of the peace, the parties must be legally competent and have authority over the disputed object, while the object must be in the realm of civil law and not contrary to law, morality, or public order. The peace deed functions as a form of lex specialis in dispute resolution and is a manifestation of the principle that confirms that a valid agreement binds the parties as a law. In this case, the peace deed has permanently stopped the dispute over the sale of joint property, created new rights and obligations, and can be used as evidence in further disputes. With ratification by a judge, the peace deed becomes a guarantee of certainty and legal protection for the parties effectively and efficiently.

The peace deed stipulated by the judge in the trial process is equivalent to a court decision that has obtained permanent legal force (in kracht van gewijssde), and has legal force, so that it can be directly implemented or executed. This is what is said that the peace deed has executorial power. This is explicitly regulated in Article 130 HIR, which states that if the parties suceed in reaching a peace in the trial, the judge will make a peace deed that is binding on both parties and can be executed like a regular judge's decision. This legal force provides legal certainty and strong protection, because if one party violates the contents of the agreement, the other party can immediately file an execution request to the court without first going through a default lawsuit. This is different from a peace agreement made outside the court, which although valid in civil law, does not have executorial force and is only considered an ordinary agreement that is subject to the civil lawsuit mechanism if a violation occurs. Therefore, the ratification by the judge of a peace agreement not only provides permanent legal force, but also provides a guarantee of forced implementation by the state, which makes the peace deed a legal instrument that is valid, binding, and effective in resolving disputes completely. Substance supervision by the judge before ratification also ensures that the content of the peace do not conflict with the law or harm either party, so that the execution of the peace deed truly reflects justice and legal certainty.

5. Suggestions

The parties to a civil dispute are advised to take the peace route through mediation in court which is then confirmed by the judge in the form of a peace deed. This provides a guarantee of legal certainty, permanen legal force (in kracht van gewiijsde), and executorrial power that allows for forced implementation by the state if there is a violation of the contents of the agreement.

Before making a peace agrement, the parties need to ensure that they have the legal capacity and authority over the disputed object, and that the contents of the agrement do not conflict with the law, morality, or public order. This is important so that the resulting peace deed is legally valid and can be confirmed by the judge without hindrance.

The judge needs to carry out a substantial supervisory function on the contents of the peace agreement before determining it as a peace deed. This action aims to ensure that there is no inequality or injustice in the agreement, so that the peace deed truly reflects the principles of justice and provides effective legal protection for all parties.

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