

Optimization of the Executorial Power of Peace Deeds in Land Disputes and Conflicts Mediated by BPN

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Article	Abstract
<p>Keywords: Executorial Power; Land Cases; Mediation; Peace Deed</p> <p>Article History Received: Mar 31, 2024; Reviewed: Apr 26, 2024; Accepted: Apr 30, 2024; Published: May 01, 2024.</p>	<p>This research aims to describe and analyze the settlement related to the peace deed that was agreed upon and signed by the parties in mediation by National Land Agency (<i>Badan Pertanahan Nasional</i>) (BPN)). This research was carried out using a literature study, to collect secondary data, the approach used was conceptual. It is hoped that the results of mediation will satisfy the parties and can be carried out well by the parties to the dispute. This research was formulated to find out whether the agreed peace agreement had binding legal force even though it was not registered with the court and whether it still had executorial force. It is known to achieve benefits, justice, and legal certainty. The legal consequences if the parties or one of the parties do not want to carry out the mediation peace deed, the trial can be continued. If the party breaks and does not implement the contents of the Deed of Agreement, then the party who feels aggrieved must file a lawsuit for breach of promise/default first against the party who does not implement the contents of the existing Deed of Agreement, so they must start the proceedings from the initial level first.</p>



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Introduction

Indonesia is a country with very significant population growth from year to year, but this massive population growth is not directly proportional to the growth of land area in Indonesia (Achmad, 2024). Indonesia's population is very large and continues to grow, which will slowly but surely lead to land ownership problems in Indonesia, because the area of land plots is very limited so humans in general and

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Indonesian society in particular categorize land as a natural resource that is very important for their survival, whether as a place to live, business land, or as a store of investment value, therefore land is one of the important assets in human life because it has high economic and social value (Oktavina, 2020).

Due to the rapid population growth and the lack of significant development in the area of land plots in Indonesia, friction often occurs in social life regarding land plots, causing disputes and conflicts to arise in society (Mccarthy, 2016). According to the Agrarian Reform Consortium (*Konsorsium Pembaruan Agraria* (KPA)) report, throughout 2023 there will be 241 cases of land conflict in Indonesia ranging from the forestry, coastal, and small island sectors, military facilities, plantation businesses, property businesses, mining, and infrastructure projects. where the number of land conflict cases in 2023 will increase compared to 2022 (*Konsorsium Pembaruan Agraria*, 2024). These land disputes and conflicts can occur because the parties have their own interests and egos, which often means that the interests and egos of each party conflict with each other.

Land disputes and conflicts can occur not only involving parties as individuals against individuals, but also between individuals and the wider community, individuals and companies, or companies and companies, and so on (Soratha, 2012). In practice, disputes and conflicts that often occur are not only related to land ownership and use. Land disputes and conflicts can also occur for various reasons, such as unclear land boundaries, changes in land use, different interpretations of land management documents, repeated sales of land plots by the same seller, and the existence of land plots that are abandoned so that there are parties claiming rights to the same land (Sukmawati, 2020).

A land dispute and conflict can have a very serious impact on society both from an economic and social perspective, some of the impacts that may occur starting from the loss of land rights which will then certainly cause huge economic losses, and even if the dispute and conflict if it drags on for a long time, it will be very possible for violence and bloodshed to occur, causing death among the parties to the dispute. Therefore, efforts to prevent and resolve land disputes and conflicts are very important to reduce the impacts and risks that may arise as a result of existing disputes (Magsi et.al., 2017).

In the legal context, land disputes and conflicts can be resolved through two channels, namely litigation, or judicial institutions (Courts), or can also be resolved through non-litigation, namely through institutions that implement alternative dispute resolution, one of which is mediation (Boboy, et.al., 2020). The process of resolving land

disputes and conflicts through litigation in court often takes a lot of time and costs which causes increased losses experienced by the parties, and cannot necessarily provide appropriate justice for all parties involved, besides that, it often costs a lot of money. Proceeding in court makes the parties, both in disputes and conflicts, reluctant to resolve them through litigation so this causes disputes and conflicts to drag on without any resolution, which will ultimately lead to physical confrontation between the parties, not infrequently. This physical confrontation is carried out to the point of causing bloodshed or death (Khoirruni, et.al., 2022).

Therefore, there is a need for a holistic and family approach in resolving land disputes and conflicts so that the parties can seek justice that is appropriate to the circumstances and desires of the parties, and justice that can reduce the physical, economic, and social losses experienced by the parties. parties as small as possible, but when the family approach has been agreed upon it must also have binding power and also have coercive power for the parties to be able to implement the existing agreement.

Mediation is a dispute resolution process using deliberative and amicable negotiations between the disputing parties, to reach an agreement that is beneficial to all parties when the parties have reached a mutual agreement, it will then be regulated and stated in an agreement. In the context of land disputes and conflicts, mediation can be a quicker, cheaper option, and can provide better satisfaction for both parties (Rahmah, et.al., 2024).

In Indonesia, the Ministry of Agrarian Affairs and Spatial Planning/BPN (Ministry of ATR/BPN) is a government agency that has duties and responsibilities in terms of land management which are included in the Main Duties and Functions (main duties) of the National Land Agency (*Badan Pertanahan Nasional* (BPN)) (Rasmawati, et.al., 2022). One of the main roles of BPN is to facilitate the resolution of disputes and conflicts that occur about land, this is as regulated in Article 3 letter g of Presidential Regulation Number 48 of 2020 concerning the BPN (PR. 48/2020), which stipulates that: "In carrying out the duties as intended in Article 2, BPN carries out the following functions: g. formulation and implementation of policies in the field of handling and preventing disputes and conflicts as well as handling land cases".

There are 2 methods for resolving disputes and conflicts used by BPN in resolving disputes and conflicts, the first is mediation and the second is through litigation, where the party who feels disadvantaged can file a lawsuit in court, either civilly or state-administratively, involving BPN as one of the parties, and the second is through the non-

litigation route where BPN facilitates the parties to be able to resolve existing disputes and conflicts through family means through mediation. In this writing, the author will discuss the resolution of land disputes and conflicts which are resolved using non-litigation channels, in this case using mediation methods carried out or facilitated by BPN as a mediator.

Method

The method used in this research is a normative research method. This method is used to assess whether legal phenomena are in accordance with the rules they should be in or whether they are contrary. The approach used in this research is a statutory approach. The legislation referred to in this case concerns all regulations relating to the settlement of land cases and peace deeds. The second is the case approach, which in this case is a land case that was resolved through mediation.

Discussion

A. Legal Strength of the Deed of Peace Resulting from Mediation Carried Out by BPN Which was not Registered with the Court

BPN is a government institution that has authority or duties and functions in the land sector. Article 1 Paragraph 1 of PR. 48/2020 determines that "The BPN, hereinafter referred to as BPN, is a Non-Ministerial Government Institution which is under and responsible to the President." Then, because BPN is a Non-Ministerial Government Institution that is under and responsible to the President, BPN is not led by a minister but is led by the head of this matter as stipulated in Article 1 paragraph 2 of PR. 48/2020. However, even though it is led by a Head, the Head of BPN is not a separate Head separate from the ministry, but the Head of BPN is still held by the Minister, more precisely the Minister of Agrarian Affairs and Spatial Planning as stipulated in Article 4 of the PR. 48/2020. National Land Affairs, therefore every time a Minister of Agrarian and Spatial Planning Regulation is made there will also be a slash followed by the words of the Head of the BPN of the Republic of Indonesia (Umar, et.al., 2019).

That then because the Head of the BPN is led by the Head of which the Head of BPN is also a Minister, more specifically, namely the Minister of Agrarian Affairs and Spatial Planning, the infrastructure facilities or supporting elements used by BPN are infrastructure facilities and supporting elements of the Ministry of ATR/BPN. This is by article 7 of the PR. 48/2020 which stipulates that "BPN's supporting elements use

existing supporting elements in the Ministry of ATR/BPN whose duties and functions are consistent.”

Whereas then as a State Institution, BPN has duties and functions that are specifically regulated, BPN's Duties, are regulated in Article 2 of the PR. 48/2020 which stipulates that "BPN has the task of carrying out government duties in the land sector by the provisions of statutory regulations." Meanwhile, to be able to carry out these duties, BPN has functions that have been specifically regulated in article 3 of the PR. 48/2020 (Rois, et.al., 2022).

Apart from the main tasks and functions mentioned above, in carrying out its duties, BPN adheres to priority policies that have been determined by the Minister of Agrarian Affairs and Planning / Head of the BPN based on directions from the President of the Republic of Indonesia, of which in this period there are three priority policies among others: (1) Accelerate Land Registration through the Complete Systematic Land Registration (PTSL) program; and (2) Land Dispute and Conflict Resolution. Land Redistribution That Apart from the main tasks and functions as mentioned above, in carrying out its duties, BPN adheres to priority policies that have been determined by the Minister of Agrarian Affairs and Planning/Head of the BPN based on directions from the President of the Republic of Indonesiav (Sahnan, et.al., 2019).

Settlement of Disputes and Conflicts as mentioned above is one of the priority policies in this period, this is because land disputes and conflicts have a very significant impact on people's lives, both from an economic and social perspective, one example of the impact that may occur is the loss of land rights, which will certainly cause huge economic losses, even if these disputes and conflicts continue to roll out and continue for a long time without a clear resolution, it will be very possible for physical confrontation to occur between the parties and even bloodshed which can claim casualties. spirit between the parties to the dispute (Lestari, 2016).

In reality, what occurs in the field is that land disputes and conflicts that often occur are not only related to the ownership and use of land plots, but land disputes and conflicts are very likely to occur due to various reasons, including the unclear boundaries of the parties' land plots due to by not maintaining land parcel boundary markings which are the obligation of the land plot owner, changes in the land use of land plots, repeated sales of the same plot of land by the same seller to different buyers, which can fall into the criminal realm (Land Mafia), and there are plots of land that are

abandoned so that there are parties who claim rights to the same land (Occupation) (Khoirruni, et.al., 2022).

In order to discuss land disputes and conflicts further, we must first know what land disputes are and what land conflicts are. Article 1 paragraph 2 of the Regulation of the Ministry ATR/KBPN. 21/2020 determines that "Land Disputes, hereinafter referred to as Disputes, are land disputes between individuals, legal entities or institutions that are not far-reaching impact." Then further Article 1 point 3 of the Regulation of the Ministry ATR/KBPN. 21/2020 determines that "Land Conflict, hereinafter referred to as Conflict, is a land dispute between individuals, groups, classes, organizations, legal entities, or institutions that have a tendency or have had a wide impact."

From the two definitions according to the ministerial regulations above, it can be seen that there is a difference between what is a land dispute and what is a land conflict, where the difference between the two only lies in the impact that will arise or has arisen from the existence of a land dispute between the parties if it will or has a broad impact both in economic, social and cultural terms, then this is included in a land conflict, whereas if the scale of impact that may or has occurred is only small in scope or even only impacts individual people, then this is included in a land dispute (Sunarno, 2019).

Regardless of the differences between the two, in Ministry ATR/KBPN. 21/2020, both disputes and conflicts are included in a category or term called Land Cases. A land case is a dispute, conflict, and even a land case, which is then submitted to the BPN, either the Central, Provincial, or Regency/City areas for handling by existing laws and regulations and by the authority they have.

Land disputes and conflicts are complex problems and are very influential in social life, both in economic terms and in social and cultural terms. Land disputes and conflicts that occur in society often have huge negative effects, this happens because many land disputes and conflicts are allowed to drag on without any concrete efforts to resolve the land disputes and conflicts that occur.

Often, ordinary people who do not have enough power in economic terms can only let land disputes and conflicts that occur to them drag on, this can happen because the resolution of land disputes and conflicts through litigation can produce decisions that have binding legal force and have Executorial power to be able to achieve justice, legal certainty, and usefulness, requires enormous sacrifices from the parties to the dispute because it will sacrifice many things both in terms of economics and in terms of a relatively long time, it does not even rule out the possibility of reaching years if the

parties continue to litigate up to the Judicial Review (*Peninjauan Kembali* (PK)) level. Because resolving land disputes and conflicts using litigation will cause greater losses experienced by the parties, and will not necessarily provide appropriate justice for all parties involved, efforts are being made to resolve land disputes and conflicts outside of litigation or through Alternative Settlement. Disputes, in this case, more specifically, are mediation.

Sri Hajati emphasizes that the urgency of alternative dispute resolution has undermined the litigation paradigm (dispute resolution through court), which is considered no longer able to meet the demands of more cooperative dispute resolution (cooperative conflict management), confidentiality and a "win-win" pattern (Hajati, 2018). Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Law. 30/1999) determines that "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court using consultation, negotiation, mediation, conciliation, or expert judgment". Mediation is one of the many alternative dispute resolution methods mentioned above that is used by BPN in handling and resolving land disputes and conflicts that come to BPN, but what is the actual meaning of mediation itself? Following are the meanings/definitions of mediation according to several experts.

Ronald J. Fisher stated that there are many definitions/understandings of mediation, but they all refer to the same general characteristics, namely that mediation is an intervention by a skilled and impartial intermediary who works to facilitate a resolution of problems that is acceptable to the parties regarding the issue. -issues which constitute the substance/main issue being disputed by the parties. Mediation is a passive, non-coercive and non-binding conflict approach to dispute management that can be carried out freely by the interested/disputing parties, while at the same time the parties still have control over the substance/content of the dispute. agreement (Fisher, 2011).

This alternative dispute resolution through negotiation has several advantages, namely economical decisions, quick resolution, satisfactory results for all parties, comprehensive agreements, decisions that can be implemented, and decisions that are valid regardless of time (Gumbira, et.al., 2020). Meanwhile, the only weakness in the mediation process lies in the strength of the parties' execution after reaching an agreement. Because the agreement was reached voluntarily, the execution of the

agreement is also under voluntary conditions. Therefore, the mediation process will only be effective for parties who truly voluntarily want the dispute to be resolved through mediation. Thus, it has the consequence that the mediator and other matters during the mediation process must still be voluntarily accepted by both parties to the dispute (Hajati, 2018).

Furthermore, apart from the definition of mediation as mentioned above, the meaning of mediation is also contained in Article 1 number 11 of the Regulation of the Ministry ATR/KBPN. 21/2020 which also regulates what mediation is, namely "Mediation is a way of resolving cases through a negotiation process to obtain an agreement between the parties, facilitated by the Ministry of ATR/BPN, Regional Office of the BPN, Land Office according to their authority and/or a land mediator," which is a more specific arrangement. regarding the handling and resolution of land disputes and conflicts that are facilitated or handled by BPN, which in this paper is handled or resolved using non-litigation methods/using mediation.

From the overall meaning of mediation, both as expressed by experts and as regulated in several regulations above, several conclusions can be drawn, namely that although there are many definitions of mediation, they all still refer to the same characteristics, namely:

1. The existence of a third party who has skills and is impartial to act as a mediator in resolving problems that exist between the parties.
2. Mediation is not forced/voluntary.
3. The substance of the mediation and the agreements that will be made later are entirely within the authority and wishes of the parties and not the wishes or wishes of the mediator/mediator.
4. The only weakness of mediation is that it does not have executive power

That the flow of handling disputes and conflicts at BPN refers to the Regulation of the Ministry ATR/BPN. 21/2020. The complaint flow begins when there is an objection letter addressed to either the central BPN, the Provincial BPN Regional Office, or a complaint addressed to the Regency/City Land Office. The complaint can be submitted via written letter directly or verbally to the officer on duty at the complaint counter at the Central BPN, Provincial BPN Regional Office, or Regency/City Land Office, or the complaint can also be submitted via existing online media.

Then who can file a complaint? Everyone can complain, whether individuals, community groups, legal entities, government agencies, or even technical units of

ministries, regional offices, or land offices, all have the same right to be able to submit complaints and receive complaint services, but of course, there are also complaints. must first fulfill the existing requirements to be served. The requirements needed to be able to submit a complaint are the requirements as specified in Article 3 Paragraph 3 of the Regulation of the Ministry ATR/KBPN. 21/2020, which consists of:

- a. The identity/legality of the complainant includes:
 1. Individual:
 - a) Photocopy of proof of personal identity; or
 - b) Power of attorney and photocopy of the identity of the giver and recipient of the power of attorney if authorized
 2. Legal entity:
 - a) Photocopy of the deed of Establishment/latest Amendment;
 - b) Power of attorney from the Board of Directors; And
 - c) Photocopy of the identity of the giver and recipient of the power of attorney if authorized
 3. Community groups
 - a) Photocopy of proof of identity of community group members; And
 - b) Power of attorney from all members of the community group, accompanied by a photocopy of the identity of the recipient of the power of attorney, if authorized
 4. Government agencies
Photocopy of proof of identity of the employee or official of the agency concerned accompanied by a Letter of Assignment or Power of Attorney from the agency concerned.
 5. Ministry, Regional Office, Land Office: report letter from the head of the work unit or work units concerned
- b. Photocopy of supporting data or proof of control/ownership of the complainant's land;
- c. Photocopy of other supporting data on land subject to dispute or conflict; And
- d. Brief Chronological Description of the Case

Then, after receiving the complaint, the officer will check whether the complaint submitted meets the requirements mentioned above. When the complaint submitted does not meet the requirements as stipulated above, the complaint will be returned to the complainant in writing explaining any deficiencies in the requirements that have not been fulfilled by the complainant (Puspadewi, 2022).

Furthermore, when the complaint meets the requirements, the complaint will be accepted and the leadership will provide a disposition to the section authorized to handle disputes, conflicts, and cases. After the complaint has been disposed of and received by the department authorized to handle it, a resume will be made and the complaint will go through several stages before finally the parties can be mediated. These stages are the stages as specified in Article 6 Paragraph 1 of the Regulation of the Ministry ATR/KBPN. 21/2020 which determines that handling disputes and conflicts is

carried out through stages: Case review, Initial title, Study, Expose research results, Coordination meetings, Final title And, Case resolution (Rois, et.al., 2022).

These stages will be carried out sequentially one by one until ending with the resolution of the case. Then, after the complaint is received and a resume is made, an assessment will be made of the complaint in the form of a staff review to make it easier to understand the incoming complaint. The results of this study are the basis for an initial degree to be carried out (Cahyono, et.al., 2018). However, regardless of the existing arrangements at several Land Offices, for example, in the implementation of handling complaints at the Sikka Regency Land Office, after an assessment is carried out and before the Initial Degree is carried out, usually to be able to enrich the information regarding existing complaints, the Sikka Regency Land Office first calls each of them. each party, both the Complainant and the Defendant, can be asked for information in advance regarding the dispute or conflict between them, what the parties want from each party, and ask the parties whether they are willing to carry out mediation between the parties which will be carried out by BPN If they don't want to, the handling of the complaint stops after the initial hearing and the parties who feel aggrieved can file Litigation legal action, but if the parties want to be mediated then the handling process will continue until the case is resolved (Khoirruni, et.al., 2022).

After reviewing the case and taking information from the parties and the parties are willing to carry out mediation between the two, the next process is the Initial Title. The initial meeting is carried out to determine whether the incoming complaint falls under BPN's authority to be able to facilitate a mediated resolution between the parties. If the matter is not within BPN's authority and is within the authority of another agency, BPN will send a letter to the relevant agency that has the authority to resolve the problem. regarding the existence of the complaint in question, then if the complaint falls within the authority of the BPN to be able to facilitate a mediated settlement between the parties in the Initial Degree the plan for handling the complaint will be determined, whether it is reviewing the relevant laws and regulations, determining what data is still needed to can carry out the handling both in terms of physical data, juridical data and field data as well as other necessary data, in addition to determining the target time for resolving the dispute in question, all of which is set out in an Minutes.

In determining the target time for completion of complaint handling as regulated in Article 9 paragraph 7 letter a Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN Number 4 of 2022 concerning Management of Complaints

the Ministry of ATR/BPN (Ministry ATR/KBPN. 4/2022) determines that "Complaints are at the level of supervision as intended in Article 2 paragraph (2) letters a, c and d, no later than 150 (one hundred and fifty) working days from the receipt of the Complaint dossier from the Complaint Management Executive."

Then, after the Initial Degree is carried out, the next stage in handling complaints is research. There are two types of research carried out, the first is document research, both physical documents in the form of maps and images that provide information about the land plot and also juridical documents related to the parties in dispute, and the legal relationship between the parties. with the disputed plot of land, the history and basis of the rights of the parties as well as other documents regarding the disputed plot of land the second research is physical field research regarding determining the use of the land plot's use and so on, as well as asking for information from local people. The results of the research are then outlined in a research results report which will then be exposed to the research results. Exposure of research results has the objectives as regulated in Article 11 paragraph 3 of the Regulation of the Ministry ATR/KBPN. 21/2020 which determines that:

"Exposing research results as intended in paragraph (2) aims to:

- a. evaluation and solving problems encountered in case handling and resolution;
- b. know the progress achieved in Case Handling;
- c. determine further action plans;
- d. ensure the suitability of the matters in the Complaint with factual evidence obtained from the Research;
- e. determine the legal/legislative provisions used;
- f. coordinate with related agencies/institutions or parties in the case that the cases handled involve the authority and/or interests of other agencies/institutions or parties if necessary;
- g. ensure completion according to the targets set;
- h. determine settlement decisions for cases handled; And
- i. develop treatment plans and targets if still needed or hold a Coordination Meeting if necessary."

The exposure of the research results is then stated in the Minutes of Exposure of Research Results. Then, from the results of the exposure, it is determined whether the data obtained is sufficient or not, if it is not sufficient then it is determined again what data is still needed and then further research must be carried out, including if data and opinions from experts in other agencies are needed then this can be done. Coordination meetings with other agencies to obtain the required data. If at the time of exposure of the research results it is deemed that all the data is sufficient, then BPN can invite the parties to mediation.

Mediation carried out by BPN is usually held in three meetings or can be increased if it is deemed possible for the parties to reach a peace agreement as long as this does not have the potential to exceed the 150-day time limit as regulated above.

In mediation, each party expresses their wishes and is given time to consider the offers from each party, whether the parties agree with each other's offer, disagree, or even bring a counteroffer. The negotiation or mutual bargaining process continues until the parties can reach the agreement desired by the parties. Then, when an agreement has been reached in mediation facilitated by BPN, BPN prepares a Deed of Peace containing the matters desired by the parties to be included in the agreement in the form of a Deed of Peace, including the rights and obligations of each party, and BPN provides input regarding whether the material or matters agreed upon violate statutory regulations or not, then when the parties have agreed regarding the contents of the Deed of Peace and no content violates statutory regulations, the BPN officer will read the Deed of Peace again in front of the parties and if there are no changes, the Deed of Peace can be signed by the parties and their witnesses. Then BPN invites the parties to register the Deed of Peace at the local District Court (Umar, et.al., 2019).

Furthermore, after signing the Deed of Conciliation of the Case, BPN will carry out a Final Degree to evaluate the results of handling the complaint whether it is by existing laws and regulations or not, and provide a report on the resolution of the case that has been handled. Then the second problem formulation is whether the peace deed that has been agreed upon and signed by the parties in the mediation carried out by BPN has binding legal force even though it is not registered with the court.

Before discussing the legal force of the Deed of Peace which is made in mediation facilitated by BPN, we must first discuss why or what reasons cause the parties not to register the Deed of Peace in Court. The reasons that exist are classic reasons from the past until now are the same reasons, namely the parties think that if they have to register the Deed of Peace with the court, they will have to bear high economic costs, which is also the reason why the parties prefer to be able to resolve land disputes and conflicts through mediation at BPN. Ahmad Setiawan revealed that the reason why people are reluctant to go to court is that "resolving it through the court is felt to be less effective as well as being time-consuming and expensive" (Setiawan, 2019).

Apart from that, Maria S.W Sumardjono revealed why people are reluctant to litigate in court "Litigating in court is generally perceived as a process that takes time, is not simple, and is not cheap" (Sumardjono, 2009). In line with this, Nia kurniati in her

book states that the length of time involved in court cases causes court costs to become more expensive (Kurniati, 2016).

Basically, people generally think that dealing with the court will take time and money, including in terms of registering the Peace Deed in Court, because it has to be in the form of a lawsuit, people generally think that this will cost a lot of money, especially sometimes people feel they don't understand how to proceed in court so they have to hire a lawyer which will also be expensive. Then, because they feel that there are a lot of costs involved, especially in low-income areas, such as in East Nusa Tenggara, this will be one of the factors that they do not register the Peace Deed with the Court.

So, even if it is not registered in court, the Deed of Peace does not have legal force?

Whereas basically, all agreements that are made legally are valid as law for the parties who make them, where the agreement is binding on the parties who agree to bind themselves in a contractual relationship, the binding force of the agreement can be equated with law, This is as regulated in the Civil Code in article 1338 which stipulates that "All agreements made by the law are valid as law for those who make them. This consent cannot be withdrawn other than by agreement of both parties or for reasons determined by law. Agreements must be implemented in good faith." Then further from this article, it can be concluded that an agreement will be binding if it is made by the law, what is the meaning of the law? According to J. Satrio, the meaning of this law "reminds us of Article 1320 B.W., which in doctrine is interpreted as a provision that regulates the conditions for the validity of an agreement. "Based on that article, an agreement is valid if it fulfills the conditions stated there" (Satrio, 1992).

Furthermore, what is BW, BW is an abbreviation for "*Burgerlijk Wetboek*" which in Indonesian is called the Civil Code (*Kitab Undang-Undang Hukum Perdata* (KUH Perdata)). Then what are the requirements regulated in article 1320 of the Civil Code as mentioned by J Satrio above? Article 1320 of the Civil Code determines that "For a valid agreement to occur, four conditions need to be fulfilled: the agreement that binds them, the ability to create an agreement, a particular subject matter, a cause that is not prohibited" (Bening & Rafiqi, 2022).

Condition number one determines "their agreement to bind themselves" which means that the parties agree to bind themselves in a contractual relationship. Then the second is "capacity to agree" which means that the parties who agree to bind themselves to the agreement are parties who are considered adults according to the provisions of the laws and regulations and are not under guardianship. Then the third is "a certain

subject matter" meaning that an object or thing is being agreed upon which gives rise to rights and obligations between the parties. And the fourth is "a cause that is not prohibited" meaning that the object or thing being agreed upon is an object that is not prohibited by statutory regulations, for example, is it permissible for the object of the agreement to be a prohibited drug? So, the answer is definitely no and the requirements mentioned above will not be fulfilled and the agreement made will automatically be null and void, however, when all the requirements mentioned above can be fulfilled then the agreement made by the parties can be declared valid and binding on the parties as Constitution.

However, unfortunately, even though it has binding legal force, the peace deed still does not have executive force because it was not registered with the court. What is executorial force? has been agreed in the Deed of Peace, so that the party who feels aggrieved no longer needs to drag on filing a lawsuit for breach of promise/default first to ask the other party to implement the contents of the agreement, the party who feels aggrieved can directly submit a request for execution in court for the implementation of the contents Peace Deed.

Then what if the Deed of Peace is not registered in court and the other party has reneged and not implemented the contents of the Deed of Agreement? If so, the party who feels aggrieved must first file a lawsuit for breach of promise/default against the party who does not implement the contents of the existing Deed of Peace, so they must start the proceedings from the initial level first.

However, unfortunately, as explained above, people are reluctant to go to court due to the length of the process and the high costs that may have to be incurred, so if there is a breach of promise regarding the Peace Deed, it is very likely that the party who feels aggrieved will not file a lawsuit and will just leave the problem as it is. exists, so that the problem will drag on and create a greater risk of friction and physical confrontation between the parties. Apart from that, this makes it seem as if in the end the mediation which resulted in the Peace Deed did not reflect benefits, justice, and legal certainty, the mediation which resulted in the Peace Deed was ultimately unable to fulfill these three legal objectives. So, what was stated by St. Augustine's "*lex iniusta non est lex*" or unjust law, is not real law.

B. The Idea is that the Deed of Peace as a Result of Mediation carried out by BPN which was not registered with the Court has Executorial Power

So, the next question is how to ensure that the mediation that produces the Peace Deed does not end in vain and can fulfill the three legal objectives above. This can be done if BPN is given the authority to directly register every Peace Deed produced through mediation, facilitated by BPN, so that the parties no longer need to incur any costs, because the person registering the deed of agreement is BPN, the public only needs to come and justify the agreement they made in the form of a Deed of Peace before the judge in a court hearing, because the trial is in the context of registering the Deed Peace requires 14 days from the time the Peace Deed is registered until the Peace Deed is confirmed in a Court Decision.

This is in line with the opinion of His Excellency Murthada Moh. Mberu, S.H., M.H. who is the Judge/Public Relations Officer of Class 1 A Kupang District Court, in his interview with the author, stated that it was sufficient to revise the existing rules, one of which is contained in Article 44 paragraph (5) of the Ministry ATR/KBPN. 21/2020 which states that the peace agreement at mediation is stated in a peace deed and registered by the parties in the District Court in the jurisdiction where the land which is the object of the case to obtain a peace decision is located so that BPN has the authority or obligation to register the Peace Deed so that later BPN can or is obliged to file a lawsuit to the registration of the Deed of Peace for mediation facilitated by the BPN. Then, when this can be implemented later, the Deed of Peace for mediation facilitated by BPN will still have executorial force even though the parties do not register it either for economic or other reasons because BPN has registered it, and this makes the 3 legal objectives as above fulfilled, both in terms of benefits, justice, and legal certainty for parties who are experiencing disputes and conflicts within the scope of land.

Apart from that, this is in line with the government's priority in accelerating the handling and resolution of existing land disputes for the sake of justice, benefit, and legal certainty for the Indonesian people, as well as easing the burden on the courts in terms of the volume of incoming land cases.

That then if the revision of these regulations can be implemented and BPN is given the Authority/Obligation to register the Deed of Peace for mediation facilitated by BPN then following up on the revision of these regulations the Ministry of ATR/BPN can follow up by holding an MOU between the Ministry of ATR/BPN with the Supreme Court regarding the technicalities of registering the Peace Deed as well as the costs of

registering the Peace Deed carried out by Government Agencies, so that it is possible to have zero rupiah fees for government agencies registering Peace Deeds.

Conclusion

The agreement between the parties can be declared valid and has binding legal force, but the deed of peace at mediation still has no executorial force because it is not registered with the court. The dominant reason why the community does not register the Peace Deed with the Court is that the process takes a long time and the high costs that may have to be incurred, so if a default occurs and the party allows it, there is a possibility that there will be a risk of confrontation between the parties. If BPN can do this to register every Deed of Peace for mediation facilitated by BPN, then it still has executorial power even without registering it directly with the Court for these reasons. However, this is at odds with Article 44 paragraph (5) of Ministry ATR/KBPN. 21/2020 the Peace Deed at mediation is registered by the Court, so there are still no regulations regarding BPN's authority to register the Peace Deed through mediation facilitated by BPN to the Court. Thus, it is necessary to revise the Regulation of the Ministry ATR/KBPN. 21/2020 by increasing the authority of BPN to be able to directly register every Deed of Peace achieved through mediation facilitated by BPN to the court so that can achieve benefits, justice, and legal certainty in the context of accelerating the handling of disputes and conflicts in Indonesia. It is necessary to hold an MOU between the Ministry of ATR/BPN and the Supreme Court regarding registration fees for Peace Deeds carried out by Government Agencies so that it can be possible to have zero rupiah fees for government agencies registering Peace Deeds.

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