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DISPUTES SETTLEMENT OF BALI TRADITIONAL INHERITANCE THROUGH PEACE AGREEMENT

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Abstract

The inheritance and the division of inheritance that is felt to be unfair is often a source of dispute. The disputes that occur can sometimes be resolved by making a peace agreement between the disputing parties. The peace desired by the parties is, of course, expected to end disputes/conflict and to provide legal certainty among those in dispute. However, sometimes peace agreements that have been made between those in dispute are disputed again in court. This study aims to examine the settlement of Balinese traditional inheritance disputes through a binding peace agreement between the parties make it. The method used in this study is a normative legal research, using a statute approach and a case approach. The result of this study showed that the settlement of Balinese indigenous inheritance disputes through a binding peace agreement of the parties that make it if the peace agreement is made based on the validity of the agreement as stipulated in article 1320 of the Civil Code, based on good faith as the principles in the law of the agreement, and must be made in the form of a notary deed is in accordance with the provisions for conciliation in book III of the Civil Code.

Keywords: Bali Traditional; Inheritance Dispute Settlement; Peace Agreement

1. INTRODUCTION

The Balinese indigenous people always make peace in their concept of life, this is in accordance with the teachings of Hinduism that are embraced by the Balinese indigenous people on the island of Bali which is known as the island of the God. However, there are still disagreements, although it is understood that the importance of living in harmony and peace. Inheriting and inheritance in the distribution are often felt unfair, which is one of the bases for a dispute. In dispute resolution, it is carried out in various ways, including: deliberation to reach a consensus or by asking for a judge's decision. Even though the

inheritance disputes that occur have been made in the agreement/peace agreement between the disputing parties, sometimes among them are also violating it, whether it is a peace agreement made between the parties themselves or witnessed by the relevant village officials, or made with an authentic deed before a notary. Violation/unimplemented of a peace agreement that has been made in certain circumstances and is not adhered to between the parties, can result in the agreement no longer being useful for the parties and this also has an impact on the violation of the sense of justice, especially for parties with good intentions in that peace agreement. Thus, understanding and clarity are needed with regard to the settlement of disputes over

Balinese traditional inheritance through a peace agreement.

The peace agreement that has been made by the parties, whether that has been made orally or in writing, whether it is written under hand or with an authentic deed, is of course expected by the parties to provide legal certainty between those in dispute. The peace agreement is also expected by the parties in the future, beneficial to the parties and can provide justice between those in disputes and for the heirs and their future descendants, namely the existence of life serenity, peace and harmony between those who are having the disputes. However, if the peace agreement that has been made between them, has been made in writing and then can be disputed again, then the peace agreement can also be useless and violate the sense of justice of the parties who have made it in good faith. Of course, this will also raise doubts, both among the parties, in the community or by the state apparatus (in this case the judge) in deciding inheritance cases and in understanding the peace agreement itself. Disputes faced by everyone, of course, are expected to be resolved peacefully, with various ways to take it, among them by taking a peace agreement. However, not always the peace agreement that has been made between those in dispute is obeyed and made as a binding law for the disputing parties. Peace agreements that have been made by the parties are sometimes disputed again and even end in court. The similar study with this present study have been conducted previously by Cahyono, Iriyanto, & Sood (2019) that focused on the Settlement of Inheritance Dispute Through Non Litigation on Sumbawa Community Of West Nusa Tenggara Province. The result of this study showed that the settlement of inheritance disputes, generally through non-litigation efforts. This model refers to the principle of inter-family deliberation, or by mediation that involves a third party as a mediator. This model is beneficial for the parties because their secrecy is

guaranteed to protect, the procedures for settlement are fast, very simple, informal, and the costs are very cheap. So, the parties are more free to negotiate, and the results are peace (Win-win Solution), so that the relations of the parties will remain harmonious. Based on the problems as mentioned above, this study aims to examine the settlement of Balinese traditional inheritance disputes through a binding peace agreement between the parties make it.

2. METHOD

The type of research used in this research is normative legal research, using a statute approach and a case approach. Legal materials used in this research are primary and secondary legal materials. The steps taken are identifying the problem to determine the discussion, detailing the sub-subjects which are then used as the basis for collecting legal materials, processing and analyzing as well as also as a basis for making systematic research results so that they become a result of legal research.

3. DISCUSSION

Inheriting, inheritance and heirs can never be separated in the life of the Balinese indigenous people, because these three things are closely related. The relationship between heirs, inheritance and heirs is not limited to the relationship between inheritance, abandoned property, and inherited property, but more than that, that is to continue the purpose of inheritance in Hinduism and in Balinese traditional communities, namely: to carry on all rights and obligations left by the heir to the heirs. The right of the heir that is inherited to the heir is all property left by the heir and the heir's obligation is to continue/proceed the obligations left by the heir which includes the obligation to perform devotional service to the ancestors by praying devotional service, maintaining, caring for, protecting ancestral heritage objects, and the obligation to continue existing social

relations.

In Balinese customary society, the heir is a deceased person who leaves an inheritance, which is inherited by his heirs who will continue the control and ownership along with their obligations (Agung, n.d.). Inheritance (legacy) is property that (will) be passed on by the heir when he is still alive or after he dies, to be controlled or owned by the heirs according to the kinship and inheritance system applicable in the indigenous (religious) community concerned (Hadikusuma, 1991). The heirs are the purusa's suputra descendants, namely the male or female descendants who carry out their dharma as the purusa's descendants who continue the rights and obligations of the heir (Agung, n.d.). The inheritance left by the heir which is also known as the inheritance will be inherited by the purusa descendants (i.e. the descendants who continue and carry on the rights and obligations of the heir). The inheritance left by the heir is not only in the form of inheritance, but also obligations (swadharma) which must be continued and passed on by the heir. Thus, the inheritance left by the heir cannot be separated from the burden of obligations or swadharma as a heir or heir.

Inheritance as mentioned in Manawa Dharmasastra are as follows:

Stridhana Stridhana is what is given at the time of the marriage ceremony, what is given at the marriage parade, what is given as a sign of love and what is received from siblings, mother or father (Manawa Dharmasastra IX.194).

Such treasure as well as the gifts given to her from her husband will become derivative assets, even if she dies while her husband is still alive. (Manawa Dharmasastra IX.195).

Treasure obtained through learning only belong to those who receive them (including) such as gifts from friends, gifts of marriage (Manawa Dharmasastra IX.206).

What a brother can get by means of

work must be without going through a marriage relationship, such gain, which is obtained solely because of his own efforts, he does not need to share this gain except because of his own will to share it with his brother (Manawa Dharmasastra IX.208) (Agung, 2016).

The terms devisor, heir, and inheritance are familiar to Balinese indigenous peoples, and also the position of inheritance, devisors and heirs. Even though some Balinese indigenous people have understood who has the position as devisor or heir and what inheritance is, this does not avoid the occurrence of disputes between them. This occurs as a result of different understanding between those in dispute, as well as the existence of different views among the Balinese indigenous people themselves, as well as among the judges who decide cases regarding the inheritance dispute in question. So these conditions cause disputes between them the heirs and/or other parties directly involved in matters of inheritance and also requires quite a long time to resolve.

One of the factors causing the length / long time to settle disputes over traditional Balinese inheritance includes the difficulty of reaching a peace agreement, due to differences in understanding that occur between the heirs themselves, among the village apparatus (when involving village officials in dispute resolution), among officials. peace (if it involves a conciliator) and even among judges who decide on inheritance cases in court when the inheritance dispute reaches the court level. In every dispute that occurs, there is usually an effort from the parties or the closest family to try to resolve disputes that occur between them only and sometimes even the apparatus and conciliator are involved in or involve themselves in the settlement of inheritance disputes.

All efforts to resolve a dispute over Balinese traditional inheritance, whether a dispute that is experienced by themselves, a dispute faced by relatives, or by

members of the community is having a good purpose. The method of settlement at this first level (deliberation to reach a consensus between the parties) is expected to be able to resolve the dispute properly, for example: the parties confer/deliberate/negotiate. If the settlement by means of negotiation is not able to complete/produce a peace agreement, sometimes a step/effort is taken to appoint someone to mediate (as the mediator). For example: asking for help from the oldest or oldest family members, asking for help from people who are respected, or even asking for help from the related traditional village officials (the head of indigenous village, head of state village kelian dinas or local village heads).

If the peace made by those who disputed by negotiating or through mediation can be resolved properly and is able to produce a written peace agreement, then the agreement will usually be used as evidence by the parties that the peace agreement has been reached. Regarding the peace that has been reached by means of an under-hand agreement, and the parties who intend to restore their inheritance rights in the peace to their respective names, the evidence of underhand peace is not sufficient to be used as a basis for the process of ending the dispute finally, but they need stronger evidence than just an underhanded peace agreement that they have made and that has been agreed, namely in the form of a peace agreement in the form of a peace agreement with a notary deed. A peace agreement made before a notary (notarial peace agreement deed) is expected to be able to bind the parties, both morally and legally, because the agreement that has been made before a notary with an authentic deed cannot be countered or ignored by the parties without admitting its existence, but otherwise it must be obeyed, because the agreement has the same power as a judge's decision which cannot be revoked.

When a peace agreement made by the parties is under their hands, and respected

by the parties and their descendants as a form of moral responsibility and as a law between them, then this can also run without the need to make another form, namely a peace agreement in form of notarial deed. However, no one is able to guarantee the continuity of such a good situation, because after all underhanded agreements as their nature do have weaknesses in terms of proving if one day the parties or their heirs and even third parties dispute again for this matter.

A peace agreement that is made as an agreement in general must meet the terms of the legality of the agreement and the fulfillment of the principles of an agreement. The terms of the validity of the agreement (as stipulated in Article 1320 Book III of the Civil Code) have 4 conditions, namely:

1. Their agreement which bind them
2. The ability to make an engagement
3. A certain thing
4. A cause that is lawful

The principles of a covenant are:

1. The principle of freedom of contract (as stipulated in Article 1338 paragraph 1 of the Civil Code),
2. The principle of consensualism (as stipulated in Article 1320 paragraph 1 of the Civil Code),
3. The principle of legal certainty / *pacta sunt servanda*, (as stipulated in Article 1338 paragraph 1 of the Civil Code),
4. The principle of good faith (as stipulated in article 1338 paragraph 3 of the Civil Code),
5. The principle of personality (as stipulated in article 1315 and article 1340 of the Civil Code).

The contents of the peace agreement made by the parties should not cause various interpretations that can lead to conflict/disputes for the parties. As has been stipulated in the Indonesian Civil Code, that in making an agreement or covenant, interpretation is not allowed

other than what should be according to the regulations stipulated for that purpose. With regard to the interpretation of an agreement, it is emphasized that, Regarding the interpretation of the agreement, it must be in accordance with the provisions in Article 1342 - Article 1351 of the Civil Code, namely:

if the words of a covenant are clear, it is not permissible to deviate from them by way of interpretation.

if the words of an agreement can be given various interpretations, then it is better to investigate the intentions of the two parties who made the agreement, rather than being held firmly by the meaning of the words according to the letters.

if a promise can be given two meanings, then that promise must be understood in terms of the meaning which enables the promise to be carried out, not in the sense that does not enable the promise to be carried out.

If the word can be given two kinds of meanings, then the meaning that is the most appropriate to the nature of the agreement must be chosen.

An agreement which has a dubious meaning, must be interpreted according to domestic customs or at the place where the agreement is made.

The terms which are always agreed upon according to custom, must be considered as having entered into the agreement, even though it is not expressly stated in the agreement.

All promises made in one covenant must be interpreted in relation to each other, each promise must be interpreted in relation to the entire covenant.

If there is doubt, an agreement must be interpreted for the loss of the person who has asked for an agreement on a matter and for the benefit of the person who has committed himself to that agreement.

No matter how broad the words are used to compile an agreement, the

agreement only includes things that both parties clearly intended when making the agreement.

If someone in an agreement states something to explain the engagement, this cannot be assumed that he wants to reduce or limit the strength of the agreement according to law, in the matters that are not stated in the agreement.

Regarding the provisions on the validity of an agreement, the principles of an agreement, and how to interpret an agreement, in making an agreement/covenant, in this case a peace agreement, must comply with these provisions and the provisions of peace as referred to mandated in book III Chapter XVIII of the Civil Code (BW) on peace. Disputing parties and related officials must also comply with the provisions of peace, both in making a peace deed, as well as for judges in deciding a dispute, in this case a Balinese traditional inheritance dispute but what happens in the legal life of the community, and also in the judiciary where the judge is in control of the legal decisions that decided. In understanding the legal requirements of an agreement, the principles of an agreement, and how to interpret an agreement, in this case the peace agreement can be implemented and run properly both in public life and in every judge's verdict in a court, so that it can produce a verdict. which guarantees and provides legal certainty, can provide a sense of justice and bring benefits to the community.

In a dispute which was decided by the Gianyar District Court Verdict, with Verdict Number: 54 / Pdt.G / 1999 / PN.Gir, dated May 10, 2000, in the appeal level with the Denpasar High Court Verdict with Verdict Number: 66 / PDT / 2000 /PT.DPS. dated July 5 2000), which at the level of the Supreme Court with the Supreme Court Verdict Number: 844 K / Pdt. / 2001, dated December 23 2003 and Verdict number: 272 PK / Pdt./2005, dated September 21 2006), originated from the existence of disputes regarding inheritance

and the existence of an adopted child in inheritance. The peace deed made by two disputing parties before the Notary Ketut Rames Iswara, Law Degree, with the Peace Deed Number 19, dated February 15, 1993, is one of the deeds used as evidence in court, that among those in dispute, a peace has been made to stop disputes between them in the case in Court with number 22 / Pdt.G / 1989 / PN.Gir. That the parties have reached an agreement and consensus to end peacefully all existing disputes between the two parties regarding adoption/adoption of sentana (children as descendent).

The peace deed No.19 as mentioned above was apparently unable to make one of the disputing parties reconcile as agreed in the peace deed. In fact, one of the parties to the peace deed actually filed a lawsuit against the dispute/conflict which he considered never resolved (as in the Verdict Number: 54 / Pdt.G / 1999 / PN.Gir, dated 10 May 2000 mentioned above), even though it had been agreed to terminate the dispute with a peace deed made with a notary deed as mentioned above. After the lawsuit was submitted to the court, with the Gianyar District Court Verdict, the Supreme Court Verdict in Cassation and the Supreme Court Judgment in Reconsideration as mentioned above, it turned out that in legal considerations it did not consider the existence of the peace deed perfectly, as well as in its decision, so that the adoption of children as stated in the verdict is null and void or canceled with all the legal consequences.

On the contrary, in the decision of the High Court as mentioned above, the peace deed becomes a legal consideration in the judge's verdict. As for the consideration, it states that "because the adoption of the child is legal according to law and is connected with evidence T7 (notarial deed No. 19 dated 15 February 1993 from Notary Ketut Rames Iswara, Law Degree.) That the plaintiffs in the conference/defendants in the counter/appeal

acknowledging the adoption of the child of the plaintiff / appealed party will bind itself to maintaining and preserve the status of the adoption of the child with all the consequences and responsibilities in order to uphold the sense of kinship for the wholeness and continuity of the adoption of the child forever, therefore the High Court is of the opinion that the plaintiffs in the conference/the defendant in the counter/appeal especially the defendants 2 to 9, the appeal has no reason to file a lawsuit against the invalidity of adoption". Thus, at the Court of Appeal/Appeal level it was decided that the adoption of the child was legal so that the adopted child was the heir of the deceased.

Regarding the court verdict as mentioned above, and based on the researcher's study that: the consideration of the District Court judge, the Supreme Court's consideration in the Cassation and the Supreme Court's consideration in reconsideration, does not reflect a sense of justice, does not see legal facts or evidence that appears in the trial (in this case the peace deed that has been made with the notary deed as mentioned above) and also the verdict as mentioned above contains legal flaws, because it does not consider the answer from the witness (notary as the official who made the peace deed), which in his statement has stated that the peace deed has been signed by the parties as stated in the peace deed. Thus, the decision as mentioned above does not fulfill a sense of justice, does not provide legal certainty and the decision cannot provide benefits as the goal of peace itself. If it is examined more deeply that an agreement/covenant made legally must be valid as a law for those who make it, as well as other parties including judges, must respect the agreement/covenant/ that has been made by the parties, because the agreement is valid. as law. With the fulfillment of the legal conditions of a peace agreement made, there is no reason in whatsoever to state that the peace deed is not binding on those who made it, moreover to other

parties who by law must respect it.

In the peace deed made by the parties as mentioned above, the Judge's Verdict at the Gianyar District Court level, the Judge's Verdict at the Supreme Court level in Cassation and the Supreme Court Verdict in Reconsideration as mentioned above ignores the existence of the peace deed without considering the provisions regarding the validity of a peace. made by the parties as mentioned above. If the provisions regarding the legal conditions of a peace are not fulfilled as required for the validity of a peace as mentioned above, it is natural that the judge's verdict above in his decision does not consider or even neglects or cancels the peace deed made by the parties. On the contrary, if the peace deed that has been drawn up has met the requirements for the validity of the peace as required in Article 1320 Book III of the Civil Code, then the judge in his consideration should mention this and be taken into consideration in his decision so that the decision reflects a sense of justice, provides certainty. and beneficial, both for litigants and for the community in the future, when the decision is used as a basis by the next judge, in deciding on similar cases. However, the case is different with the judge's verdict at the high court level as mentioned above. The considerations and verdict of the Denpasar High Court have reflected a sense of justice, certainty/provide legal certainty and this decision provides benefits in the development of a better future law. The judge in his decision has applied the law and has seen legal facts or evidence that appears in the trial, has considered the answer from the witness (Notary) where the peace deed was drawn up. The decision of the judge at the appellate level takes into account the provisions governing the legal terms of peace as stipulated in Article 1320 Book III of the Civil Code, so that in legal considerations consider the existence of the peace deed which is used as the basis for the decision, so that the decision can provide a justice, certainty and usefulness, especially for the

parties in a case and also for the community who seek justice when one day a case/dispute, the judge who decides to make this decision as a reference/jurisdiction. Likewise, no one has the right to interpret the contents of the agreement or in this case the peace agreement that has been made by the parties.

Inheritance dispute as stated in the Denpasar District Court Verdict Number 273 / PDT.G / 2008 / PN.Dps, dated November 6, 2008, which was strengthened by the Denpasar High Court Verdict with Verdict Number: 74 / PDT / 2009 / PT.DPS, daVerdict Decision Number: 1331 K / Pdt / 2010, dated September 30, 2010 and in Reconsideration with Supreme Court Verdict Number 603 PK / Pdt / 2012, dated December 24, 2013, previously among the disputing parties have made a peace, with the Peace Deed drawn up before the Notary Anak Agung Ngurah Manik Danendra, SH with the Peace deed Number: 2 dated June 13, 2007. In the peace deed, it was stated that between the two parties there were disputes and crime cases, where the first party (Mrs. Ni Made Lely Nawaksari) has reported the second party with a police report No.Pol: STPL / 137 / IV / 2007 / DIT Reskrim Polda Bali dated on April 16, 2007. The disputes and cases mainly related to the legacy of the late Doktorandus I Made Madia, who was the father of the first party and the other second party, and was the husband of Ni Made Sudiasih (the second party). The two disputing parties have agreed and covenanted to end the dispute over the police report mentioned above. So the point is that, both parties have agreed and agreed to end the dispute and declare peace. The parties will not file demands and/suit in any form regarding the disputes and disputes mentioned above if everything that will be agreed upon by the parties in a separate agreement, namely "Deed of Inheritance Distribution Agreement". The Deed of the Inheritance Distribution Agreement which was intended as such, has also been

drawn up in the presence of Notary Anak Agung Ngurah Manik Danendra, SH with the Deed of Inheritance Distribution Agreement Number: 2 dated June 13, 2007.

In the Verdict of the Denpasar District Court, Number: 273 / PDT.G / 2008 / PN.Dps dated November 6, 2008, (which is strengthened by the Verdict of the Denpasar High Court Number: 74/ PDT/2009/PT.DPS, dated August 18, 2009), in its legal considerations it states that: "...Defendant 1 was not proven to be the heir of the deceased, so that he is not entitled to make a letter or deed stating that he is entitled to inheritance property, either partially or wholly, so that the agreement deed or peace deed concerning the right to inheritance of the deceased, which states that Defendant 1 is the heir/entitled person is disregarded, because it does not support the evidence. According to the panel, the Peace Deed made before a {ublic Notary should be declared as having no legal force and must be canceled, because the peace deed was made because the plaintiff was under pressure at that time, due to a police report that the plaintiff was accused of making or submitting false information. The material for the peace was related to the inheritance/heir of the deceased, while Defendant 1 was not the heir, so that the Panel was of the opinion that the peace deed should be canceled. This is because Plaintiff 1 is not in the status of a purusa or is not an heir." Based on the considerations as mentioned above, the Denpasar District Court decided that the Peace deed Number: 2 dated June 13, 2007 which was drawn up before Notary Anak Agung Ngurah Manik Danendra, SH was declared to have no legal force and must be canceled. On the other hand, the Supreme Court Verdict in Cassation Number: 1331K/Pdt/2010 dated 30 September 2010 and in Reconsideration Number: 603 PK / Pdt / 2012 dated 24 December 2013 as mentioned above, in its legal considerations it states that, *Yudex facti* incorrectly applying the law of proof

with considerations that:

The plaintiff's argument in their lawsuit has been denied by Defendants I and II, that Defendants I and II are married with the status of "mepanak together (bring their onw chikdren)" and both have the status of purusa (heirs) in their respective homes, so that they are entitled to property. legacy of the deceased,

The defendant's inheritance has been followed up with an inheritance distribution agreement no. 03 and peace agreement no. 02,

Whereas the inheritance distribution agreement no. 03 and peace agreement no. 02, is valid which was made based on the agreement before the Public Notary and the plaintiff (the Reconvension Defendant), cannot prove that the agreements were made based on pressure.

Based on the aforementioned considerations, the Supreme Court in Cassation decided to revoke the Denpasar High Court's Verdict which strengthened the Denpasar District Court's Verdict, and stated that the Peace Deed No. 02 is valid and binds the parties who made it and must comply with all contents of the deed. the peace.

Based on the verdict as mentioned above, the researcher found that if in Balinese indigenous peoples there is an inheritance dispute, and mediation efforts have been made and are unsuccessful, so that the final effort is taken in the form of dispute resolution in court to obtain legal certainty. If the effort to resolve a dispute chooses the litigation/through court, of course, the authority to decide inheritance disputes is entirely in the hands of the judge. This authority is regulated in the Act of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. Thus, judges in deciding a case should and must be obliged based on the applicable law. In assessing a peace deed, where the deed is one of the evidences presented to him (the judge) that between the disputing parties there has been a peace

regarding inheritance disputes, the judge should respect the peace deed that has been drawn up by the parties. After all, the peace deed made by the parties binds the parties who made it as well as in the case of Law, for other parties, in this case the judge decides a case.

The peace deed that is made is binding on the parties who made it, by fulfilling the legal conditions of peace. As required in article 1320 Book III of the Civil Code. However, if we look closely at the decision from the High Court which strengthens the Decision of the Denpasar District Court, Number: 273/PDT.G/2008/PN, which in its legal consideration states that

The peace deed, set aside because it does not support proof,

The peace deed, is declared to have no legal force and must be canceled,

The peace deed was drawn up because the plaintiff at that time was in a state of distress, due to a police report that the plaintiff was accused of making or submitting false information.

The material of the peace is related to the inheritance/heir of the deceased, while Defendant 1 is not the heir, so the peace deed deserves to be canceled. This is because Plaintiff 1 is not in the status of a purusa or is not an heir.

Unlike the case with the Supreme Court Verdict as mentioned above, in its legal considerations it states that:

1. Inheritance distribution agreement no. 03 and peace agreement no. 02, is valid which is made based on the agreement before the notary and the plaintiff (the reconstruction defendant),

2. cannot prove that the agreements (the agreement on the distribution of inheritance and the peace agreement) were made based on pressure.

Thus, the *Judex factie* Verdict of the Denpasar High Court which has strengthened the Verdict of the of Denpasar District Court which decides :

does not consider the existing formal juridical (procedural law) aspects,

does not consider the applicable material legal provisions,

do not see legal facts or evidence that appears in the trial,

contains a legal flaw, because it did not consider the answer from the co-defendant 1 (Notary), who in his letter stated that the process of making the peace deed had been explained correctly and clearly, and at that time the plaintiff was accompanied by his legal advisor and siblings. Thus, these agreements were not made based on pressure.

For the sake of creating benefit, legal certainty and justice in society, the settlement of Balinese traditional inheritance disputes through a peace agreement must be made and fulfill the following conditions, so that the peace agreement made is binding on the parties who made it, namely:

A person must be authorized and have the authority to enter into a peace agreement, so that the legal conditions of the agreement are fulfilled, as required in Article 1320 of the Indonesian Civil Code, namely:

- agreed those who bind themselves
- the ability to make an engagement
- a certain thing
- a cause that is lawful

Fulfillment of the principles in the covenant.

The principle of this agreement is contained in article 1338 paragraph (1) of the Civil Code, namely the principle of freedom of contract, the principle of consensualism and the principle of *pacta sunt servanda*. Apart from these three principles, the principles of good faith and personality principles must also be fulfilled.

Peace made by the parties (in relation to disputes that are the cause of peace), is only limited to the matters agreed in the peace agreement.

The peace made by the parties, only ends the disputes contained in the peace agreement.

The peace made by the parties, has the power of a judge at the final level.

Settlements that have been made by the parties, cannot be refuted on the grounds that there was an error regarding the law or on the grounds that one of the parties was disadvantaged.

The peace must be made with an authentic deed before a notary as the official authorized to make it, based on the wishes of the parties.

Thus, on the contrary, if the settlement of Balinese traditional inheritance disputes through a peace agreement is not made and does not fulfill the conditions as mentioned above, the peace agreement that is made is not binding on the parties who made it. A settlement that has been made by the parties can be canceled, if:

there has been an error regarding the person concerned or regarding the subject of the dispute

errors regarding the sit of the case.

if fraud or coercion has been committed

on the basis of documents which were later declared to be false

a settlement regarding a dispute that has been ended with a judge's verdict which has definite legal force, but it is not known by the parties or one of them.

Starting from the two cases of inheritance disputes as decided by the court judge as mentioned above, that between/among the judges there are still differences in interpretation regarding the existence of the peace deed that has been drawn up and used as evidence by the disputing parties. Justice, certainty and benefit of court decisions can be obtained by the public, when the judge as a state apparatus in a court has a good understanding. Judges in their decisions must and must explore, follow and understand the legal values and the sense of justice that live in society (Agung, n.d.). This obligation of judges is mandated by Article 5 paragraph 1 of Law of the Republic of Indonesia No.48 of 2009 concerning Judicial Power, which states

that: "judges and constitutional judges are obliged to explore, follow, and understand legal values and the sense of justice that lives in Public." "The word dig assumes that the law exists, but is hidden, so that it still has to be dug up to the surface. So the law exists, but it still has to be explored, searched for and found, not absent, then created." (Mertokusumo, 2004) For this reason, the role of judges is very important for the state and for people who seek justice and legal certainty so that dispute resolution before the court is able to accommodate these interests, so that the judge's decision is beneficial in the life of law for all the people. Therefore, for judges in using their powers as stipulated in article 5 paragraph 1 above, in deciding cases of disputes over Balinese traditional inheritance through a peace agreement, they must pay close attention to the provisions contained in :

Article 1338 of the Civil Code, namely "all agreements which are legally made are valid as laws for those who make them", herein contains a principle of freedom of contract, namely that everyone is free to make any agreement, including a peace agreement provided that the agreement is made lawful and in accordance with the provisions of the applicable laws.

The terms of the validity of the agreement are as stipulated in Article 1320 of the Civil Code

Provisions regarding the interpretation of the agreement as stipulated in article 1342 to article 1351 of the Civil Code.

Provisions regarding peace as stipulated in article 1851 to article 1864 of Civil Code.

Notary as stipulated in article 1 paragraph 1 of Act of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Act Number 30 of 2004 concerning the Position of Notary, is a public official who is authorized to make authentic deeds and has other powers as referred to in the Law. -This Law or based on other Laws. Notary as a public official who has the authority as mentioned above, including making a peace

agreement deed at the will of the parties, must act trustworthy, honestly, thoroughly, independently, and safeguard the interests of the parties involved in legal actions as required in article 16. paragraph (1) letter of Act of Notary Position. Apart from what is stated above, in making deeds according to the authority. For a notary who is exercising his authority as mandated in the Act of Position of Notary, the deed it makes as a legal product functions properly, namely providing legal certainty for the parties and as perfect evidence.

For the public in general and for disputing communities who want to end a dispute (conflict) by making a peace deed, where the purpose of making the deed is as a means of evidence for them about peace made to end a dispute, then they must understand the peace deed authentic which is made before a notary is the right choice for that and does not make the peace deed under hand, because the power of proof of the peace deed under the hand is imperfect and does not comply with the provisions regarding the terms of the peace deed, namely the peace deed must be made authentically with a notary deed. It is also necessary to pay attention to the prohibitions in a peace agreement. If there is no violation of the prohibition, all parties should believe in and obey the law of the peace agreement that has been made.

4. CONCLUSION

Settlement of Balinese indigenous inheritance disputes through a binding peace agreement of the parties that make it if the peace agreement is made based on the validity of the agreement as stipulated in article 1320 of the Civil Code, based on good faith as the principles in the law of the agreement, and must be made in the form of a notary deed is in accordance with the provisions for conciliation in book III of the Civil Code. Thus, it can be suggested that it is important to have better understanding and in accordance with the applicable

provisions both among the community, legal practitioners (including: notaries, lawyers), judges and all elements of the nation, that how a peace agreement should be made, which is binding on those who make it, so that conflicts/disputes can be avoided in the future and the peace agreement that has been made can be used as perfect evidence.

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