

THE VAN DADING ACT AS A RESULT OF MEDIATION WHICH WAS NOT ACCOMPANIED BY A COURT RULING IN RELATION TO THE EXECUTORIAL VALUE

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ABSTRACT

Efforts to resolve a legal case can be done by means of peace. Peace through the mediation process is a concept of social harmony without hostility and can be used as an option for the parties in resolving disputes. This research discusses the legal provisions that regulate the process or mechanism for resolving disputes by means of mediation according to positive law provisions and how van Dading deeds resulting from mediation which are not accompanied by court decisions relate to executorial value according to applicable legal provisions.

This research is descriptive in nature with a normative juridical type of research on secondary data in the form of primary, secondary and tertiary legal materials obtained through library research and document study. Primary data through interviews was conducted to strengthen secondary data. The approach uses a statutory approach, while the analysis used is qualitative analysis.

The process of resolving disputes through mediation is in accordance with the sociological basis applied by Indonesian society and is also in accordance with the philosophical basis as intended in the 4th principle of Pancasila. Juridically, dispute resolution by means of mediation has also been regulated in positive law, as stipulated in Article 130 HIR/154 Rbg., Civil Code, Law Number 30 of 1999, Law Number 48 of 2009, Perma Number 1 of 2018 and other related laws and regulations. The result of the dispute resolution process by means of mediation, whether carried out in court or outside court, is the existence of an agreement or peace agreement which both have evidentiary value and are binding for the parties. However, both do not have definite legal force as befits a court decision which has permanent legal force. The peace agreement resulting from mediation in court can be immediately upgraded to a deed of peace through the panel of judges examining the case at the time of the trial and finalized into a court decision. Meanwhile, a peace agreement or agreement resulting from mediation outside of court only obtains status as a peace deed after the parties, with the help of the mediator, submit a peace lawsuit through the District

Court, vide. Article 36 PERMA Number 1 of 2016. So, the peace deed in question has legal certainty and has permanent legal force (incracht van gewijsde).

Keywords: mediation, court decision, executive value.

A. INTRODUCTION

Mediation is a way of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator. A mediator is a judge or other party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process to seek various possible dispute resolutions without resorting to deciding or forcing a resolution. Carrying out mediation requires that it be carried out by a certified mediator, because a certified mediator aims to encourage improvements in the quality of mediation services. People who have obtained a certificate through mediation education and training have the knowledge and skills of a mediator, so that they will not change a mediation process that is consensual and based on the autonomy of the parties into a decision-making process like arbitration.

In general, according to legal provisions in Indonesia, mediation can be divided into 2 (two) forms, namely: mediation in court and mediation outside of court. In accordance with PERMA No. 1 of 2016 concerning Mediation Procedures in Court, if the parties with the help of a certified mediator succeed in resolving the dispute outside the court with a peace agreement, then the Parties through the Mediator can submit a Peace Agreement to the Case Examining Judge to be confirmed in the Deed of Peace.¹

The Parties with the assistance of the Mediator are obliged to formulate a written agreement in a Peace Agreement signed by the Parties and the Mediator. The mediator is obliged to ensure that the Settlement Agreement does not contain provisions that: 1) conflict with law, public order and/or morality; 2) harm third parties; or 3) cannot be implemented.

Apart from that, the Judge in front of the parties will only confirm the peace agreement in the form of a peace deed if the peace agreement meets the following conditions: 1) in accordance with the wishes of the parties; 2) does not conflict with the law; 3) does not harm third parties; 4) executable; 5) in good faith.²

In accordance with Article 1858 paragraphs (1) and (2) of the Civil Code and Article 130 HIR/Article 154 RBg paragraphs (2) and (3) which regulate peace and peace agreements, it is explained that the peace deed has the following legal force:

A peace decision has the same force as a judge's (court) decision at the final level, so it has permanent legal force, and the decision cannot be sought for appeal or cassation. Thus, the peace deed confirmed in the peace decision which has been read in front of the court by the panel of judges has legal certainty like an ordinary decision which has permanent legal force.

The peace deed has perfect evidentiary power, meaning that if the peace deed is used as evidence, it does not require other supporting evidence to prove that an event or other legal relationship has occurred which has given rise to rights and obligations, because the peace deed is the same as an

¹ Sarwono. *Civil Procedure Law Theory and Practice*. Jakarta: Sinar Graphics, 2012. p. 5

² Sudikno Mertokusumo. *Civil Procedure Law*. Yogyakarta: Liberty, 2011.p. 84.

authentic deed made by a public official. namely the judge through a peace decision and made it deliberately so that it can be used and used as evidence.³

The peace deed (*acta van dading*) resulting from mediation has executorial force, because the peace decision contains the instructions "For the sake of justice based on belief in the One Almighty God". Every deed or decision which in the head of the decision contains *irah-irah*, is included in an authentic deed which has executorial force.

Mediation always results in a balanced dispute resolution for the parties (win-win solution), so that it does not harm the litigants. Mediation is one of the alternative dispute resolution methods that is relatively cheap and does not take a long time compared to litigating through the litigation process. Mediation is also carried out behind closed doors and in secret, so that the parties do not worry about the case circulating to the public. Apart from that, the result obtained during the mediation process is a mutual agreement between the parties, so that the disputing parties do not raise objections to what has been agreed.

In the application of applicable law in Indonesia, there are two types of dispute resolution, namely litigation and non-litigation. Litigation is a dispute whose resolution process is carried out in court, while non-litigation is a dispute whose resolution process is carried out outside court, which is commonly called alternative dispute resolution (ADR), by means other than arbitration, it can also be done by means of negotiation, conciliation, or mediation.

Dispute resolution through court proceedings is basically the last step if deliberations are unsuccessful. The final result of the dispute resolution stage in court is a decision. However, in reality it is still felt that court decisions do not solve the problem, tend to give rise to new problems, including the emergence of dissatisfaction from the defeated party, and then taking legal action which requires additional energy, thought, money and time. This settlement process has led to the emergence of alternative dispute resolution outside of court, one of which is mediation.

As developments progress, people are starting to choose the process of resolving disputes through mediation considering the process is simple and fast, as well as the nature of decisions that are win-win solutions. The results are taken through deliberation and based on mutual agreement, so the parties feel that no one has been harmed. Moreover, mediation is a problem-solving negotiation process with the help of a neutral third party, namely a mediator, who works to help the disputing parties to produce a satisfactory agreement. The mediator does not have the authority to decide disputes between the two parties, which is of course different from the authority of judges and arbitrators.⁴

In its development, mediation institutions have become part of the stages of dispute resolution in court, the mechanism occurs after a lawsuit has been registered and submitted by the plaintiff to the defendant. At the first hearing, the judge will order both parties to carry out mediation by determining a mediator appointed by the parties. In the process, a mediator must be able to carry

³ Krishna Harahap. *Civil Procedure Law*, 4th ed. Bandung: Grafitri, 2015. p. 63.

⁴ Karmawan. "Mediation Discourse and Efforts to Resolve It," *Coordinate: Journal of Communication between Islamic Religious Universities* 16. No. 1 (2017): 107–126, <http://journal.uinjkt.ac.id/index.php/kordinat/article/view/6457/3953>. p. 123.

out his role so that the goals of the mediation can be achieved. A mediator has various functions ranging from holding meetings, leading negotiations, taking notes, making agendas, submitting settlement proposals, maintaining orderly negotiations, to helping the parties draw up an agreement.⁵ In accordance with the Republic of Indonesia Supreme Court Regulation Number 1 of 2016, the mediator's authority, stages and time of mediation have been determined. If the mediation is successful, a peace agreement will be obtained, which must be stated in writing and signed by the parties and acknowledged by the mediator.

As for out-of-court mediation, so far it has been based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law does not fully regulate the stages of mediation implementation, so that existing mediators do not have the same standards regarding this matter. Unless the standards for mediation stages are determined by existing mediation organizations or institutions such as the National Mediation Center. The results of mediation carried out by mediators outside of court usually result in an agreement or peace agreement. Furthermore, based on Article 1851 of the Civil Code (abbreviated as the Civil Code), the peace agreement itself must basically end the case, and is stated in written form and must be executed by all parties to the case.

According to Retnowulan Sutantio, a peace agreement is the beginning of the issuance of a peace deed (*acte van dading*) from a court (judge) which has the same position as a court decision which has permanent legal force or in legal terms it is also called *inraht van gewijsde*.⁶ A peace agreement can be made by the parties before the judge examining the case, or the peace agreement can also be made by the parties themselves outside of court, which is then brought to court to be confirmed as a peace deed.

In practice, in society, disputes or lawsuits often occur in court, initiated by a peace agreement previously made by the parties. Problems arise after one party does not comply with the contents of the peace agreement, so that the other party ends up filing a lawsuit in court. This condition shows that there are still problems regarding the position of the agreement or peace agreement resulting from mediation.

Based on the description above, the author is motivated to conduct research regarding the legal provisions governing the process or mechanism for resolving disputes by means of mediation according to positive law provisions and what the legal strength of agreements that are the result of the mediation process are, both in court and outside court. according to applicable legal provisions.

⁵ Sri Mamudji. "Mediation as an Alternative for Dispute Resolution Outside of Court." *Journal of Law & Development* 34. No. 3 (2004): 194–209, <http://jhp.ui.ac.id/index.php/home/article/view/1440/1360>.p. 203.

⁶ Retnowulan Sutantio. "*Mediation and Dading, Arbitration and Mediation Proceedings*," in the *Center for Legal Studies, Department of Justice and Human Rights*. Jakarta: Center for Legal Studies, Department of Justice and Human Rights. 2013. p. 161.

B. THEORETICAL BASIS

1. Definition and Legal Basis for Mediation

a. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

The Arbitration Law aims to provide legal certainty and convenience for parties who wish to resolve disputes through arbitration and alternative dispute resolution (APS). Increase the efficiency and effectiveness of dispute resolution. Encourage the use of arbitration and APS as an alternative to resolving disputes outside the court.⁷

The Arbitration Law regulates arbitration, mediation, conciliation, negotiation and expert assessment. Arbitration is a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute. An arbitration agreement is a written agreement between the disputing parties which contains their agreement to resolve the dispute outside the general court through arbitration.

An arbitration institution is an institution that organizes arbitration. Arbitration institutions can be established by the government, professional organizations, or other legal entities. An arbitration award is a decision made by an arbitrator or panel of arbitrators which is binding on the parties to the dispute. Arbitration awards have the same legal force as court decisions. APS is a method of resolving disputes outside of general court other than arbitration. The APS regulated in the Arbitration Law are mediation, conciliation, negotiation and expert assessment.

Dispute resolution through the Arbitration Law has several benefits, including:⁸

- 1) Faster and more efficient than resolving disputes in court.
- 2) Cheaper than resolving disputes in court.
- 3) The parties can choose an arbitrator or mediator they trust.
- 4) The dispute resolution process is more confidential.

The Arbitration Law is an important instrument for resolving disputes outside general court. The Arbitration Law provides legal certainty and convenience for parties who wish to resolve disputes through arbitration and APS.

b. Supreme Court Regulation Number 1 of 2016 concerning Mediation

Supreme Court Regulation Number 1 of 2016 concerning Mediation (Perma No. 1 of 2016) is a regulation that regulates mediation procedures in court. This regulation aims to increase the effectiveness of resolving cases through mediation. Strengthen the role of judges in encouraging and facilitating mediation. Providing legal certainty for parties who wish to resolve cases through mediation.⁹

Perma No. 1 of 2016 regulates various matters related to mediation, including: the meaning of mediation, types of mediation, procedures for submitting mediation requests, the role of the judge

⁷ Valerine J.L, Kriekhoff. *Alternative Dispute Resolution*. Jakarta: Gramedia Pustaka. 1999. p. 224-225.

⁸ Riduan Syahrani. *Basic Material Book for Civil Procedure Law*. Bandung: Citra Aditya Bakti. 2000. p. 66.

⁹ Gunawan Widjaja. *Alternative Dispute Resolution*. Jakarta: Raja Grafindo Persada. p. 3.

in mediation, mediation costs, peace deeds, and court decisions. Perma No. 1 of 2016 is an important instrument to encourage case resolution through mediation. Mediation has several benefits, including being faster and more efficient than resolving cases at trial. Cheaper than settling a case at trial. The parties can more easily reach a win-win solution. The mediation process is more confidential.

Here are some important points in Perma No. 1 of 2016 that mediation can be carried out at all levels of court. Mediation can be carried out before or after the case goes to trial. The judge is obliged to encourage the parties to resolve the case through mediation. The mediator can come from a judge, civil servant, or other party who has a mediator certificate. Mediation costs are borne by the parties. And the peace deed resulting from mediation has the same legal force as a court decision.

2. Van Dading Deed

The van dading deed is a peace deed regulated in Article 1851 of the Civil Code and Article 130 HIR which is made by the parties to end a case that is being examined by the court or prevent a case from arising.

a. Article 1851 Civil Code (Civil Code)

Article 1851 of the Civil Code reads:

Peace is an agreement whereby both parties, by handing over, promising or retaining an item, end a pending case or prevent a case from arising.

Article 1851 of the Civil Code regulates peace as a way of resolving disputes outside of court. Peace can take two forms:¹⁰

- 1) Peace to end a pending case: This peace is made to settle a case that is being filed in court.
- 2) Peace to prevent a case from arising: This peace is carried out to prevent disputes from occurring in the future.

Terms of validity of peace:

- 1) Must be done in writing.
- 2) Must be approved by all parties to the dispute.
- 3) Must not conflict with law and morality.

Consequences of peace:

- 1) Peace that has been made legally and is binding on the parties.
- 2) The peace that has been made can be used as the basis for a court decision.
- 3) The peace that has been made cannot be canceled unilaterally.

Benefits of peace

- 1) Faster and more efficient than resolving disputes in court.
- 2) Cheaper than resolving disputes in court.
- 3) The parties can more easily reach an agreement that is a win-win solution.

¹⁰ Joni Emirzon. *Alternative Dispute Resolution Outside of Court*. Jakarta: Gramedia Pustaka Utana. 2001. p. 93-95.

4) The mediation process is more confidential.

b. Indonesian National Arbitration Board (BANI) Regulation Number 1 of 2014 concerning Mediation

BANI Regulation Number 1 of 2014 concerning Mediation (BANI Mediation Regulation) is a regulation that regulates mediation procedures at BANI. This regulation aims to:¹¹

- 1) Increasing the effectiveness of dispute resolution through mediation.
- 2) Strengthen BANI's role in encouraging and facilitating mediation.
- 3) Provide legal certainty for parties who wish to resolve disputes through mediation.

BANI Mediation Regulations regulate various matters related to mediation, including: Definition of mediation, Types of mediation, Procedures for submitting mediation requests, Role of BANI mediators, Mediation costs, Peace Agreement, Closing. The following are several important points in the BANI Mediation Regulations:

- 1) Mediation at BANI can be carried out before or after the case is submitted to arbitration.
- 2) BANI provides a list of experienced and professional mediators.
- 3) Mediation costs at BANI are relatively affordable.
- 4) The Settlement Agreement resulting from mediation at BANI has the same legal force as an arbitration award.

3. Executorial Value of the Van Dading Deed

a. Article 19 paragraph (2) Law Number 30 of 1999

Article 19 paragraph (2) of the Arbitration Law regulates the form of an arbitration agreement, which must be made in writing and signed by all parties to the dispute. The executorial value related to Article 19 paragraph (2) of the Arbitration Law refers to the legal force of the arbitration agreement. The arbitration agreement has no executorial value. This means that the arbitration agreement cannot be enforced through the courts. What has executorial value is the arbitration award. An arbitration award that has become legally binding can still be enforced through the courts.¹²

Even though the arbitration agreement has no executorial value, the agreement is the basis for the issuance of an arbitration award. An arbitration award can only be issued if there is a valid arbitration agreement between the parties. The executorial value in Article 19 paragraph (2) of the Arbitration Law does not refer to the arbitration agreement itself, but to the arbitration award produced based on the agreement. A valid arbitration agreement is a prerequisite for the issuance of an arbitration award that has executorial value.

b. Supreme Court Decision Number 1047 K/Pdt/1986

¹¹ A. Patra M. Zen and Maria Louisa. *Guide to Legal Aid in Indonesia*. Jakarta: AusAid, YLBHI, PSHK and IALDF. 2006. p. 207.

¹² Sudikno Mertokusumo. *Indonesian Civil Procedure Law*. Yogyakarta: Liberty. 1999. p. 87.

Supreme Court Decision Number 1047 K/Pdt/1986 (MA Decision 1047/1986) has executorial value. This decision has permanent legal force and can be enforced through the courts. The executorial value of MA Decision 1047/1986 is based on several things:

- 1) Supreme Court Decision 1047/1986 is a cassation decision which is the highest decision in the judicial hierarchy in Indonesia.
- 3) MA Decision 1047/1986 has permanent legal force, meaning that there are no other legal measures that can be taken to annul it.
- 4) MA Decision 1047/1986 orders the losing party to take certain actions.

If the losing party does not comply with MA Decision 1047/1986, the winning party can submit a request for execution to the court. The court will issue a writ of execution containing an order to the bailiff to carry out the contents of the decision. It can be concluded that Supreme Court Decision 1047/1986 has executorial value and its implementation can be enforced through the courts.

C. RESEARCH METHODS

This research is descriptive in nature with a normative juridical type of research on secondary data in the form of primary, secondary and tertiary legal materials obtained through library research and document study. Primary data through interviews was conducted to strengthen secondary data. The approach uses a statutory approach, while the analysis used is qualitative analysis.

The research stages carried out are basically several activities which include collecting and inventorying secondary data, namely data obtained from literature related to the process and legal force of mediation results as dispute resolution in legal provisions in Indonesia. Then, review primary legal materials in the form of related laws and regulations, as well as review secondary and tertiary legal materials. Next, conduct field research to obtain primary data used to support the results of literature research, namely interviews with mediators who are also the Executive Director of the National Mediation Center (PMN). The final stage is to prepare a descriptive report in the form of analysis and study as a result of the research.

D. DISCUSSION

1. How a van dading deed without a court decision can resolve disputes effectively.

A van dading deed without a court decision can resolve disputes effectively in several ways:

a. Agreement of the Parties:

The essence of the van dading deed is an agreement made by the parties to the dispute. This agreement was made voluntarily and without coercion from any party. When the parties agree with the contents of the van dading deed, they are more likely to comply with the contents of the agreement.

b. Efficiency and Effectiveness:

The process of making a van dading deed is faster and cheaper than the process of resolving disputes in court. This is because the van dading deed does not require a long and complicated trial process.

c. Win-Win Solution:

The van dading deed allows the parties to find a solution that benefits all parties. This is because the parties have control over the contents of the agreement and can adapt it to their needs.

d. Building Relationships:

The mediation process that underlies the making of a van dading deed can help rebuild relationships between the parties to the dispute. This is important to prevent disputes from occurring in the future.

e. Legal force:

A van dading deed made before a notary has the same legal force as a court decision. This means that the implementation of the van dading deed can be enforced through the courts if one of the parties does not comply.

However, it should be remembered that a van dading deed without a court decision cannot always resolve disputes effectively. Here are some challenges that can occur:

- a. Difficulty reaching an agreement: If the parties cannot reach an agreement, mediation may not be successful and a van dading deed cannot be executed.
- b. Violation of the contents of the van dading deed: If one party violates the contents of the van dading deed, the other party must file a lawsuit in court to force its implementation.
- c. Concerns about validity: Some parties may be concerned about the validity of the van dading deed without a court decision.

Overall, a van dading deed without a court decision can be an effective way to resolve disputes. Its efficiency, effectiveness and legal force make it an attractive option for parties seeking to resolve disputes quickly and peacefully.

Based on the description previously mentioned, if mediation has been successfully carried out by both parties, both in court and outside court, they have reached an agreement to make peace, then the parties are assisted by the mediator to make an agreement or a peace agreement, either as stated in determined by Article 1 number 8 and number 9 PERMA Mediation, as well as Article 1851 of the Civil Code.

An agreement or peace agreement resulting from mediation has legal force like other ordinary agreements (sale and purchase and rental agreements) which only explain that a legal relationship has occurred between the parties who made it. If in the future there is a party who does not have good faith in carrying out the performance as they have agreed, then the other party who is disadvantaged can file a lawsuit for breach of contract in court. Thus, the results of the peace in question do not yet have legal certainty. If an agreement is reached from the mediation process, then the parties sign the agreement and are required to register it with the District Court within 30 days of signing. This agreement, based on Article 6 paragraph (7) of Law Number 30 of 1999, is final and binding. However, its final and binding nature means its implementation is based on the

good faith of the parties. However, if one party later turns out not to carry out the agreement, then the agreement they made, even though it was registered in court, still has no executorial force.¹³ Legal certainty will be effective if the parties agree to confirm it as a peace deed, so that the peace agreement has legal force. If the peace agreement resulting from mediation is carried out outside of court, then the parties must file a lawsuit with the competent District Court to upgrade the status of the peace agreement or peace agreement to a peace deed, as regulated in Article 36 paragraph (1) PERMA Mediation. However, if the peace agreement occurs through mediation in court, then with the help of a mediator, the parties simply submit an increase in status to a deed of peace to the panel of judges examining the case.

An agreement or peace agreement resulting from mediation that has been confirmed and has the status of a peace deed (*acte van dading*) has the same force as a court decision which has permanent legal force, so the peace decision has 3 (three) legal powers like an ordinary decision, namely binding force and final, perfect evidentiary power, and executorial power. Binding means that every item that has been agreed upon and stated in the peace deed can be implemented by being executed by the court, of course in the event that one of the parties denies it. Meanwhile, final means that by upgrading the status of a peace agreement to a peace deed, all legal remedies have been closed for the parties.¹⁴

This is in accordance with Article 1858 paragraphs (1) and (2) of the Civil Code and Article 130 HIR/Article 154 RBg paragraphs (2) and (3) which regulate peace and peace agreements. In the formulation of Article 1858 of the Civil Code, it is stated: a) All settlements between the parties have the force of a judge's decision at the final stage; b. The peace agreement cannot be disputed on the grounds of an error regarding the law or on the grounds that one of the parties has suffered a loss.

Furthermore, Article 130 HIR/154 RBg paragraphs (2) and (3) states: a. If such a peace occurs, then at the time of the hearing, a deed is executed regarding this matter, whereby both parties are obliged to fulfill the agreement made, then the letter (deed) will have force and will be executed as an ordinary judge's decision. b. Such a decision cannot be appealed.

These two articles essentially explain that a peace decision has the same force as a judge's (court's) decision at the final level, so it has permanent legal force, and the decision cannot be sought for appeal or cassation. Thus, the peace deed confirmed in the peace decision which has been read in front of the court by the panel of judges has legal certainty like an ordinary decision which has

¹³ Hajati, Sri, Agus Sekarmadji and Sri Winarsi, "Model for Settlement of Land Disputes Through Mediation with Legal Certainty." *Journal of Legal Dynamics* 14. No. 1 (2014): 36–48, <https://doi.org/http://dx.doi.org/10.20884/1.jdh.2014.14.1.275>.

¹⁴ Amarini, Indriati. "Effective and Efficient Dispute Resolution Through Optimizing Mediation in Court." *Cosmic Law* 16. No. 2 (2016): 87-106, <https://doi.org/10.30595/kosmik Hukum.v16i2.1954>. p. 94.

permanent legal force, namely binding and final power, perfect evidentiary power, and executorial power.

"Binding" means that the decision applies according to law for both parties. This is in accordance with Article 1338 paragraph (1) of the Civil Code which states that all agreements made legally apply as law for those who make them, so that both parties are obliged to carry out the achievements they agreed to in the peace deed. "Final" means that through the peace decision, the peace deed is like a final decision, so that no legal action can be taken against the peace decision, because the decision has been covered by appeals and cassation as regulated in Article 130 HIR. With regard to matters of proof, a peace deed has perfect evidentiary power, meaning that if the peace deed is used as evidence, it does not require other supporting evidence to prove that an event or other legal relationship has occurred which has given rise to rights and obligations, because the peace deed is the same as an authentic deed made by a public official, namely a judge, through a peace decision and made deliberately so that it can be used and used as evidence. The peace deed also has evidentiary force against third parties even though the peace deed does not have binding force on third parties. So, if a third party feels disadvantaged by the peace deed, the third party can file a lawsuit using the peace deed as evidence.

2. Potential and obstacles in using a van dading deed without a court decision.

The process of making a van dading deed is faster and cheaper than the process of resolving disputes in court. The van dading deed allows the parties to find a solution that benefits all parties. The mediation process that underlies the making of a van dading deed can help rebuild relationships between the parties to the dispute. A van dading deed made before a notary has the same legal force as a court decision.

Difficulty reaching an agreement: If the parties cannot reach an agreement, mediation may not be successful and a van dading deed cannot be executed. Violation of the contents of the van dading deed: If one party violates the contents of the van dading deed, the other party must file a lawsuit in court to force its implementation. Concerns about validity: Some parties may be concerned about the validity of the van dading deed without a court decision. Lack of education: There are still many people who don't know about the van dading deed and its benefits.

The peace deed (acta van dading) resulting from mediation has executorial force, because the peace decision contains the instructions "For the sake of justice based on belief in the One Almighty God". Every deed or decision which in the head of the decision contains irah-irah, is included in an authentic deed which has executorial force. If one party does not carry out what is stipulated in the peace decision, then the other party who feels they have been disadvantaged can submit a request for execution to the District Court which has decided the case. The parties no longer need to file a new lawsuit which requires a longer process.

The peace that has been made by the disputing parties, before a notary with a notarial deed, is expected to end the dispute, providing legal certainty between those in dispute. The peace deed is also expected to provide legal certainty, be useful and provide justice between those in dispute and

for their future descendants. In this way, a calm life, peace and harmony will be created between those who are at odds.¹⁵

The content of the peace deed decision is to punish the parties to submit and obey and carry out the contents of the agreement that has been agreed upon and to charge the court costs to be borne jointly by the parties. Based on this ruling, the substantial justice contained in it is that the formulation of the contents of the agreement agreed upon by the parties is their respective wishes so that the peace agreement contains the good faith of the parties.¹⁶

This is in accordance with Article 1338 paragraph (3) of the Civil Code which states that all agreements must be implemented in good faith. Furthermore, in the peace agreement the parties are placed on an equal footing, there are no differences, so that the parties are obliged to respect each other's rights and obligations.¹⁷ The characteristic or characteristic that differentiates a deed of peace from an authentic deed made before another notary is the phrase "For the sake of justice based on the one and only God." Apart from that, according to article 130 paragraph (2) HIR (Herziene Indonesisch Reglement), a peace deed has the same force as a decision that has permanent legal force and cannot be appealed or cassationed against. The peace deed immediately has executorial force, because it has permanent legal force. If the decision is not implemented, then execution can be requested from the court. If one of the parties does not comply with the peace agreement that has been made, then the aggrieved party can request a grosse of the peace agreement made in authentic form to a notary, so that the grosse has the same executorial power as a judge's decision, then the district court is obliged to immediately implement it. execution, so that the problem will be resolved more quickly.¹⁸

Law Number 30 of 2004 concerning Regulations on the Position of Notaries is included in the scope of organic laws and regulations, because it regulates the Position of Notaries. The material regulated therein is included in public law, so the provisions contained therein are regulations that are coercive in nature (dwingend recht).

3. Recommendations for increasing the effectiveness and legal certainty of van dading deeds without a court decision.

The solution to overcome obstacles is by increasing education: It is necessary to educate the public about the van dading act and its benefits. Increasing the role of the mediator: The mediator must

¹⁵ Agung, Son of Agung's Wife. Notarized Peace Deed in Court Evidence. *NOTARIL Notarial Journal*. 1.1 (2016): 51-68.

¹⁶ Manan, H. Abdul and S.SH. *Application of Civil Procedure Law in the Religious Courts*, Jakarta: Prenadamedia Group. 2016.

¹⁷ Firdaos, Mochamad. Review of the Principles of Justice in Peace Deed Decisions. Written by M. Saupil on 26 July 2020. <https://www.pa-tanahgrogot.go.id/beritapengadilan/pengumuman-pengadilan/266-tinjauan-asas-keadilan-dalam-angkatan-akta-percepatan> on 26 March 2021 at 22.35

¹⁸ Anuttama, Kartika Purwandana. *Implications and Juridical Review of the Peace Deed Made Before a Notary*. Yogyakarta: Thesis. 2016.

have sufficient skills and experience to help the parties reach an agreement. Strengthening legal rules: It is necessary to make clearer legal rules regarding van dading deeds to increase legal certainty. A van dading deed without a court decision has great potential to resolve disputes effectively. However, there are several obstacles that need to be overcome so that van dading deeds can be used more widely.

A Notary who is authorized to make authentic deeds and is the only public official who is appointed and ordered by a general regulation or as desired by interested people. Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Law on Notary Positions explains that a Notary has the authority to make authentic deeds regarding all deeds, agreements and provisions required by law and/or desired by interested parties to be stated in the deed. authentic, guaranteeing the certainty of the date the deed was made, storing the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

To increase the effectiveness and legal certainty of van dading deeds, the following are several recommendations that can be considered:

1. **Clarification and Refinement of Regulations:** It is important to clarify and refine regulations related to van dading deeds so that they are clearer and easier to understand by all parties involved.
2. **Increasing Legal Awareness:** Carrying out outreach and education to the public, especially the parties involved in a dispute using the van dading deed, so that they understand the procedures and legal implications well.
3. **Use of Professional Services:** It is recommended to involve professional services such as a notary or advocate in the process of making a van dading deed to ensure the validity and clarity of the document.
4. **Monitoring and Evaluation:** There needs to be a mechanism for regular monitoring and evaluation of the implementation of the van dading deed to ensure that the process is running in accordance with applicable legal provisions.

By implementing these recommendations, it is hoped that the effectiveness and legal certainty of van dading deeds can be increased so that they can provide optimal legal protection for the parties involved.

E. CONCLUSION

Dispute resolution procedures can be carried out with peace efforts through mediation procedures starting with filing a lawsuit in court where the Panel of Judges requires the parties to the dispute to reach peace at the start of the trial assisted by a mediator. If peace is achieved, the event ends and the panel of judges, assisted by the clerk, prepares a certificate of reconciliation between the disputing parties which contains the contents of the peace. The legal basis for the Peace agreement is PERMA No. 1 of 2016 concerning Mediation Procedures in Court.

The result of the dispute resolution process by means of mediation, whether carried out in court or outside court, is the existence of an agreement or peace agreement which both have evidentiary

value and are binding for the parties. However, both do not have definite legal force as befits a court decision which has permanent legal force. The peace agreement resulting from mediation in court can be immediately upgraded to a deed of peace through the panel of judges examining the case at the time of the trial and finalized into a court decision. Meanwhile, a peace agreement or agreement resulting from mediation outside of court only obtains status as a peace deed after the parties, with the help of the mediator, submit a peace lawsuit through the District Court, vide. Article 36 PERMA Number 1 of 2016. So, the peace deed in question has legal certainty and has permanent legal force (*incracht van gewijsde*).

The parties can also make a peace agreement in front of a Notary and then the Peace Deed is handed over to the Panel of Judges examining the case to be used as evidence which can be the basis for the judge's consideration in examining and deciding the case with a peace decision (*Acta Van Dading*) because the Deed is authentic, then the judge can make a decision immediately (*Uit Voerbaar Bij Vooraad*) on the case. Then the trial process will run faster than it should. The authority of a Notary in making a peace deed has been regulated in Article 15 paragraph (1) UUJN and an explanation regarding Article 1851 of the Civil Code concerning peace.

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