

Optimization of Mediation Based on a Peace Deed Made Before a Notary in The Settlement of Civil Disputes

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ABSTRACT: Handling civil disputes in court often faces various obstacles, such as a long process, high costs, and uncertainty of results. Therefore, mediation based on a peace deed made before a notary appears as an alternative dispute resolution that is more efficient, peaceful, and legally binding. This study aims to analyse the effectiveness of a peace deed by a notary in the mediation process, identify obstacles that arise in its implementation, and formulate a strategy for optimising mediation based on the peace deed. The research method used is normative juridical with a conceptual and legislative approach. The data analyzed are primary, namely laws and regulations and notarial deeds, as well as secondary data in legal literature, scientific journals, and court decisions. Data collection techniques are carried out through document studies, then analyzed qualitatively-descriptively. The study results show that a peace deed made before a notary has high binding and executory legal force, and can accelerate dispute resolution efficiently. However, its implementation faces obstacles in the form of limited notary authority, low public awareness, and the absence of technical regulations governing the implementation of mediation by notaries. Therefore, it is necessary to strengthen rules, improve notary competency through training, and provide outreach to the community to optimize the mediation function based on peace deeds.

KEYWORDS: Mediation; Notary; Civil Dispute; Peace Deed

1. INTRODUCTION

Settlement of civil disputes through litigation in court often faces various complexities that cause the process to be long, expensive, and tiring for the parties. The formal procedures that must be taken, from registering a lawsuit, preliminary examination, court mediation, trial of the main case, to the verdict, often take months or even years. This causes dissatisfaction with the justice system due to the slow resolution of cases and the high cost burden (Soeharto, 2020). In addition, the civil justice system in Indonesia is also faced with the problem of limited human resources, high workloads of judges, and a lack of flexibility in creating win-win solutions for the parties (Putri & Nugraheni, 2021). Court decisions are zero-sum, where one party wins and the other loses, so the potential for continued conflict remains high.

In this context, mediation as an alternative non-litigation dispute resolution offers a faster, cheaper solution, and can maintain good relations between parties. However, the effectiveness of mediation in court is still limited because many parties do not attend seriously or only consider it a formality (Sari, 2019). Therefore, it is necessary to develop a stronger and legally binding mediation model, one of which is mediation based on a peace deed made before a notary. The deed has legal force as an authentic deed and can provide legal certainty and stronger execution power. Optimization of this model is expected to be a breakthrough in overcoming the complexity of resolving civil disputes more efficiently and peacefully.

In a sophisticated contemporary society, civil conflict resolution necessitates a methodology that is not only legalistic but also speedy, amicable, and possesses binding legal authority. This aligns with the principle of justice, which is attained through protracted litigation and alternative dispute resolution (ADR) methods that can provide mutually beneficial outcomes for the parties involved (Ardiansyah, 2021).

Efficient settlement is needed because the litigation process often takes a long time and is burdensome regarding costs and the psychology of the disputing parties. Meanwhile, a peaceful settlement is important to maintain long-term social and business relationships. This is very relevant in Indonesian society, which upholds the values of deliberation and family (Widodo, 2020). However, peaceful efforts are often considered not to provide legal certainty because they are not stated in a form with formal binding force. This is where the important role of a peace deed made before a notary comes in. As an authentic deed, the deed has perfect evidentiary power and can be executed immediately if one of the parties defaults (Siregar, 2019).

By combining the principles of mediation that emphasise peace agreements and the legality of authentic deeds made by notaries, a dispute resolution mechanism is created that is fast, peaceful, and has strong legal force. This model is urgently needed to

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strengthen a legal system responsive to the community's needs. Notaries are strategically positioned in the Indonesian civil law system as public officials authorised to make authentic deeds. One form of notarial legal product with perfect evidentiary power is a peace deed, which contains a peace agreement between the parties in a civil dispute. In this context, notaries have great potential to facilitate mediation between the disputing parties effectively and legally (Lubis, 2020).

While certified mediators often fulfil the mediation role in judicial proceedings, the participation of a notary in formalising the outcomes of a peace accord into an authentic deed has benefits for legal authority and enforceability. A peace deed executed before a notary can promptly serve as the foundation for enforcing a decision articulated in Article 1851 of the Civil Code, thus circumventing additional litigation (Rizky & Syahrin, 2021). As impartial and autonomous entities, notaries are trusted by the public due to their robust legal standing. Consequently, the function of a notary extends beyond mere formal registration to encompass that of a mediation facilitator, promoting peaceful, efficient, and lawful resolutions (Nugroho, 2022). Notaries require mediation training and a more transparent legal framework to enhance their position and broaden their authority in mediation activities. Integrating mediation and peace deed creation within notarial authority can enhance the efficiency of civil dispute settlement, alleviate court burdens, and maintain high legal certainty.

The main objective of this study is to comprehensively examine how a peace deed made by a notary can be optimised in the mediation process for resolving civil disputes. This study is based on the importance of finding a dispute resolution model that is peaceful, efficient, and legally binding. In this case, a peace deed made by a notary has the potential to bridge these needs, because it has legal force as an authentic deed and can be executed directly (Rizal, 2020).

First, the study aims to analyze the effectiveness of the peace deed in accelerating and streamlining the mediation process. This effectiveness is seen from how the deed can reduce the burden on the court, guarantee legal certainty, and provide a binding, peaceful solution (Mulyadi, 2021). Second, this study aims to identify the obstacles faced in implementing peace deed-based mediation. These obstacles include the limited authority of notaries to act as mediators, minimal mediation training for notaries, and low public awareness of this alternative dispute resolution (Putri, 2022). Third, the research is directed at formulating optimisation strategies, both from the regulatory aspect, strengthening the capacity of notaries through mediation training, and increasing socialisation to the community so that peace deed-based mediation can be widely accepted and implemented. By achieving this goal, it is hoped that the research can provide theoretical and practical contributions in strengthening a more effective, peaceful, and legally binding civil dispute resolution system.

The urgency of this research lies in the need for a breakthrough in civil dispute resolution that is not only fast and efficient but also has permanent legal force and minimises social conflict. Currently, civil dispute resolution through litigation in court still often takes a long time, is expensive, and ends in tension between parties. Alternative dispute resolution, such as mediation, is a more peaceful solution, but its effectiveness still needs to be improved (Saragih, 2020). In this context, a peace deed before a notary offers important potential as a binding and immediately executable legal instrument, as regulated in Article 1851 of the Civil Code and Article 16 of Law No. 2 of 2014 concerning the Position of Notary. The deed records the parties' agreement and provides a guarantee of legal force as an authentic deed (Hasibuan & Rahmawati, 2021). However, the implementation of peace deed-based mediation by a notary still faces challenges, such as the absence of special regulations and the limited role of notaries in the mediation process (Wijaya, 2022).

The urgency of this research is increasingly strong due to the increasing burden of cases in court, which encourages the need for a more systematic and reliable out-of-court dispute resolution system. Therefore, it is necessary to conduct an in-depth study on strategies for optimising the role of notaries in mediation, including strengthening regulations, mediation training for notaries, and increasing public awareness. This research is expected to answer the needs of modern law that emphasizes restorative justice and efficiency of the legal process, while enriching the treasury of legal science and notarial practice.

This study has a novelty in the integrative approach between the mediation mechanism and the existence of a peace deed made before a notary, as a binding and authentic legal instrument. Although mediation as an alternative dispute resolution has been widely studied, there is still very little research that specifically discusses how a peace deed by a notary can be used as an optimal tool in strengthening the results of mediation so that it has high legal execution and legitimacy (Sutisna & Ahmad, 2021).

The novelty of this study also lies in the strategic analysis of the role of notaries as mediation facilitators, not just as recorders of peace results. So far, notaries have only been positioned as deed makers, not as active actors in the dispute resolution process. The neutral and professional position of notaries has excellent potential to be a bridge between the disputing parties (Hidayati, 2020). In addition, this study raises a review of the need to strengthen regulations, mediation training for notaries, and increase public awareness, which are rarely discussed in an integrated manner in previous studies. Thus, this study makes a real contribution to developing an alternative dispute resolution system that is preventive, efficient, and legally binding.

This research not only expands the academic discourse in civil and notary law but also offers practical solutions for the world of justice and legal practice in Indonesia, especially in reducing the burden of cases in court and increasing access to justice.

2. LITERATURE REVIEW

2.1. The Concept of Mediation in Civil Law

Mediation is a form of alternative dispute resolution (ADR) that aims to resolve conflicts through negotiations facilitated by a neutral third party, namely a mediator. In the context of civil law, mediation aims to reach a peaceful agreement between the parties without having to go through a long and expensive litigation process (Sutisna & Ahmad, 2021). According to Supreme Court Regulation (Perma) No. 1 of 2016, mediation is a method of resolving disputes through a negotiation process between the parties assisted by a neutral mediator. The goal is to achieve a win-win solution, reduce the burden of cases in court, and encourage public legal awareness.

The basic principles of mediation include confidentiality, voluntariness, mediator neutrality, balance of power between the parties, and autonomy of will. These principles ensure that the mediation process is impartial, legally safe, and acceptable to all parties (Hidayat & Wulandari, 2020).

In practice, mediation is divided into two types: formal mediation and non-formal mediation. Formal mediation is carried out within the framework of official laws and institutions, such as mediation in court, regulated by Perma. Here, the mediator is usually a judge or certified mediator appointed by the court. The mediation results can be strengthened as a peace deed or court decision (Susanti, 2022). Meanwhile, non-formal mediation is carried out outside the court, without a binding legal structure. This mediation is often practised in indigenous communities or by third parties such as community leaders, professional mediators, or notaries. In the context of this research, non-formal mediation, which is then stated in a notarial peace deed, is very relevant because it can give legal force to the results of the agreement (Hasibuan & Rahmawati, 2021).

The advantages of informal mediation are flexibility and speed, but the disadvantage is the lack of legal protection if not stated in the form of an authentic deed. Therefore, collaboration between informal mediation and the power of a notarial deed is an ideal solution in resolving civil disputes efficiently and legally.

2.2. Peace Deed as a Legal Product

A peace deed is a written agreement between the disputing parties that contains the results of a peaceful settlement and is stated in the form of an authentic deed by a notary. In general, this deed aims to end or prevent further disputes peacefully, through an agreement with high legal evidentiary force (Ardiansyah & Santoso, 2021). The main characteristics of a peace deed include: Contains an agreement between the parties without coercion; Made in writing and signed; Poured out by an authorised public official (notary); Can be the basis for implementing the law in the event of a default; Is final and binding on the parties (final and binding).

Peace deeds are commonly used in and out of court in the context of mediation. When made by a notary, this deed becomes a legal document with the status of an authentic deed, as regulated in Article 1868 of the Civil Code (Hasibuan, 2022). According to Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law by or before a public official authorised to do so. In this case, a notary, as a public official regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, can make authentic deeds, including peace deeds.

The legal force of a peace deed made by a notary lies in three aspects: 1). Formal evidentiary force, because an authorised official makes it in a valid form; 2). Material evidentiary force reflects the truth witnessed directly by the notary; 3). Executorial force, if accompanied by the clause "by law has the same force as a judge's decision that has permanent legal force", can be the basis for carrying out the execution (Damayanti, 2020).

In the context of mediation, this peace deed can function as a guarantee of legal certainty and a strong means of proof if there is a violation of the agreement's contents. Therefore, the strategic position of a notary in preparing a peace deed can provide maximum legal protection to the disputing parties (Siregar & Latifah, 2021).

2.3. The Role of Notaries in Mediation

Notaries, as public officials, have the main function of making authentic deeds, as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. In the context of mediation, the authority of a notary does not explicitly include actions as an official mediator, as carried out by a mediator certified by the Supreme Court. However, notaries can still facilitate agreements between parties in the private realm, especially in the form of a peace deed.

According to Article 15 paragraph (2) letter f UUJN, a notary is authorised to make a deed related to an agreement or agreement approved by the parties, including the results of a peace deliberation. However, a notary has no judicial authority to force a settlement or provide legal considerations like a court mediator (Sutedi, 2020). Therefore, the role of a notary in mediation is more facilitative and administrative, namely, recording and ratifying the agreement that the parties have reached independently.

Neutrality is a basic principle in the office of a notary. Notaries are required to be impartial towards the parties, ensuring that each party knows and understands the contents of the deed made (Nasution & Azis, 2022). This neutral attitude is important in building trust between the parties when undergoing an informal mediation process based on consensus.

Notaries who are known to have high integrity and professionalism are often trusted by the public to assist in the peace agreement process. The presence of a notary provides a sense of legal security because the results of the agreement are stated in the form of an authentic deed with strong evidentiary power. This is different from oral mediation or ordinary agreements that are

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vulnerable to debate if a dispute arises again in the future (Purwanto, 2021). Thus, even though it does not have a formal mediation function, the strategic role of a notary as a neutral party who records the results of an agreement can encourage peaceful, efficient and legally based dispute resolution.

2.4. Theoretical Framework and Approach

The theory of legal effectiveness developed by Lawrence M. Friedman is the primary conceptual basis in this study. Friedman divides the legal system into three main elements, namely legal substance, legal structure, and legal culture (Friedman, 1975). The three interact with each other and influence the level of success of implementing a legal norm in society. In the context of this research, the legal substance includes the regulation of peace deeds and the position of notaries in the Indonesian legal system, including its regulation in the Notary Law and the Civil Code. The legal structure includes related institutions such as notaries, courts, and mediation institutions. In contrast, the legal culture reflects public awareness in choosing a peaceful path through mediation, supported by an authentic deed. The effectiveness of peace deed-based mediation will be determined mainly by the synergy of these three elements. If the public does not yet have legal awareness, or the legal structure does not provide adequate regulatory and institutional support. The potential for this mediation will not be optimal.

This study uses two main approaches, namely the normative legal approach and the sociological approach. The normative legal approach is used to analyze written legal norms governing mediation, peace deeds, and notary authority. Primary legal sources such as Law No. 2 of 2014 concerning the Position of Notary, the Civil Code, and Perma No. 1 of 2016 concerning Mediation Procedures in Court are the primary materials in this analysis (Marlina, 2022). Meanwhile, a sociological approach is needed to see the extent to which the community understands and utilises peace deed-based mediation. This approach examines social, cultural factors, and public perception of notaries and non-litigation dispute resolution mechanisms. This is important because a legal instrument's success is determined by the existence of rules, but also by the acceptance and response of the community to it (Herlina & Sumardjono, 2020).

By combining both approaches, this study seeks to provide a comprehensive understanding of the effectiveness of peace deed-based mediation in the Indonesian civil law system.

3. METHODS

This study uses a normative legal research type, namely legal research that starts from the applicable positive legal norms. This approach examines the provisions of the laws and regulations that regulate the role of notaries in making peace deeds and their relevance in the civil dispute mediation process. According to Soekanto and Mamudji (2001), the normative legal approach is a method that aims to examine the principles, theories, and concepts of law and applicable regulations as a basis for analysis of a legal problem.

This study uses two main approaches, namely the conceptual and legislative approaches. The conceptual approach is used to explore theoretical ideas related to mediation and the role of notaries in resolving civil disputes. Meanwhile, the legislative approach is used to explore and examine related legal norms, such as the Civil Code (KUHPperdata), Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, and Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. The data used in this study consists of primary data in the form of official documents of laws and regulations, as well as examples of peace deeds made by notaries. At the same time, secondary data includes scientific journals, legal literature, and related court decisions, which form the basis for analysing mediation practices and the validity of peace deeds in the Indonesian legal system.

The data collection technique is carried out through document study, which collects data by examining primary and secondary legal materials. This study is carried out systematically to understand the legal basis and practice of making peace deeds as an instrument for dispute resolution. Furthermore, the data obtained is analysed using qualitative-descriptive analysis, namely by systematically describing the contents of documents and legal literature to identify legal issues, analyse implementation constraints, and formulate optimization strategies. This technique does not use statistical calculations, but emphasizes the sharpness of argumentation and the coherence of legal logic in concluding (Marzuki, 2017).

4. RESULTS AND DISCUSSION

4.1. Effectiveness of Peace Deed in Mediation

A peace deed made before a notary is a form of legal instrument with binding force and high executory value so that it can function effectively in civil dispute mediation. According to the Notary Law (Law No. 2 of 2014), a deed made by a notary is an authentic deed with perfect evidentiary force as regulated in Article 1870 of the Civil Code. This deed can immediately become the basis for execution if one party defaults, without going through further litigation (Yulia, 2022). The binding and executory power of the peace deed makes the mediation results stated in this form have moral force and legal coercion. This allows for peaceful dispute resolution based on strong legal guarantees. In addition, the nature of a notarial deed that cannot be easily refuted by the party who signed it strengthens the certainty and stability of the mediation results (Sudrajat, 2021).

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In terms of efficiency, a mediation-based peace deed made by a notary significantly saves time and costs. The out-of-court mediation process that culminates in signing a peace deed can reduce the length of the time-consuming litigation process, attorney fees, and court administration costs. In addition, as a neutral and trusted public official, a notary facilitates the mediation process with high professionalism and accountability, so that the process runs more smoothly and efficiently (Fadhilah, 2023). However, this effectiveness still depends on the parties' understanding of the legal force of the peace deed and adequate legal awareness. For this reason, the socialisation of the role of notaries and deed-based mediation training needs to be improved so that the potential of this instrument can be optimised to resolve civil disputes peacefully and efficiently.

4.2. Obstacles in the Implementation of Mediation Based on Peace Deeds

Although mediation based on a peace deed made before a notary has excellent potential in resolving civil disputes peacefully and efficiently, its implementation in the field still faces various obstacles. One of the main obstacles is the limited authority of notaries in conducting mediation, because notaries are not certified mediators recognized by the Supreme Court based on Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in Court. In practice, although notaries have the capacity as neutral and professional parties in preparing peace deeds, their lack of involvement in the formal mediation system makes the validity of their mediation questionable (Subekti & Azhari, 2022). In addition, the low public awareness and understanding of the function of peace deeds made by notaries as an alternative dispute resolution is a serious obstacle. Many parties still believe dispute resolution can only be done through the courts. The lack of legal literacy causes people not to utilize peaceful channels through notaries as a legitimate and efficient option (Rahmawati & Darmawan, 2023). This is exacerbated by the lack of socialisation from the government and notary professional organisations regarding the role of notaries in non-litigation mediation.

The next obstacle is the absence of technical regulations for implementing mediation based on a peace deed before a notary. Until now, no statutory provisions have explicitly regulated the procedures, requirements, and limitations in the implementation of mediation by a notary. As a result, this mediation practice does not have standard operating procedures and can potentially raise doubts about the legal force of the resulting deed (Fathurrahman, 2021). Technical regulations are needed to provide legal certainty and distinguish between a peace deed resulting from mediation and a regular agreement deed. Given the significant potential role of notaries in helping to resolve disputes peacefully, these various obstacles must be overcome immediately through strengthening regulations, mediator training for notaries, and increasing legal education for the public.

4.3. Optimisation Strategy

A number of systematic and sustainable strategies are required for mediation based on a peace deed made before a notary to function optimally in resolving civil disputes.

1. Strengthening Regulation

The first urgent step is to strengthen regulations. Currently, no technical regulations explicitly regulate the procedure for mediation by notaries outside the court. It is necessary to issue derivative regulations from the Notary Law and align them with Supreme Court Regulation No. 1 of 2016 to accommodate the role of notaries as mediation facilitators. These regulations must regulate the scope of authority, procedures for making peace deeds, and the legal consequences of the mediation results (Maulana & Prasetyo, 2021).

2. Socialisation to the Community

The low level of legal literacy of the community regarding alternative mediation is a challenge in itself. Therefore, massive socialisation must be done through notary institutions, law colleges, and related government agencies. This education aims to introduce the benefits of mediation based on a peace deed, especially in terms of cost and time efficiency, and to avoid the stigma that legal settlement can only be done through the courts (Nurjanah, 2023).

3. Notary Training and Certification

Notaries must be equipped with technical mediation skills through professional training and certification as non-litigation mediators. With this training, notaries act as recorders of agreements and as active parties who can facilitate a fair and constructive negotiation process. This training program can be integrated with coaching from the Indonesian Notary Association (INI) and the Supreme Court (Akhmadi, 2022).

4. Improvement of Facilities and Infrastructure

Optimization also requires infrastructure support. Notary offices must have comfortable mediation rooms, digital administration systems for agreement documentation, and institutional support from professional organizations and official mediation institutions. This will increase the professionalism and public trust in mediation carried out by notaries (Fathurrahman, 2021).

By implementing these strategies, mediation based on a peace deed before a notary has the potential to become an effective instrument in resolving civil disputes quickly, cheaply and with legal certainty.

5. CONCLUSION

This study confirms that a peace deed made before a notary has excellent potential in resolving civil disputes efficiently, peacefully, and legally. As a form of peace agreement stated in an authentic deed, a peace deed has perfect evidentiary power (Article 1868 of the Civil Code). It can be the basis for execution if it includes an executory clause (Article 15, paragraph (2), letter f of the Notary

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Law). This makes the role of a notary very strategic in supporting dispute resolution outside of litigation. However, this potential is not yet fully optimal due to the limited authority of notaries as certified mediators, the absence of technical regulations governing peace deed-based mediation, and the low public understanding of the benefits of resolving disputes through non-litigation channels. Although notaries have legal capacity as public officials, they have not been fully empowered to facilitate mediation actively. In addition, there are no standard rules regarding the procedures for mediation stated in the peace deed, which often raises doubts in its implementation.

For this reason, regulatory support is urgent, especially in the form of technical regulations that provide a strong legal basis for notaries in their mediation role. Furthermore, improving the competence of notaries through training and certification as mediators, as has been implemented in mediator training by the Supreme Court and the National Mediation Agency, is an important step to strengthen the quality and legitimacy of the mediation process. No less important, increasing public awareness of the benefits of mediation based on a peace deed needs to be done through ongoing legal education. Socialisation from notary professional organisations, legal education institutions, and government institutions can encourage a paradigm shift in society in resolving disputes peacefully and efficiently. Thus, optimising mediation based on a peace deed by notaries is a very relevant strategy in answering the need for fast, cheap, and legally binding dispute resolution, while strengthening the role of notaries in the Indonesian legal system.

RECOMMENDATIONS

Based on the results of research on optimizing mediation based on a peace deed made before a notary, several recommendations can be submitted to strengthen and develop this civil dispute resolution mechanism.

First, it is essential for the government and professional notary organizations to immediately draft technical regulations that regulate the procedures for implementing mediation based on a peace deed by a notary. These regulations should contain standard mediation procedures, the authority of notaries in facilitating mediation, and formal requirements for making a peace deed. In addition, the government and notary organizations also need to hold special training and certification for notaries as professional mediators. This training aims to improve notaries' technical competence and ethics so that notaries can carry out their mediation role effectively, reasonably, and neutrally. With adequate regulations and training, the mediation process based on a peace deed can run more reliably and be widely accepted by the community and the disputing parties.

Second, legal institutions, such as courts and alternative dispute resolution (ADR) institutions, are advised to actively encourage and facilitate mediation based on peace deeds as an alternative to resolving civil disputes. Legal institutions can provide recommendations or require parties to consider mediation involving notaries, especially in cases that allow for peaceful resolution. In addition, socialisation and education of judges, lawyers, and the general public regarding the advantages and benefits of peace deed-based mediation need to be increased. This aims to build collective awareness that dispute resolution does not always have to go through a long and expensive litigation process, but can be done effectively through mediation with the support of the legal force of a peace deed.

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