

THE EFFECTIVENESS OF THE PEACE DECISION IN THE DISPUTE OF CIVIL CASE PERMA NO. 1 OF 2008 IN THE MAKASSAR DISTRICT COURT

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ABSTRAK

This study aims to determine the effectiveness of peace decisions in civil case disputes according to PERMA No. 1 of 2008. As well as to find out the legal consequences that arise if a peace agreement in a civil case dispute is violated by one or both parties because of a bad faith. The research was conducted at the Makassar District Court and the Makassar Religious Court. The method used in this study is sociological juridical, namely by studying various legal provisions relating to the effectiveness of peace agreement decisions in civil case disputes according to PERMA No. 1 of 2008 as the latest regulation governing the Mediation process in Court. In the results of the study, it is known that the files of the peace agreement, have not been seen uniformly in the mention of terms. PERMA No. 1 of 2008 has provided a more comprehensive, more detailed arrangement with respect to the mediation process in court. It is also possible for mediation to be pursued at the level of appeal or cassation. This PERMA also has shortcomings such as conflicting articles. Article 2 (paragraph 1) states that PERMA only applies to cases that are processed in court, while Article 23 (paragraph 1) states that it is permissible to bring the results of a peace agreement passed outside the court to obtain a peace deed. Even though this authority has not become the authority of the court.

Keywords: Peace Verdict, PERMA, Makassar District Court

INTRODUCTION

Theoretically, it is quite appropriate if there is still a view that in a state of law (*rechstaaf*) that is subject to the corridors of the Rule of law, the position of the judiciary is considered as the executor of judicial power. The judiciary in this view has a role as a pressure valve for all violations of law and order in society, and is the last resort to seek truth and justice.

However, in practice, people who seek justice in the judiciary find the justice system inefficient. It is characterized by an ineffective resolution of a matter that can take up to decades. The long-winded judicial process in the circle of legal remedies on the part of the plaintiff and defendant seems endless. Starting from appeal, cassation, and judicial review. Even if there has been a permanent judgment, the execution of the judgment will face *verzet* efforts in the form of *verzet* parties and *derden verzet*.

This reality makes the justice-seeking community yearn for a judicial system that can process cases quickly, cost-effectively, and has permanent and binding legal decisions. As well as allowing the losing party not to bear large losses.

Until now, the judiciary in any country in the world, has not been able to create an effective and efficient justice system. Designing such a longed-for justice system is not easy. In the design process, many aspects collide with each other.

Various criticisms have been directed at the existence and performance of these criticisms have come to the fore, especially after the 1980 era. Such global criticism generally boils down to some of the same things and indicates that the judiciary should work to improve performance and the existing justice system. These criticisms include:

1. Slow Dispute Resolution
2. Expensive Case Fees
3. The Court is not responsive
4. Court Ruling Does Not Solve the Problem
5. Confusing Court Verdicts

In response to these criticisms, efforts have been made to make the justice system run much more effectively. Several countries in the world have been working on designing more effective systems and some of them have put them into practice. These judicial methods include integrating management systems in the judiciary, limiting cases that can be cassated, and methods of merging courts with arbitration. However, although various judicial systems and methods are designed with the intention and purpose of creating a more effective judiciary, until now the practice of these systems has not produced maximum results. Justice-seeking communities do not feel better benefits. Due to the ineffectiveness of the judiciary, settlement of disputes through peace soon came to the fore. Dispute resolution through this avenue is seen as much more effective. At this time, various ways of peaceful dispute resolution have developed, especially dispute resolution outside the court.

In Indonesia, the dream of an ideal judicial system is increasingly urgent to be implemented considering that in the socio-cultural system of Indonesian society which is covered by the customary law system, various disputes that occur are always sought to be resolved familially, peacefully in order to maintain family relations, as well as social relations between the parties to the dispute. Nevertheless, Indonesian society, which consists of various ethnic groups, has a distinctive order in looking at various things, including their attitude in solving a case. The characteristics of each society with different cultures certainly influence their views in deciding cases, even when the case is handed over to the state through court institutions or institutions outside the judiciary, all of which are oriented towards the characteristics of modern community dispute resolution, not in the realm of dispute resolution in the customary law system.

Various forms of dispute resolution both through the judiciary and outside the court, with various terms such as; mediation, negotiation, facilitation, conciliation, expert determination, arbitration, adjudication, and mini trial. This term has limitations on differences and similarities in the process of resolving disputes through peaceful means.

1. Mediation
2. Negotiation
3. Facilitation
4. Conciliation
5. Expert Determination

6. Arbitration
7. Adjudication
8. Mini Trial

Although dispute resolution through peace is more popular outside the court, dispute resolution by peaceful means can also be carried out within the scope of the judiciary in article 130 HIR and article 154 RBG mentioned efforts to resolve disputes through peaceful means before the judicial hearing proceeded to the next stage.

Article 130 paragraph (1) of HIR reads:

"If on that appointed day both parties come, then the district court with the help of the chairman tries to reconcile them."

The above provisions indicate that the civil justice system requires settlement of disputes through peace, even before the ADR (Alternative dispute Resolution) system or alternative dispute resolution (outside the court) is known and popular today. Dispute resolution through judicial channels is currently regulated in PERMA (Supreme Court Regulation) No. 1 of 2008 concerning Mediation Procedures in Court.

In resolving disputes through this peaceful way, the litigants complete the agreement themselves, with or without the help of a third party. After that, the results of the agreement are set forth in the form of a peace decision. If such an agreement is reached, it doesn't mean that justice seekers can avoid the problems of an inefficient and effective judiciary. Because, in the settlement of this dispute, the results of the agreement of the parties as stated in the peace decision, have the same quality as the court decision with permanent legal force, so that the determination of the agreement of the parties listed in the peace decision has executory power and this provision cannot be appealed.

In practice in the field, it is still rare to find judges who succeed in making the parties to disputes in civil cases agree to make peace. In the pre-research that the author conducted at the Makassar Class 1 District Court and the Makassar Religious Court, since PERMA No. 1 of 2008 was enacted, the author has seen a number of peace rulings produced to end civil case disputes. Therefore, this study will discuss the effectiveness of the implementation of PERMA No. 1 of 2008 in the Makassar District Court after the regulation is established.

METHOD

The approach used in this study is sociological juridical, namely by studying various legal provisions relating to the effectiveness of the implementation of peace deed decisions in civil case disputes according to PERMA No. 1 of 2008 as the latest regulation governing the Mediation Process in District Courts and Religious Courts, located in Makassar City.

RESULTS AND DISCUSSION

A. Legal Effectiveness of Peace Deed Decisions in Civil Case Disputes According to PERMA No. 1 of 2008

1. Peace Agreement and Peace Deed

In the process of mediation in court, all agreements between the parties must be stated in written form. This is outlined in Article 130 HIR paragraph (2):

Peace reached before a court or judge if agreed by both parties, it is made in the form of a peace deed that applies as a verdict or court decision that has obtained legal force (shah) and is still mentioned inkraht and gewijsde.

In Article 17 (paragraph 1) of PERMA:

"If mediation results in a peace agreement, the parties with the help of the mediator shall formulate in writing an agreement reached and signed by the parties and the mediator."

The agreed material is hereinafter referred to as the peace agreement. This agreement, by the mediator is first checked. Because, even if agreed by the parties, the mediator must pay attention to the possibility of an agreement that is contrary to law or that cannot be implemented or that contains bad faith (Article 17, Paragraph 3).

After the material agreement by the mediator is considered appropriate, only then do the parties and the mediator sign the peace agreement. After that, the peace agreement is then faced again with the judge who previously handled the parties' cases. To the judge, the peace agreement was shown to be later strengthened into a peace deed.

Article 17 (paragraph 5) states:

"The parties can put forward a peace agreement. To the judge to be strengthened in the form of a peace deed."

The above paragraph implies that a peace agreement that has been made in writing by the parties does not have to be submitted to a judge for a peace deed to be made.

Article 1 paragraph (2) and paragraph (3) of Perma states:

"A peace deed is a deed that contains the contents of the peace agreement and the judge's decision upholding the peace agreement which is not subject to ordinary or extraordinary legal remedies. A peace agreement is a document containing the terms agreed upon by the parties in order to conclude a dispute that is the result of a peace effort with the assistance of one or more mediators under this rule."

Based on the definition above, and based on the results of the research that the author conducted, a peace agreement and a peace deed are two agreements of different parties.

One of the mediators at the Makassar District Court, Jan Manoppo, said there were at least two differences between the peace agreement and the peace deed

- 1) A peace agreement is an agreement signed by the parties or the legal representatives of the parties and the mediator, while the peace deed is signed by the parties or the legal representatives of the parties and the judge handling the case,
- 2) A peace agreement is the first step before the next step is a peace deed legally ratified by a judge. This means that the peace agreement is material for making a peace deed. A peace deed cannot be made without a peace agreement.

Still according to Jan Manoppo, in a peace agreement, if both parties do not want to make a peace deed signed by a judge, then the parties to the peace agreement must contain a clause revoking the lawsuit and / or a clause stating that the case has been completed.

Meanwhile, according to one of the mediators at the Makassar Religious Court, Syahidal, the Makassar Religious Court applies two systems of agreement. That is, the parties may agree on a treaty agreement up to the stage of a peace agreement only. Conditionally, the peace agreement

includes a clause stating the withdrawal of the lawsuit, or a clause stating that the case has been completed. This is in accordance with Article 17 paragraph (6) of Perma No. 1 of 2008:

"If the parties do not want the peace agreement to be strengthened in the form of a peace deed, the peace agreement must contain a revocation clause and/or a clause stating that the case has been completed."

And according to Syahidal, if the parties want to make a peace deed, then the peace agreement that has been signed by the parties and the mediator, then brought before the panel of judges who handle the parties' cases to be ratified into a peace deed decision. In the research that the author conducted, litigants generally only carry out the stages of agreement agreements until the first stage, which is only to make a peace agreement for the plaintiff to withdraw the lawsuit.

But another mediator at the Makassar Religious Court, Saribanna, said almost all cases only reached the stage of a peace agreement because the cases resolved were generally family approach cases.

If the peace agreement is then submitted to a judge for a peace deed, then a clause indicating that the case has been completed and cannot be refiled does not have to be included.

According to one of the mediator judges in charge of the Makassar District court, Mustari, this is not a problem, because the peace deed that has been passed before the judge with the articles contained in it is already a clue that the peace indicates a peace agreement that cuts off all possibilities for disputes again.

According to Jan Manoppo, in Makassar District Court, the parties are obliged to carry out the two stages of mediation. If at the Makassar Religious Court, the agreement decision can be completed until the mediation stage in the form of signing a peace agreement by the parties, then at the Makassar Religious Court, the mediation stage does not only reach the stage of a peace agreement, but must be brought before the panel judge who handles the case to make a peace deed. According to mediator Wayan Karya, this is because the cases resolved are generally illegal acts, in the form of debt receivables and land disputes. So a firmer agreement is needed to bind the rights and obligations of the parties.

Based on the explanation above, it can be seen that at the Makassar Religious Court, a peace agreement can be done in two ways, namely it can only arrive at a peace agreement without the need to make a peace deed before a judge. On condition that the ongoing lawsuit be withdrawn. Or continue the peace agreement to be ratified before peace.

While at the Makassar District Court, it can be seen that the peace agreement is required to go through both stages of peace. So that in addition to the parties making a peace agreement signed by the mediator, the parties are required to ratify the agreement before a judge to issue what is called a peace deed.

2. Legal Effects Arising from the Results of the Peace Agreement and the Peace Act

In Article 23 Paragraph (3), it is stated that the conditions of a peace agreement can be strengthened into a peace deed, including:

- 1) In accordance with the will of the parties;
- 2) Not contrary to the law;
- 3) Do not harm third parties;

- 4) Executable;
- 5) And in good faith.

The above conditions mean that a peace agreement can be confirmed if it does not stumble on Article 14 Paragraph (2) and fulfills the five conditions according to Article 23 Paragraph (1)

If the consequences of Article 23 paragraph (3) mentioned above in the peace agreement can contain an agreement of the parties, then the validity of the agreement and the consequences of its cancellation will be subject to Article 132 of the Civil Code.

For the validity of an agreement, four conditions are required:

1. Agree Those who bind themselves;
2. Ability to make a parikatan;
3. A certain thing;
4. A lawful cause.

When the agreement is concluded, it is often not realized by one of the parties that it turns out that the agreement contains elements of nullity and harm to himself. Problems will arise when the cancellation is only known / realized after being strengthened into a peace deed. For example, the agreement has been based on the existence of *doang* (coercion), *dwaling* (mistake), and *bedrog* (fraud), while it was only realized by the other party after getting confirmation from the court.

Article 1 number 2 states that:

"A peace deed is a deed that contains the contents of the peace agreement and the judge's decision upholding the peace agreement which is not subject to ordinary or extraordinary legal remedies."

PERMA No. 1 of 2008 does not anticipate such things. It is possible that when submitted before the judge it appears that the agreement seems to qualify, but in fact the agreement contains an element of nullity and the judge has already confirmed the agreement into a peace deed.

So that legal certainty must be maintained, but justice must also not be ruled out and it would be unfair if the aggrieved party in the peace agreement could not demand justice. It is true, in Article 23 Paragraph (3) it is stated that a peace agreement must have good faith, but it is difficult to see a good faith arising from deception. As in general, good faith is reasonably suspected, and bad faith must be proven.

Of the several possibilities mentioned above, filing a new lawsuit regarding the cancellation of the peace agreement based on the provisions of Articles 1859, 1860, and 1861 of the Civil Code is the most likely alternative compared to filing a legal remedy that has been closed by the provisions of Article 1 number 2 of the PERMA.

As for the legal consequences arising from the implementation of the peace agreement and peace deed, and the legal consequences of not implementing the results of the peace agreement and peace deed by the parties.

1. The decision of the peace agreement and the peace deed shall be implemented

2. The verdict resulting from the peace agreement and the deed is not implemented.

CONCLUSION

The peace agreement and peace deed that have been agreed after the birth of Perma No. 1 of 2008 are more firm and effective than the peace deed made before this regulation was made, or based on the provisions of Perma No. 2 of 2003. Like the articles listed more fully, there is an article that states that they will not sue each other in the future. The legal consequence of the implementation of the peace agreement and the peace deed is the emergence of rights and obligations between the parties listed in the peace deed. Meanwhile, if the result of the agreement is not implemented, then the violation can be filed as a new case in court, and separate from the procedure that has been reached in the mediation process that resulted in the peace deed, before.

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