

Theme: Legal Force of Peace Treaty Deed (*Acta Van Dading*)
Made By Mediator In Court In Settlement Civil Disputes

LEGAL FORCE OF PEACE TREATY DEED (*ACTA VAN DADING*) MADE BY MEDIATOR IN COURT IN SETTLEMENT CIVIL DISPUTES

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ABSTRACT

Efforts to resolve a legal case can be done by peaceful means. Peace can be made through a process in court and can also be a peace made by the parties to make a peace deed before a Notary. How is the legal rule of the Deed of Peace Agreement (*Acta van Dading*) based on the Civil Code and how is the legal force of the Deed of Peace (*Acta van Dading*) determined by the judge from the mediation process in civil disputes. This writing uses Normative legal research, the type of Literature legal research and data collection techniques in this study are using Research methods. The legal position of the Deed of peace made before a Notary Public becomes evidence that has complete and perfect evidentiary power. If the peace deed has been made in the form of a decision by the Panel of Judges, it is the same as a decision that has the force of law that can be implemented. The results of the study concluded that the peace agreement from the results of mediation both carried out in court and outside the court which was confirmed into a peace deed (*Acta Van Dading*) has permanent legal force, cannot be appealed or cassated, and has executory legal force.

Keywords: Legal Force, Deed of Peace Agreement, Mediator, Civil Dispute Resolution

1. Background

In Indonesia, there is a legal basis that allows a dispute to be resolved through an alternative dispute resolution mechanism, namely Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power in Article 58 and also in the Civil Code. Article 1851 confirms that peace can be made on existing cases both ongoing in court and cases to be brought before the court. It is possible and valid as long as the parties are willing and have good faith to resolve a problem. In the event that the peace is either carried out by the judge as a mediator or facilitator as well as the peace carried out outside the court, both will be done in writing, to strengthen the peace.

Based on this, the peace agreement resulting from a dispute resolution process must be set forth in written form, it aims to prevent the re-emergence of the same dispute in the future. To fulfill the above, the peace process outside the court can be carried out by making a deed, namely a peace deed. This peace deed can be either a deed under hand or an authentic deed made by a notary.

Peace in civil proceedings is carried out by mediation, namely dispute resolution through a negotiation process to obtain agreement between the parties assisted by a Mediator. A mediator is a

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judge or other party who has a Mediator Certificate as an impartial party to assist the parties in the negotiation process to find various ways of resolving disputes without having to use the means of deciding or forcing a settlement. Mediation refers to Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court.

Although in practice the success of a mediation process is determined by the professionalism of a mediator, nevertheless, the interests of the parties also largely determine the level of success. With this legal certainty, of course, various legal aspects and problems in practice will also arise. The problems that arise in practice will be very difficult to overcome, if no research is conducted. Especially to obtain data related to peace issues in the session and its review.

Many judges are more inclined to use *Acte Van Dading for Peace deeds made by the parties without / no confirmation* from the judge and *Acte Van Vergelijk* is a deed that has obtained confirmation from the judge, Peace in essence can be made by the parties before or by the judge who examines the case, also peace can be made by the parties outside the court and then brought to the court concerned to Confirmed. From the description above, it can be argued that peace can be divided as follows:

1. A peace deed made with the approval of a judge, where the deed is made by the parties before the judge or with a mediator or facilitator of the judge or often referred to as *Acte Van Vergelijk*.
2. A peace deed without the approval of a judge carried out with Alternative Dispute Resolution (APS) or commonly called *Alternative Dispute Resolution* (ADR) can use *Acta Van Dading* or a deed under hand.

Based on the above, each community has various ways to obtain agreements in resolving cases, conflicts and disputes. Gradually people tend to abandon customary ways of resolving disputes and move to methods recognized by the government. This is where the law is built to mediate disputes with rules that must be obeyed by discipline. In enforcing the law there are three elements that must be considered, namely legal certainty (*rechssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerechtikeit*).

2. Research Methods

This research is a qualitative research that is descriptive. Descriptive research aims to describe precisely the characteristics of a particular individual, condition, gejala or group, or to determine, or determine the spread of a symptom, or to determine whether there is a relationship between a symptom and other symptoms in society. According to Hussein Umar, descriptive is "describing the nature of something that takes place at the time the research is carried out and examining the causes of a particular symptom".

To obtain the required data, the author conducts data collection carried out by means of *Library Research* or also called document studies which include Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. The research was conducted by reading several references, such as books, laws, and literature related to the Legal Study of Peace Agreement Deed (*Acta Van Dading*) made by mediators in court in civil dispute settlement.

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3. Discussion

The agreement resulting from mediation outside the court in the form of an agreement or peace has been determined based on Article 6 paragraph (7) of Law Number 30 of 1999 concerning Arbitration & Alternative Dispute Resolution. The provisions of Article 6 paragraph (7) which reads, that: "The agreement to resolve disputes or differences of opinion in writing is final and binding on the parties to be carried out in good faith and must be registered in the District Court within a maximum of 30 (thirty) days from signing." The provisions of the article can be interpreted as the legal force of an agreement resulting from alternative dispute resolution, including in this case the result through mediation.

Peace is a *win-win solution* or alternative form of settlement by winning both parties that can be achieved. The agreement is written and both are obliged to obey every clause contained in the peace deed. In addition, good faith in resolving disputes is the main thing that is the basis for conducting a peace agreement. Therefore, the peace deed must be based on the agreement of the parties to end the dispute, so that the implementation of the contents of the peace deed requires good faith from both parties to the dispute to implement the contents of the peace deed.

There are 3 points related to the legal force inherent in the peace deed decision, which are as follows:

1. Equated in Power with a Ruling with Permanent Legal Force

According to Article 1858 paragraph (1) of the Civil Code, peace between parties, is as powerful as the final judge's decision. This is also affirmed in the last sentence of Article 130 paragraph (2) HIR, that the decision of the peace deed has the same force as a decision that has permanent legal force.

2. Has executory power

This affirmation is referred to in Article 130 paragraph (2) HIR. The last sentence of the article confirms that the decision of the peace deed: a. has the force of a judge's decision that has obtained permanent force, and b. also has *executorial kracht* as well as a court decision that has permanent legal force. Shortly after the verdict was handed down, it immediately attached executory power to it. If either party does not comply or perform the fulfillment specified in the agreement voluntarily.

3. The Verdict of the Peace Deed Cannot Be Compared

This is affirmed in Article 130 paragraph (3) HIR. The verdict of the peace deed cannot be compared. In other words, against the decision closed legal remedies (appeal and cassation). The prohibition is in line with the provision that equates its force to a judgment that has permanent legal force. Not against a decision with permanent legal force, all legal remedies have ended.

In practice in society, the existence of notaries in legal formation is reflected in the participation of Notaries as mediators in various disputes between parties as long as the parties are clients in civil affairs. Although the main task of a notary is to make or record events authentically, the participation of the Notary's role is more than stipulated in the law, especially as a mediator in differences of views on something in the legal relationship between two clients becomes very possible. For parties who

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make an agreement before a Notary, if there is a conflict or dispute related to the deed, then usually the first person to ask for advice is the Notary concerned.

In order for a peace treaty to meet legal provisions, it must comply with the provisions of article 1320 of the Civil Code, which is about the validity of a treaty, the author explains the meaning of the agreement and fulfills Article 1851 paragraph (2) of the Civil Code, determines that the peace agreement is made in writing.

As an authentic deed, the peace deed made before the notary has complete evidentiary power. Full evidence is such evidence that the judge has sufficient certainty (*genoegzaam*) to grant the legal effect demanded by the plaintiff, without prejudice to the possibility of evidence to the contrary.

The termination of this dispute is through peace efforts stipulated in the peace deed before the court, then every peace decision must be obeyed and implemented as stipulated in the peace decision in this dispute. For this reason, every peace decision has binding force to be obeyed and implemented as specified in Article 1858 Paragraph (1) of the Civil Code that peace between parties is as powerful as the final judge's decision. This is also affirmed in the last sentence of Article 130 Paragraph (2) HIR that the decision of the peace deed has the same force as a decision that has the force of law as a judge's decision that has obtained permanent legal force and also has executorial *force* (*executorial kracht*).

4. Conclusion

Legal Rules of the Deed of Peace Agreement (*Acta Van Dading*) Based on the Civil Code, namely in Article 1851 paragraph (1) of the Code and the legal consequences arising from the Deed of Peace is an agreement that contains the principle of *Pacta sunt Servanda* which binds the parties, meaning that the peace deed can provide legal certainty guarantees for the parties to the dispute. The legal force of the peace deed (*acta van dading*) determined by the judge from the mediation process in civil disputes, namely the peace deed has the same force as the decision of the judge (court) in the final level. The Peace Deed is submitted to the Panel of Judges who examine the case to be used as evidence that can be the basis for the judge's consideration to examine and decide the case with a peace decision (*Acta Van Dading*).

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