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Dispute settlement of land certificate blocking at the national land agency through a notarial peace deed

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ABSTRACT

The recording of land blocking at the National Land Agency can occur due to an act, legal event or a land dispute or conflict. Through a peace agreement that has been agreed between the parties to the dispute, a deed of peace is made. Peace deeds made by the parties before a notary can be an effective and efficient choice in resolving disputes arising from civil legal relations that occur outside the court. This research uses normative juridical research methods, namely research focused on examining the application of positive legal norms relating to the validity of an agreement. The data collection technique used is using literature study. The analysis in this research uses qualitative analysis. Notaries carry out part of the state's power in the field of civil law to serve the interests of people who need legal evidence in the form of authentic deeds recognized by the state as perfect evidence. The notary peace deed becomes a dispute resolution and can provide justice as well as legal certainty between the parties to the dispute.

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1. INTRODUCTION

One of the dispute phenomena found in society is land disputes. A land dispute can be formulated as a conflict or dispute that makes land the object of dispute (Silvana et al., 2021). Land cases often occur when viewed from the conflict of interests of the parties in land disputes: people dealing with bureaucracy, state companies, private companies, and conflicts between people (Sumardjono, 2022). Land disputes can be classified into 3 categories: civil land disputes, administrative land disputes, and land disputes that are indicated to contain elements of criminal aspects (Kurniati, 2016).

Land registration aims to obtain a letter of evidence in the form of a certificate of land rights issued by the National Land Agency (Bunga et al., 2023). Land certificates are a product of the implementation of land registration activities (Putri et al., 2023). The existence of a land certificate for the holder of land rights is very important, this is because the certificate is used as evidence and guarantees legal certainty for the holder of the right itself (Ardian et al., 2022).

The main problem is related to the certainty of land rights originating from physical land data and juridical land data submitted by the recipient of the right to the National Land Agency. Parties who feel disadvantaged can request recording in the land registration book or what is known as blocking of land certificates. This has the effect of blocking as a protection step in the form of temporary prevention of all forms of changes to the land rights certificate by the land office until a permanent decision from the relevant court occurs. With this, the land cannot be transferred

to another person either through sale or purchase or otherwise and also cannot be given by lease or pledged to a third party (Sekarsari et al., 2019).

The importance of the notary's role in helping to create legal certainty and protection for the community is more preventive like legal problems (Iskhak et al., 2019). By issuing an authentic deed related to the legal status, rights and obligations of an individual in law that serves as the most perfect evidence. The role of a notary can also be seen from his capacity to provide legal advice and verify an agreement, whether the agreement has been made in accordance with the rules of making a correct agreement or the agreement was made ineligible (Sjaifurrachman & Adjie, 2011). As referred to in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position in Article 1 paragraph (1) Notary is a public official authorized to make authentic deeds and other authorities.

In general, several ways can be chosen to resolve disputes, distinguished through the court or outside the court such as negotiation, conciliation, expert judgment, mediation, arbitration, and others, which are often referred to as alternative dispute resolution (Soemartono & Margono, 2019;Hariadi & Anindito, 2020). In Indonesia, the settlement of a dispute through alternative dispute resolution (ADR) is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and also in the Civil Code Article 1851 (Ningsih, 2019). Peacemaking is also stipulated in Article 130 of the Herzeinne Indonesische Reglement (HIR), which regulates the mediation procedure in which the judge is required to make a peacemaking effort towards the parties to the dispute in court (Hadrian, 2019).

The study by Ardian et al. (2022) examines the blocking of certificates of land rights in dispute at the Land Office of Padang Pariaman District, finding weaknesses in the system that may lead to legal uncertainties for land rights holders. The process of blocking involves application, assessment, and recording at the Land Office to protect the interests of land rights holders, especially in cases of jointly owned land and inheritance disputes. This research emphasizes the importance of notaries in providing legal certainty and protection for the community, highlighting the validity of notarial peace deeds in dispute resolution.

2. RESEARCH METHOD

The method used in this research is the normative juridical research method, which is research focused on examining the application of positive legal rules or norms (Ibrahim, 2013). The characteristic of this research uses an empirical approach which is carried out by analyzing the research on the deed of peace made before a notary. The type of approach used in this research is a statutory approach, which is by examining legislation and regulations related to the legal issues being studied. The research specifications are descriptive by describing, analyzing, and concluding problems concerning land dispute settlements. The research source uses secondary data, which comes from primary legal materials in the form of related legislation, secondary legal materials in the form of books, as well as tertiary legal materials. The data collection technique used is using library studies. The analysis used in this research uses qualitative analysis.

3. RESULTS AND DISCUSSIONS

Validity of Notarial Peace Deed in Dispute Settlement of Land Certificate Blocking at the National Land Agency

Philosophically, dispute resolution is an effort to restore the relationship between the parties to the dispute to its previous state. By restoring the relationship, the parties can establish relationships, both social and legal relationships between one another. Resolving can be interpreted as making an end, clearing up or deciding to arrange, reconciling (disputes or quarrels), or arranging something so it becomes better (Panjaitan, 2022). Disputes can be resolved through formal methods that have developed into an adjudication process consisting of a process through the courts and arbitration or informal methods based on the agreement of the parties to the dispute through negotiation and mediation (Usman, 2003). The resolution of a dispute requires efforts to resolve it, both efforts to resolve disputes through the courts (litigation) using formal legal provisions and through efforts outside the courts (non-litigation) (Kurniawan & Ma'ruf, 2019;Wijayanti & Handayani, 2023).

According to Usman (2003), the effort to find ways of settlement that prioritize compromise began when seeing the forms of settlement used at that time (in court institutions) show various weaknesses or shortcomings such as high costs, the length of the examination process and so on. The negative effects of the court institution are known as out-of-court settlement efforts (non-litigation). This condition then encouraged the creation of the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Prayitno & Miptahudin, 2021).

The scope of disputes that can be resolved through alternative dispute resolution under UUAPS is civil law and trade law disputes that can be resolved directly by the disputing parties (negotiation) or assisted by a third party as an intermediary (mediator). Dispute settlement based on face-to-face meetings by the parties is carried out within a maximum of 14 (fourteen) days from the time the negotiations are conducted by the parties and the parties must have decided as outlined in the form of a written agreement. The results of the agreement through the negotiation process are made in writing so that they have legal certainty and binding force on the negotiating parties and interested third parties (Syafrida & Hartati, 2020).

Notaries as public officers are tasked with providing services to people who need their services in making written evidence, especially in the form of authentic deeds in the field of civil law. The existence of a notary is the implementation of the law of evidence (Budiono, 2013). The duties and authorities of a notary are basically the same as those of a judge, which is to provide decisions regarding justice between the parties to a dispute. The notary has a significant role as a public officer who is authorized to make authentic deeds. Notaries are not required to examine and investigate the material truth of each deed that has been carefully examined so that there are no errors in the deed. If necessary, the notary is obliged to refuse to make a deed requested if it is known that the actions taken by the client violate the applicable regulations.13 Article 15 paragraph (1) UUNJ emphasizes that one of the powers of a notary is to make a deed in general. Grosse of a notarial deed has the same executorial power as a judge's decision (Tobing, 1999). Grosee deed besides having executorial power also has other benefits, which is in terms of proof as stipulated in Article 1889 number 1 of the Civil Code, that if the original title deed no longer exists, the first copy provides the same proof as the original deed (Budiono, 2013).

The notary must ensure that the deed made is following the specified legal rules so that the relevant parties are protected by the deed. Therefore, the notary must understand legal issues substantially so that in addition to the deed made is not contrary to the existing law, the notary can also be legally accountable for the existence of the deed. A substantial understanding of the law by a notary will ensure that legal certainty can be applied to provide legal order and protection for the community (Rochim & Sulistiyono, 2018). Notary can be said to be a mediator whose role is to facilitate the mediation process of the parties to reach several agreements. with the hope that the mediation can reach a mutual agreement which is then made in an authentic deed, a deed of peace (A. Ningsih et al., 2019).

A deed of peace is made based on the consent of the parties for the sake of certainty, order, and legal protection for related parties. A deed is considered valid if it has met the formal and material requirements in its making. Deeds that have followed the procedures as regulated in the law will have a valid character and perfect evidentiary power. This deed of peace may be invalidated if its contents are contrary to the law. Peace can be made by the parties in the presence of or by the judge examining the case or made by the parties outside the court. Peace made by the parties outside the court can be in the form of a deed that is not official or an authentic deed made by a notary public.

The agreement that has been finalized into a peace deed is a binding and final settlement for the party's seeking justice. The success of out-of-court mediation is determined by the agreement of a mediator; therefore, the mediator must master various skills and techniques. Another skill required for a mediator is the ability to listen effectively and impartially, because the final result of out-of-court mediation is a notarized peace deed. The deed of peace obtained out of court should be in the form of an authentic deed, so that if a lawsuit is filed with the court the judge can impose a decision immediately (uit voebar bij voordaad), because the deed has perfect or undeniable evidential power. The contents of the deed are considered true and the judge must believe what is written in it (Ramadhani et al., 2022).

The notary is only responsible for the validity of a deed product but is not responsible for the content of the deed. This results in a peace deed made by a notary, even though it is an authentic deed, if it contains an error, is made by fraud or is contrary to the applicable law, then the peace deed can also be sued or canceled.

Case Position

LS as the first party and BP as the second party in 2005 both cooperated in the sale of land including the processing of land documents belonging to the first party on Swadaya Timur Street, Duren Subdistrict, in East Jakarta which has a land area of 1,353 m2 (one thousand three hundred fifty-three square meters). During their cooperation, the second party introduced a third party to the first party, IL and became an intermediary for the first party to lend money in the amount of Rp. 600,000,000, - (six hundred million rupiah) to IL and will be returned within 3 (three) months with an interest of 2.5% (two and a half percent) per month with a guarantee of IL's land certificate.

After the transfer of the money loan, IL did not submit the collateral as he promised to the first party, so then the second party as the party who introduced IL to the first party submitted his certificate of Building Rights with the number X/Klender on a plot of land described in Measurement Letter Number xx/1999 dated August 31, 1999 covering an area of 67 m2 (sixty-seven square meters) with Identification Number (NIB): 0x.0x.0x.0xx registered in the name of BP as collateral to the first party.

Based on this, on May 3, 2009, the first party applied to block the HGB certificate owned by BP at the East Jakarta City Administration Land Office through letter number xxxx-HT&PT and recorded it in the land registration book on May 8, 2009.

In 2021, the first party and the second party agreed to end the dispute over the matter, the first party and the second party went to Notary ES, S.H., M.Kn. who works in the working area of the East Jakarta Administrative City to make a peace deed.

The peace deed made by Notary ES has complied with the formal and material requirements and has perfect evidentiary power. The peace deed is binding and becomes law for each of the parties involved, both LS and BP. It was also stated that with the signing of the deed of peace, the parties involved ended all disputes and cases regarding the blocking of the land, and then all court decisions either existing or to be issued in the future regarding the case regarding the land will not have legal force and must be considered as never issued.

Legal Consequences Caused If One Party Defaults on Deed of Peace Number xx Dated June 22, 2021

Article 1238 and Article 1239 of the Civil Code contain provisions regarding default. Broadly speaking, default is the existence of negligence or non-fulfilment of obligations. Negligence in default is different from negligence in the sense of violation of law in Article 1365 of the Civil Code. Negligence in default is negligence in fulfilling the things agreed upon by the parties. Default arises as an excess of the parties' agreement on something or object. Default comes from the Dutch term "wan preststie", "wan" which means "bad" and "prestatie" which means the obligations that the debtor must fulfil in every engagement.

Default is the performance of an obligation that is not in time or is not carried out according to what is appropriate. The debtor is said to be in a state of default if in carrying out the performance of the agreement it has been negligent so that it is late from the specified time schedule or in carrying out the performance not according to the proper or appropriate. There are also elements of default, among others: the existence of a valid agreement (Article 1320 of the Civil Code), the existence of errors due to negligence and intent, the existence of losses, the existence of sanctions, which can be in the form of compensation, resulting in the cancellation of the agreement, risk transfer, and paying court costs (if through the litigation process). Default can occur due to the fault of the debtor, either due to intent or negligence or due to force majeure, which is beyond the debtor's ability.

This default is an event or situation where the debtor does not fulfill the obligations of the performance of the engagement properly and the debtor has an element of fault on it. Default has legal consequences for the party who did it and has consequences for the right of the aggrieved

party to sue the party who made the default to provide compensation, so that by law it is hoped that neither party will be harmed by the default.

Legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects (Putra & Moch Djais, 2016). The term "legal effect" refers to any action taken to deal with an effect that has been approved by the law and has been agreed upon by the legal actors and regulators. The actions used are legal actions or actions used to overcome situations in line with the law. It can also mean that legal consequences are all the consequences mentioned in various legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by the law which are determined or considered as legal consequences.

The legal consequences that can be demanded of the party who commits default are regulated in Article 1267 of the Civil Code, contains of (a)Fulfillment of the agreement, (b)Fulfillment of the agreement along with compensation, (c)Indemnification of damages, (d)Reversal of the agreement, and (e)Cancellation of the agreement followed by compensation.

The notary must register the peace deed in court through the lawsuit process. As long as the deed of peace made in the presence of a notary is not registered in court, the deed of peace is still in the form of an agreement only that binds the parties.

The contents of the deed of peace contain new rights and obligations that must be fulfilled by the parties to the dispute, if in the future these rights and obligations are not fulfilled by one of the parties to the dispute, there will be a violation of the rights of the deed of peace in which one of the parties is harmed or their rights are not fulfilled. The deed of peace is divided into 2 (two) types, they are:

1. Deed of peace with judge's approval (actavan vergelijk)

Generally, a new decision has permanent legal force legally binding, if there is no legal recourse against it. Usually for a decision to have such force, when an appeal and cassation has been taken. However, against the decision of a deed of peace. The law itself attaches that power directly to it. After the verdict is pronounced, it immediately inherently has permanent legal force, so that the peace has the same power as a judge's decision with permanent legal force. The deed of peace immediately has executorial power because it has permanent legal force. If one of the parties does not comply with the peace agreement that has been made, the aggrieved party can request a Grosse of the peace agreement made in the form of an authentic deed to a notary.

2. Deed of peace without judge's approval (acta van dading)

Dading is an agreement that is subject to Book 3 of the Civil Code, the first paragraph of dading as an agreement made legally binds the parties who make it law. The making of a deed of peace in the presence of a notary is one of the effective and relatively easy ways of settling disputes out of court in the Indonesian legal system. A deed of peace has a valid legal position in the judicial process and is also strong evidence. This peace deed has executorial power with a stipulation issued by the Head of the District Court containing an execution order so that the peace deed can be implemented.

If one of the parties, either LS or BP defaults on the contents of the peace deed that has been mutually agreed upon and signed in the presence of a notary, the aggrieved party can file a lawsuit at the local court office. The Notary, ES must also register the peace deed with the local district court in order to obtain a stipulation from the Head of the local district court so that the peace deed has an executorial value, which contains an execution order so that the peace deed can be implemented.

4. CONCLUSION

Through this peace process, the parties to the dispute do not need a long time, are more efficient and cost less when compared to dispute settlement in court. Peace can be implemented in court or outside of court. The settlement of land-blocking disputes through notarial peace deeds is expected to be an alternative to out-of-court dispute settlement. A deed of peace made in the presence of a notary is a deed of agreement between the parties to prevent disputes from arising or to end disputes between the disputing parties inside or outside the court. Notary as a legal profession that carries out the duties of a public official should be able to accommodate and be proactive in

peaceful dispute settlement so that the parties can obtain the value of justice, security, trust and legal certainty. This research contributes to the field of science is related to the blocking of certificates of land rights in dispute for the order of land administration. The research contributes to the understanding of peaceful dispute settlement in land-related matters. The implication of the research in theory and practice is expected to provide insights into alternative dispute resolution methods, such as notarial peace deeds, to prevent legal consequences and ensure justice, security, trust, and legal certainty in land disputes. The suggestion for future research could be to further explore the effectiveness and implementation of notarial peace deeds in resolving land disputes, considering the limitations and challenges that may arise in practice. Considering the limited time and costs, the researcher limited the research only to the process of resolving land disputes through the mediation process.

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