



The Notary Authority in Resolving Land Disputes with Deed of Peace

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Abstract

Disputes that often occur are usually related to ownership of land, this is because of the important role of land in human life, so that land becomes an object that is prone to disputes or disputes between people, this occurs because human needs for land are increasing, but the land supply is relatively fixed. Notary as a public official trusted by the community to resolve land disputes through a peace deed made by a notary to ensure legality. The method used is empirical juridical research. Research data were collected through field studies through interviews with resource persons to obtain primary data and literature studies to obtain primary data. The focus in this research is to find out and analyze the authority of a notary public in resolving land disputes with a deed of peace. The results showed that 1) Notary was authorized to make a peace deed to guarantee legal certainty for the parties to settle land disputes in accordance with article 15 Paragraph (2) letter f of the UUJN and 2) The peace deed drawn up by a Notary Public is an Authentic Deed but not final binding like a van dading deed decided from the results of mediation in court.

Keywords: Land Disputes; Peace Deed; Notary Public

Introduction

Notary is a public official authorized to make an authentic deed and other authorities as stipulated in Law No. 30 of 2004, which has been converted into Law No. 2 Year 2014 On Notary in Article 1, paragraph 1:

Notary Public is an official authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws.¹

Thus, not only the authority that has been given through the notary ethics law, but the notary as a public official also has other authority granted by other relevant laws.

Duties and authority of Notaries as regulated in Article 15 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning notary ethics, mention about making an authentic

¹ Article 1 number 1 of Law No. 2 of 2014 concerning the notary ethics

deed regarding all deeds, agreements, and provisions required by statutory regulations and / or that is desired by the interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, give a grosse, copy and quote the deed, all of it as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by law. So that in addition to the deed which is part of the duties and authority of other appointed officials, a notary can make it.

One authority on the Notary is a deed of peace or Dading. Peace is an agreement between the two parties whose contents are to surrender, promise or hold an item. A peace agreement that results from a dispute resolution process must be written in a format that aims to prevent the re-emergence of the same dispute in the future.²The peace process outside the court can be carried out by making a peace deed which can be in the form of a deed under the hand or an authentic deed made before a notary. A peace deed can also be made after a court ruling aims to carry out the ruling of a court ruling for the sake of a ruling, but there is also a deed of peace which is made to rule out a portion of the ruling.

The deed of peace is made on the basis of the will of the parties for the sake of certainty, order and legal protection for the parties concerned. Deed peace force as a binding provision for the parties agree. This peace deed can be requested for cancellation, that is, if the content is contrary to the law

Disputes that often occur are usually related to ownership of land, this is because of the important role of land in human life, so that land becomes an object that is prone to disputes or disputes between people, this occurs because human needs for land are increasing, but the land supply is relatively fixed. This then makes the land owner willing to sacrifice anything to defend his land, as stated by Mochammad Tauhid:

"The agrarian problem (a matter of land) is a matter of human life and livelihood, because land is the origin and source of food for humans. Fighting for land means fighting for food, the pillar of human life. For this reason, people are willing to shed blood sacrifice everything that exists in order to sustain their next life.³

In general typology of cases in the field of land can be divided into five groups namely:

- a) Cases relating to people's cultivation of plantation land, forestry and others.
- b) Cases relating to violations of land reform regulations.
- c) Cases relating to excesses in the provision of land for plantations.
- d) Civil disputes relating to land issues.
- e) Disputes regarding customary land.⁴

Basically, the current source of land conflicts often occurs among others, caused by:

- a) Unequal and uneven land ownership / control;
- b) Discrepancy in the use of agricultural and non-agricultural land;
- c) Lack of alignments for the economically weak people;
- d) Lack of recognition of indigenous peoples' land rights (ulayat rights);
- e) Weak position of community holders of land rights in land acquisition;
- f) Land issues in the issuance of certificates which include:
 - a. The process of issuing land certificates is long and expensive,
 - b. Fake certificate,
 - c. Certificate overlapping (overlapping),
 - d. Revocation of certificate.⁵

² Salim, *Contract Law: Theory and Compilation Technique*, 8th print, Sinar Grafika, Jakarta, 2006, Page 92

³ Mochammad Tauhid, 2009, *Agrarian Issues as Problems of Livelihoods and Prosperity of the Indonesian People*, STPN Press, Yogyakarta, Page 3.

⁴ Edi As'Adi, *Civil Procedure Law in Mediation Perspective (ADR) in Indonesia*, Graha Ilmu, Yogyakarta, 2000, Page 1.

⁵ Lutfi I Nasoetion, 2002, *Land Conflict (Agraria) Towards Justice (Agrarian)*, Yayasan AKATIGA, Bandung, Page. 112.

Based on related data, there were 8,959 land dispute cases recorded by BPN and 56% of these were land conflicts between communities and other communities.⁶

Likewise, as in West Sumatra, there are still many disputed conflicts, which are generally related to customary land. Land disputes relating to customary land would be better if resolved through an outside court to obtain the best results for the common interest by involving adat leaders as mediators, given that the resolution of land disputes in court takes a long and long time, and even though it has been decided by the court is not certain that the court's decision can satisfy the parties, for that it is better if peace is done through a peace deed made by a Notary to ensure legality. But besides that there are still many who question how the authority of the Notary to make the deed relating to land and how the strength of the deed.

Research Method

The method used in this thesis research is empirical juridical research, which is research based on field research to get primary data in the field of law. The specifications of this study are descriptive analysts, because this study is expected to obtain data that clearly illustrate what is discussed in this study. The type of data used in this study are primary and secondary data, where secondary data consists of Primary, Secondary and Tertiary Legal Materials. The data collection techniques used for research in the field are interviews and study of documentation documents. While the data obtained from this research will be analyzed using qualitative methods, namely analysis of data without using statistical formulas because the data used are not in the form of numbers. Thus what is used is only by logical explanation of the sentence based on the rules and opinions of experts.

Research Result and Discussion

The Notary Authority in Resolving Land Disputes with the Peace Deed

The notary as a public official is also trusted to provide legal counseling, including in terms of solutions to resolve land disputes experienced by the community. The existence of public trust is also followed by the authority of Notary as stated in Article 15 UUJN Paragraph (2) letter e which states:

"Providing legal counsel in connection with the making of Deed;"

For this reason, before the parties agree to make a certain deed, the Notary must provide legal counsel, explain to the parties about matters relating to what will be agreed by the parties and certain legal consequences of the deed, so that in the future no party will feel disadvantaged due to lack of understanding of it. The most important thing is that the Notary in carrying out his role in providing legal education must be independent, honest and impartial.

According to the Notary Ishaq, To be able to resolve a land dispute, the most important thing is the good intentions of the parties and the desire to get a win-win solution for the parties. The notary can

⁶ <https://economy.okezone.com/read/2019/05/03/470/2051073/ada-8-959-sengketa-lahan-terbanyak-konflik-antar-masyarakat>
Accessed on 10 August 2019, at 14.10

listen chronologically from the parties to be able to understand what is the origin of the problem and from that it can be also found a solution that is equally desired by the parties⁷

Land disputes can actually be resolved through alternative channels, Alternative Dispute Resolution, or non-court and also through the court. The court to settle land disputes will take a long time and a long process, therefore people who are aware of this will prefer the non-court route through mediation or peace by the parties.

The notary is involved in resolving parties' disputes with mediation as the mediator who facilitates the mediation process. The position of the Notary in this matter is only as a neutral and impartial third party, his job is only to help the disputing parties to resolve their dispute and do not have the authority to make decisions. The selection of a Notary Public as a mediator is the desire of those who request the services of a Notary Public to mediate, because the Notary is a person who can be trusted by the parties with all the advantages they have, especially their knowledge in the field of land.

The mediator in this study only acts as a facilitator in the mediation process, with the hope that the mediation can reach the agreement of the parties made in the peace agreement, then the outcome of the peace agreement is made in a peace deed drawn up by a notary who acts as the mediator. The parties are free to accept or reject the mediation agreement, because in mediation the highest power is with the parties to the dispute. Usually the parties themselves choose the Notary as the mediator to mediate the dispute, the parties come to the Notary asking for his willingness to settle the dispute. The agreement is the result of a compromise or middle way that is chosen and agreed together in the mutual interest.⁸

Notary's position as mediator in dispute resolution is a development in the process of dispute resolution. A notary who is a mediator does not break the provisions of the UUJN, because it is a thought that is not only rooted in the rule of law but also sees benefits in society, what is needed by the community, it is fitting for a Notary to act as a mediator even though he does not have a certificate as a mediator and have not attended the training / education of mediators, because Notaries are among those trusted and respected by the community because they are considered to have expertise in certain fields, especially in making authentic deeds.

The existence of this peace deed is a form of legal certainty given to the parties for what has been agreed to resolve the land dispute, which was made before the Notary Public as the official in charge of making the deed about the agreements and had previously provided legal counsel regarding the deed as mandated by UUJN to be implemented, so that there are no mistakes related to the person concerned or the subject of the dispute and a peace must indeed be made in written form to ensure legal certainty.

Legal Strength of the Peace Deed for the Parties in Carrying Out Land Dispute Resolution

The deed drawn up by a notary is a legal deed and has binding legal force as an authentic deed, because the notary deed related to land fulfills the elements as an authentic deed, and the Notary himself according to the Notary Position Law, has the authority to make it. It also includes a peace deed made by a Notary on the agreement of the parties to settle a land dispute. The peace deed contains the parties' agreement, on how the solution achieved from the mediation results, to be able to resolve disputes between the parties and mutual benefit, is agreed and implemented with the intention together to end the dispute that exists between the parties and as long as the thing agreed upon is not a subscription to the Law, the agreement is valid.

⁷ Interview with Notary M. Ishaq, on September 11, 2019 at 10.12 WIB

⁸ Surya Perdana, *Mediation Is One of the Methods of Settlement of Work Termination Disputes in Companies in North Sumatra*, Medan, 2008, Page. 40.

Besides that based on Article 1851 of the Civil Code mention:

"Peace is an agreement which contains that by handing, promising or holding an item, both parties end a case that is being examined by a court or prevent a case from arising. This agreement only has legal force, if made in writing."⁹

It can be interpreted that if a peace agreement is made in writing, especially in front of a Notary Public official who is authorized to make an authentic deed, the peace agreement has permanent legal force.

The peace deed drawn up before the Notary does have binding legal force as an authentic deed, applying the principle of *pacta sun servanda* which is applicable as a law for the parties, but not as a final binding as Van Dading's deed resulted from mediation by a judge. Van dading or peace decisions made before the trial have permanent legal force and execution can be carried out as usual ordinary decisions that have permanent legal force, against this peace decision cannot be appealed to the appellate court.¹⁰

Thus it can be seen that the peace deed has provided legal certainty for the parties, and has legal power so that it can be accepted by the Head of the Padang City Land Office to transfer the rights to the land to a third party and with certainty have resolved the dispute that exists between the parties and are equally beneficial for the parties.

Conclusion

Based on the provisions contained in Article 15 paragraph (2) of the UUJN, legally formal the Notary is authorized to make a land-related deed, as long as the deed is not under the authority of the PPAT. The authority of the Notary in making the deed related to the land has a strong legal force because the authority is based on the Law. In resolving land disputes, the Notary in accordance with his authority will make it happen in a deed, which content is an agreement that has been reached between the parties as a solution to resolve the land dispute. as stated in UUJN that the deed drawn up by a Notary is an authentic deed, applies as a law for the parties that are obliged to be obeyed and implemented. The existence of this peace deed is a form of legal certainty given to the parties for what has been agreed to resolve the land dispute, which was made before the Notary Public as the official in charge of making a deed about the agreements and had previously provided legal counsel regarding the deed as mandated by UUJN to be implemented.

The peace deed drawn up before the Notary does have binding legal force as an authentic deed, but it is not final binding as Van Dading's deed resulted from mediation by the judge. Van dading or a peace decision made before the trial has permanent legal force and can be carried out as an ordinary decision which has permanent legal force, against this decision the peace cannot be appealed to the appellate court, but it can be seen that the peace deed has provided legal certainty for the parties, and has legal force so that it can be accepted by the Head of the Padang City Land Office to transfer the rights to the land to a third party and has certainly resolved the dispute that exists between the parties and is equally beneficial for the parties

⁹ Article 1851 of the Civil Code

¹⁰ <https://www.hukum-hukum.com/2014/07/akta-perdamaian-akta-van-dading.html> Accessed August 26, 2019

Suggestion

The legislative board should consider making rules to clarify the authority of the Notary to make a peace deed so that the position of the peace deed before the Notary is the same as the peace deed before the Judge (van dading). To the parties it is recommended to further consider the resolution of disputes through the mediation line first, considering that land dispute resolution takes a long time and a long process, whereas through the mediation process in front of a judge can be shorter and set forth in the van dading deed.

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Interview

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