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The Legal Standing of Reconciliation Agreement That Was Made After the Issuance of Court Decision Concerning Certificate of Reconciliation

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Abstract: As individuals, each human being still has differences, the differences in interests can lead to disputes. If there is no common ground in a dispute, the dispute can be resolved by Judicial Institutions (litigation). However, the litigation process has several disadvantages, including the settlement of the dispute is slow, case fees are expensive, the court is unresponsive, as well as the ability of judges that are generalists. Therefore, it is needed peacefully alternative disputes resolution that is fast and easy in its process namely through the resolution of disputes outside the Judicial Institutions. The settlement of the dispute is resolved by making certificate of reconciliation, if the parties to the dispute have reached mutual agreement that is formulated in one certificate of reconciliation and then registers it to the court. The legal force of certificate of reconciliation is regulated in Article 1858 of the Civil Code (KUHPerdata) which concludes that the reconciliation between the parties has the same power as the judge's decision at the final stage. The certificate of reconciliation cannot also be debated or disputed again in the future because it is final and binding on the parties. Because it is in the form of a court decision that has permanent legal force, then the reconciliation decision has three powers like an ordinary decision, those are, binding force, power of evidence, and power of executorial. The legal consequences of an agreement that was not implemented by one of the parties or both parties who do not have good faith, then the legal consequences is that both parties must be subjected to sanctions in the form of fines in accordance with applicable laws. That if an agreement is not implemented by one of the parties, then no legal effort can be made, because in its principle, the certificate of reconciliation is made on the basis of resolving disputes. A decision / certificate of reconciliation that has been agreed and signed jointly by the parties to the dispute cannot be proposed for an appeal legal effort in accordance with Article 130 paragraph (3) of HIR.

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I. INTRODUCTION

Humans are originally born alone, as individual human beings interact with one another to maintain their lives. Aristotle mentions that human as "*zoon politicon*" which means that humans are destined as social creatures, so it is predestined to live in society. Humans as social beings cannot live in isolation from other humans, but must always live in groups, class, or harmony as a social unit. Because of the factor of the necessities of life, a feeling of helping, a sense of self-esteem, a desire to be obedient, to seek protection, and others because of the existence of interests.

As individuals, each human being still has differences, the differences in interests can lead to disputes so that humans are expected to maintain the order in living together. If not, it will cause conflict or dispute in the community. In everyday life, people often call it as "the case". Problems that become the case usually start from the existence of violation of rights, one party violates the rights of the other party. The party whose rights have been violated feels unacceptable, while those who violate the rights feel innocent or plead guilty but do not want to return the condition of the violated rights to normal. Not infrequently, it is also found that the parties to the case submit the settlement of the case that they face to the court. Although in theory it is said that in dispute resolution through litigation process, there is the principle of simple, fast and low cost. However, in reality, the litigation process is still felt to be very detrimental to the parties in the case so that the principle is still felt as mere slogan.

Based on various weaknesses inherent in the Judicial Institutions in the resolution of disputes, there are other ways to resolve disputes outside the judicial institutions. Although the legal dispute has been begun its trial in the court, the alternatives are still available to resolve the case peacefully both inside and outside the

court. One of the methods that can be taken is through mediation, because basically in a civil case trial process, the judge has an obligation to order the parties to the dispute to seek the reconciliation (*perdamaian*) through mediation first. If the mediation process is not pursued or a dispute is immediately examined and decided by a judge, the legal consequence is that the decision is null and void.

Dispute resolution in mediation is very much in accordance with the values that live in Indonesian society that still upholds customs and culture. Usually if a dispute arises then what is done first is the deliberation for consensus. This shows that reconciliation is an important thing to do in resolving a dispute. Therefore, the settlement of the case can be done with peace, which is also called with the term "*dading*". With regard to reconciliation itself, it has been regulated in Article 1851 of the Civil Code (KUHPerdata), which states that: Reconciliation is an agreement which contains that by giving, promising or holding goods, both parties end a case that is being examined by the court or prevent the emergence of a case if it is made in writing.

The settlement of cases through reconciliation will be far more effective and efficient, it even contains various benefits both substantially and psychologically. The reconciliation made by the parties has the same binding legal force as the judge's decision at the final level, both the cassation decision and judicial review, meaning that it is closed for legal efforts. In the implementation of reconciliation carried out through mediation, the Supreme Court Regulation No. 1 of 2016 concerning the Mediation Procedures in the Court has regulated about the procedures for conducting the reconciliation through that media. There is a mediation process carried out in the Court by using a mediator registered in the Court, as well as a mediation carried out outside the Court that is the will of the parties. In conducting the mediation outside the court, the parties can use both certified and non-certified mediators.

In Article 1 of the Supreme Court Regulation No. 1 of 2016 concerning the Mediation Procedures in the Court, Reconciliation Agreement is an agreement on the results of mediation in the form of a document that contains the provisions on dispute resolution that was signed by the parties and mediators. The mediator is obliged to ensure that the Reconciliation Agreement does not contain the provision that conflict with law, public order, and/or decency, are detrimental to third parties or cannot be implemented. Then, the parties must return to the Panel of Judges to present the results of the reconciliation agreement. When the trial the parties may request that the agreement be strengthened in the Certificate of Reconciliation.

Article 36 of the Supreme Court Regulation No. 1 of 2016 explains that parties with or without the assistance of a certified mediator who has successfully resolved disputes outside the court with a reconciliation agreement can submit the reconciliation agreement to the court that has authority to obtain certificate of reconciliation. Filing the lawsuit by attaching a reconciliation agreement and documents is as evidence that shows the legal relationship between the parties and the object of the dispute. The case examiner judge in front of the parties will only strengthen the Reconciliation Agreement to become Certificate of Reconciliation, which was stated by the case examiner judge in the trial that is open to the public no later than 14 (fourteen) days from the date when the lawsuit was registered. The copy of the certificate of reconciliation is obliged to be given to the parties on the same day as the recitation of the certificate of reconciliation.

In the reconciliation there are two terms that are often used namely Acte Van Dading and Acte Van Vergelijk. Retnowulan Sutantio uses the term *Acte Van Dading* for reconciliation, whereas Tresna uses the term *Acte Van Vergelijk*, to express the reconciliation in Article 130 HIR. The majority of the judges are more likely to use *Acte Van Dading* for certificate of reconciliation made by parties without/have not had the confirmation from the judge and *Acte Van Vergelijk* is a deed that has obtained confirmation from the judge.

Not all civil cases that are in process in the Court can be pushed by the Panel of Judges (*Majelis Hakim*) to conduct a reconciliation effort through mediation first. There are exceptions to cases that are mediated as contained in Article 4 paragraph (2) of the Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court as follows:

1. The Disputes which the deadline for completion of the examination at trial is determined including, as follows:
   a. disputes resolved through the Commercial Court procedures;
   b. disputes resolved through Industrial Relations Court procedures;
   c. objection to the decision of Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*/KPPU);
   d. objection to the decision of Consumer Dispute Settlement Body (BPSK);
   e. The application for cancellation of the arbitration decision;
   f. objection to the decision of the Information Commission;
   g. settlement of political party disputes;
   h. disputes that are resolved through the procedures of small claim court; and
   i. other disputes where the deadline for completion of the examination in the trial is determined in the provisions of the legislation;

2. The disputes where the examination is carried out without the presence of the plaintiff or defendant who has been properly summoned;
3. Counter claim (*rekonvensi*) and the inclusion of a third party in a case (*intervensi*);
4. Disputes concerning the prevention, rejection, cancellation and legalization of marriage;
5. The disputes that are submitted to the Court after trying out-of-court settlement through Mediation with the help of a Certified Mediator registered at the local Court but declared unsuccessful based on the statements signed by the Parties and Certified Mediators.

The Settlement of cases through reconciliation is far more effective and efficient even containing various benefits both substantially and psychologically. The reconciliation conducted by the parties has binding legal force which is the same as the judge's decision at the final level, both the cassation decision and the judicial review, meaning that it is closed for legal efforts. Even though the reconciliation has been reached and the decision of the reconciliation has been determined by the Court *(inkracht van gewijsde)*, but in its practice the implementation of the execution of court decisions faces the obstacles, which means it is not as easy as imagined.

In order to avoid expanding the discussion in this paper, the author limits the problems in this paper with the following identification:

1. How is the implementation of the decision of certificate of reconciliation that was made after the issuance of the court decision concerning the certificate of reconciliation *(akta perdamaian)*?
2. How is the legal standing of the reconciliation agreement that was made after the issuance of a court decision on the certificate of reconciliation?
3. How is the legal force of the reconciliation agreement that was made after the issuance of court decision on the certificate of reconciliation and how is the legal effort?

II. METHODS

The type of research used in this legal research is normative juridical legal research because this research was conducted to study about the application of the rules *(kaidah-kaidah)* or norms in positive law. This research is also called library research or document study, because this research will mostly be done through literature study or better known as studies on secondary data. From the juridical point of view, the study is based on the rules that apply and regulate about the legal consequences of the deed of peace that is unimplemented. The method of approach in this study is the statute approach *(pendekatan perundang-undangan).* The statute approach is usually used to discuss issues of conflict norms or *conflicten van normen*.

III. Result

A. Implementation of Certificate of Reconciliation Decision Made After the Issuance of the Court Decision.

Many judges are more likely to use *Acte Van Dading* for certificate of reconciliation made by the parties without / have not had the confirmation from the judge and *Acte Van Vergelijk* is a deed that has obtained confirmation *(pengukuhan)* from the judge. Reconciliation, in essence, can be made by the parties in front of or by the judge examining the case, also the reconciliation can be made by the parties outside the court and then is brought to the related court in order to get the confirmation *(pengukuhan)*.

From the description above it can be stated that reconciliation can be divided as follows:

1. Certificate of reconciliation made with the approval of the judge, where the deed was made by the parties in front of the judge or by the mediator or facilitator of the judge or that often referred as *Acte Van Vergelijk*.
2. Certificate of reconciliation without the judge's approval conducted by *Alternatif Penyelesaian Sengketa* (APS) or commonly referred as Alternative Dispute Resolution (ADR) can use *Acte Van Dading* or privately made deed.

The opinion of the judges of the Syar'iyah Court of Meulaboh regarding the legal force possessed by the certificate of reconciliation resulting from the mediation is in accordance with the law that has regulated about it. The judges use the legal basis to strengthen their opinion by mentioning the articles that regulate them, including: Article 1851 Civil Code *(KUHPerdata)* which states that reconciliation is an agreement in which both parties, by giving, promising or holding goods end a case that is dependent on or prevent the emergence of a case, Article 130 HIR paragraph 2 which states that if such peace can be achieved, then at the time of the trial a deed about it is made, in which both parties are sentenced to keep the promise which is made, which letter will has the power and will be carried out as an ordinary decision, and Supreme Court Regulation No. 1 of 2008, 1313 Civil Code *(KUHPerdata)* states that an agreement is an act in which one or more people bind themselves to one or more other people.

In Article 3 of the Supreme Court Regulation No. 1 of 2016 concerning Mediation Producers in the Court which states as follows: Every Judge, Mediator, Parties and / or attorney must follow the dispute

resolution procedure through Mediation. The case examiner judge in the consideration of the decision must mention that the case has been attempted for reconciliation through Mediation by mentioning the name of the Mediator. The case examiner judge did not command the parties to take Mediation process so that the parties who do not conduct Mediation have violated the provisions of the legislation that regulate about Mediation in the Court. If there is a violation of the provision, if a legal effort is submitted then the Court of Appeal (appellate court) or the Supreme Court with interlocutory decision commands the court of level I (first level court) to conduct the Mediation process.

The most important role of judges in handling a case is to seek the reconciliation among the disputing parties. Because the task is a task that is more important than the function of the judge who will give the final decision on a case that he handled in trial. The judge has the power to give decisions on the certificate of reconciliation made by the parties in front of the mediator when the agreement is formed. The certificate of reconciliation is made when the mediation has reached an agreement between the two parties and the certificate of reconciliation is also stated into a writing that is decided by the judge.

The reconciliation agreement has legal force that provides legal certainty for the parties to the dispute. Reconciliation agreement will have a binding legal force when it has become certificate of reconciliation through judge's decision in the court. The certificate of reconciliation must be registered to the court in order to obtain binding legal force and has legality in an agreement that has been made by both parties so that in the future there will be no problems that have been agreed by both parties and issued by the Court in the form of a Decision.

The reconciliation decision or certificate of reconciliation is requested the power to the panel of judges, the legal force on reconciliation agreement is the same as an ordinary agreement which only binds the parties because the agreement has not been requested for its power or a decision to the panel of judges, and when there are the problems again, it can still be submitted as a new case and it can not be executed. To become a certificate of reconciliation, the reconciliation agreement must be requested for its power to the panel of judges as mentioned earlier. If this agreement is still not in the form of the certificate of reconciliation, then the power is very weak, because the agreement is only limited to an agreement made by both parties without any supervision by the authorized institution in this matter.

The functions possessed by the certificate of reconciliation for the parties, one of which is as evidence of reconciliation and as a proof of the agreement that is valid and binding. The case that can be formed with certificate of reconciliation in this matter is the problem of sharing the joint property that has been agreed by both parties. However, the case of joint property itself is made in the certificate of reconciliation, if in the future there is a dispute again, the case can not be brought back to the court, from that provision, then this case of joint property when reaching an agreement, it is enough to simply revoke the case.

The legal consequence of the existence of the certificate of reconciliation is that the reconciliation decision that is in the form of the certificate of reconciliation has the same legal force as the court decision. The legal force binding on the parties is inherent in the reconciliation decision. The parties cannot cancel it unilaterally. The parties must be obliged to obey and fully implement the contents of that reconciliation decision.

The legal power of executorial is also inherent in reconciliation that is in the form of the certificate of reconciliation. Because in the judicial verdict *(amar putusan)* / the certificate of reconciliation contains *dictum condemnatoir* in the form of an order or punishment. It means that if one of the parties does not want to carry out the contents of the reconciliation agreement voluntarily, then the other party can submit a request for execution to the Court, so that the party that conduct the breach of agreement is forced to fulfill the contents of the reconciliation decision and if it's necessary the Court can request the assistance from public power (from the party of police).

Therefore, it can be known about the legal consequences arising from the existence of decision/the certificate of reconciliation that has permanent legal force as described above has been in accordance with the provisions stipulated in applicable laws and regulations, namely in accordance with Article 130 Paragraph (2) of HIR and Article 195 paragraph (1) of HIR. The legal consequence of the decision/certificate of reconciliation is that since it was agreed upon and the signing of the certificate of reconciliation, then it is valid as the law for the parties that made it, the parties must be obliged to fulfill and obey the contents of the reconciliation agreement contained in the certificate of reconciliation. Furthermore, the certificate of reconciliation with permanent legal force has the power of executorial.

Based on the description above, that if there is a problem in the future regarding the contents of the certificate of reconciliation that has been stated into the form of a Court Decision, then the Court through a registrar of the court or bailiff that was led by a judge can directly conduct the execution towards the contents of the certificate of reconciliation that is not implemented. This was done to pay attention to the values of humanity and justice.

B. The legal standing of the reconciliation agreement that was made after the issuance of a court decision.

The main legal basis for reconciliation in Indonesia is the basis of the state of Indonesian, that is Pancasila, in which in its philosophy, it is implied that the principle of dispute resolution is deliberation for consensus. This is also implied in the 1945 Constitution of the Republic of Indonesia. In addition, reconciliation is regulated in Book III of Civil Code Chapter XVII, starting from Article 1851 to Article 1864. Because Book III of the Civil Code (*KUHPerdata*) regulates agreement law, then the reconciliation as an agreement is subject to the general provisions of the agreement.

The peaceful settlement of disputes that is often carried out at the Sharia Court is the settlement through mediation. Definition of Mediation itself is derived from English language that means to resolve the dispute by the way of mediating. In the Supreme Court Regulation No. 1 of 2008, the definition of mediation is mentioned in article 1 point 7, namely Mediation is a way of resolving disputes through a negotiation process to obtain the agreement of the parties with the assistance of the mediator.

After the mediation process that reaches peace, a certificate of reconciliation is formed if the parties wish it to be made. The legal force of reconciliation agreement has been regulated in the Supreme Court Regulations, Civil Code, HIR/RBG, which has explained that on the legal force of the certificate of reconciliation or sanctions for the violating parties, there are not many parties who carry out the reconciliation *(perdamaian)* through mediation that reach the peace as stated in the certificate of reconciliation.

The certificate of reconciliation is an agreement between the two parties that has found a mutual agreement and in this case the two parties have determined a mutual agreement by presenting mediators who have been chosen by both parties so that it has permanent legal force and cannot be changed at any time. The certificate of reconciliation is in accordance with the principle of a simple court, fast and low cost court, because it cannot be requested for legal efforts, a simple one can be directly carried out by the court, with a low cost because there is no need for down payment costs in execution.

The certificate of reconciliation is an agreement between the two parties in which they request legal force assisted by the Mediator in accepting and carrying out the contents of the agreement that was agreed. The reconciliation decision has the executorial power as described in article 1858 of the Civil Code, Article 130 of HIR paragraph (2) Article 130 of HIR (3) as follows:

- Article 1858 of Civil Code: Among the related parties, reconciliation has power like a Judge's decision at the final stage. The reconciliation cannot be debated by the reason that there is a mistake about the law or by the reason that one of the parties was harmed.
- Article 130 paragraph (2) of HIR: If such reconciliation can be achieved, then at the time of the trial the deed about it is made, in which both parties are obliged to fulfill the agreement that was made, which letter will has the power and will be carried out as an ordinary decision.
- Article 130 paragraph (3) of HIR: Such decision cannot be appealed.

If the aforementioned articles are concluded, then the description is as follows:

1. The reconciliation decision is equated with a court decision that has obtained permanent legal force that attaches the legal force to the reconciliation decision in the law itself as can be seen above.
2. The legal efforts of appeal and cassation are closed against the reconciliation decision. In contrast to the reconciliation agreement in the form of the certificate of reconciliation made by the parties outside the court's intervention, against such the certificate of reconciliation the parties can still submit it as a lawsuit of the case. With this statement it is clear that the reconciliation decision is closed for the legal efforts of appeal and cassation.
3. Reconciliation decisions have the power of execution, in each decision or certificate of reconciliation is attached:
4. The binding legal force of a court decision that is in the form of a decision contains the legal truth for the parties in the dispute. If a lawsuit that is contentiosa in character has been imposed its decision by the court, then the decision has obtained permanent legal force, the decision becomes the legal truth for the parties in the dispute. At the same time, binding decision: the decision is binding on the parties in the dispute, on those who get the rights from them, and on their heirs.
5. The legal power of execution of the character or other principle contained in a court decision that is in the form of a decision is the power of executorial.

If in the decision contains the command (*amar*) that is *condemnatoir* in character. If the parties in the dispute have reached an agreement to make peace, then they can ask the panel of judges so that the reconciliation agreement that they have agreed upon can be stated in the certificate of reconciliation as outlined in the decision.

The reconciliation decision in the form of certificate of reconciliation is also attached into it the legal power of executorial. Because in the judicial verdict *(amar putusan)* / the certificate of reconciliation contains *dictum condemnatoir* that is in the form of order or punishment. It means that if one of the parties does not want to carry out the contents of the reconciliation agreement voluntarily, then the other party can submit the request for execution to the Court, so that the party who did the breach of agreement is forced to fulfill the contents of the reconciliation decision and if it's necessary the Court can request the assistance from public power (from the party of the police). Because the power of a reconciliation decision is the same as a court decision that has permanent legal force, then the reconciliation decision has three powers like an ordinary decision, namely binding force, power of evidence and the power of executorial. In every decision or authentic deed that has an executorial power, there are heads of decisions or deeds with the words "For the sake of justice based on the Almighty god". Authentic deeds that has the head like the verdict (decision) are regulated by the law, so only authentic deeds with the head "For the sake of justice based on the Almighty god" have the power of executorial.

Therefore, it can be known about the legal consequences arising from the existence of decision / the certificate of reconciliation that has permanent legal force as described above has been in accordance with the provisions stipulated in applicable laws and regulations, namely in accordance with Article 130 Paragraph (2) of HIR and Article 195 paragraph (1) of HIR. In essence, the legal consequence of the decision / the certificate of reconciliation is that since it was agreed upon and the signing of the certificate of reconciliation, then it is valid as the law for the parties that made it, the parties must be obliged to fulfill and obey the contents of the reconciliation agreement contained in the certificate of reconciliation. Furthermore, the certificate of reconciliation with permanent legal force has the power of executorial.

C. The legal force of the reconciliation agreement that was made after the issuance of court decision on the certificate of reconciliation and the legal effort.

The certificate of reconciliation is an agreement between the two parties that has found a mutual agreement and in this case the two parties have determined a mutual agreement by presenting mediators who have been chosen by both parties so that they have permanent legal force and cannot be changed at any time. Settlement of disputes that is often carried out in the Religious Courts is the resolution through mediation. The definition of Mediation itself is derived from English language that means to resolve the dispute by the way of mediating.

The main legal basis for peace in Indonesia is the basis of the state of Indonesia namely Pancasila, in which in its philosophy, it is implied that the principle of dispute resolution is deliberation for consensus. This is also implied in the 1945 Constitution of the Republic of Indonesia. In addition, reconciliation is regulated in Book III of Civil Code Chapter XVII, starting from Article 1851 to Article 1864. Because Book III of the Civil Code (*KUHPerdata*) regulates agreement law, then the reconciliation as an agreement is subject to the general provisions of the agreement.

The rationale for conducting peace efforts is, first, because the order of people's lives in Indonesia prioritizes the reconciliation in resolving disputes / conflicts. Second, the prevention of the possibility of the emergence of hostility atmosphere in the future between the parties in the dispute because of in the court's decision there were those who lost and those who won, especially if among of the parties were still in the family circle. Third, the rationale for peace efforts is also to avoid expensive costs through legal brokers and also to avoid litigation process that is prolonged for a long time.

In the Supreme Court Regulation No. 1 of 2008, the definition of mediation is mentioned in article 1 point 7, namely: "Mediation is a way of resolving disputes through a negotiation process to obtain the agreement of the parties with the assistance of the mediator". According to Tolberg and Taylor what is meant by mediation is a process in which the parties with the help of a person or several people systematically resolve the disputed problems to find alternatives and reach the settlement that can accommodate their needs. After the mediation process that reaches the peace, then certificate of reconciliation is formed if the parties wish to be made. The legal force of reconciliation agreement has been regulated in the Supreme Court Regulations, Civil Code, HIR / RBG, which has explained that on the legal force of the certificate of reconciliation or sanctions for the violating parties, there are not many parties who carry out the reconciliation *(perdamaian)* through mediation that reach the peace as outlined in the certificate of reconciliation.

The parties prefer to make peace in a family way because until now the parties who made the agreement as stated in the certificate of reconciliation have never asked the Religious Court / Syar'iyah Court to execute the party who did not carry out the contents of the agreed agreement. The certificate of reconciliation can support the principle of simple quick, why is that because it cannot be requested for legal efforts, simple can be directly carried out by the court, there is no need for down payment costs in execution or legal efforts.

In the civil case examination before the trial of the court, the Chief of the panel of Judges are given the authority to offer the reconciliation to the parties in the disputes. An offer of reconciliation can be attempted

throughout the inspection of the case before the Panel of Judges decided the decision (verdict). This reconciliation is offered not only on the day of the first trial, but also at each session of the trial. This is in accordance with the character of civil case initiative of the litigation come from the parties, because the parties can also end the dispute peacefully through the mediator of the Panel of Judges in front of trial of the court. In accordance with the provisions of the Law Number 4 of 2004 concerning the Judicial Power, Article 16 paragraph (2) explains that the Court does not close the effort on peaceful settlement of civil cases.

There are several formal requirements that must be met by the parties to the dispute to be able to do reconciliation efforts, including the following:

a. There is agreement between the two parties, in an effort to carry out reconciliation that is carried out by the panel of judges at the trial of the court, both parties must agree and approve voluntarily to end the ongoing dispute. The approval must really come from both parties. Approval that fulfills formal requirements is as follows:
   1) The existence of a voluntary agreement *(toestemming).*
   2) Both parties are capable of making agreements *(bekwanneid).*
   3) Object of agreement regarding certain subject matter *(bapaalde onderwerp).*
   4) Based on permitted reasons *(georrlosofde oorzaak).*

b. Ending a Dispute, when the reconciliation can be implemented, then a reconciliation decision which is commonly called a certificate of reconciliation is made. The reconciliation decision that is made in the panel of judges must really end the current dispute between the parties to the disputes completely. The reconciliation decision should cover the entire dispute, this is intended to prevent the emergence of another case with the same problem.
c. Regarding Existing Disputes, the requirement to be the basis of that reconciliation decision is that a dispute between the parties should have occurred, both those that have already been realized and those that have actually been realized but will be submitted to the court so that the reconciliation made by the parties prevents the occurrence of case in trial of the court.
d. The form of reconciliation Must Be Written, Reconciliation agreement is valid if it is made in writing, this condition is imperative, so there is no reconciliation agreement if it is implemented verbally in front of the authorized official. Thus, the certificate of reconciliation must be made in writing in accordance with the format that has been stipulated by the applicable provisions.

Regarding to the existing disputes, the requirement to be used as the basis for a reconciliation decision is that a dispute between the parties should have occurred, both those that have already been realized and those that have actually been realized but will be submitted to the court so that the reconciliation made by the parties prevents the occurrence of case in trial of the court, thus the form of reconciliation must be in written form. The reconciliation agreement is valid if it is made in writing, this requirement is imperative, so there is no reconciliation agreement if it is implemented in verbal in front of the authorized official. Thus, the certificate of reconciliation must be made in writing in accordance with the format that has been stipulated by the applicable provisions.

In its principle, the purpose of conducting mediation / reconciliation is to settle disputes peacefully and it is determined by the certificate of reconciliation that has legal force and is final in its character by the authorized Judicial Institutions. So before the inspection of the case is conducted, the judge in the court always attempts to make the peace of the parties in the trial of the court. The judge must be able to provide the meaning, instill awareness and confidence to the parties to the dispute, the settlement of the case by the reconciliation is a way of resolving the case that is better and wiser than resolving the case by a court decision, both in terms of time, cost and energy that are used.

In pursuing a reconciliation / mediation process the parties to the dispute must conduct it with good faith so that agreements in the reconciliation effort can be reached easily, because if there is no good faith from the parties, then the mediation / reconciliation process will be difficult to be able to produce a mutual agreement that is mutually beneficial for both parties *(win-win solution).* The foregoing as explained in the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the Court. Article 7 paragraph (1) states that the parties are required to undergo the mediation process in good faith.

If during the peace process there is one party who is not in good faith, then the other party who feels aggrieved can be punished by paying the case itself from the mediation / reconciliation process. As stipulated in the provisions of the Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court, Article 22 paragraph (5) states that the Mediation costs as a punishment to the plaintiff can be taken from the down payment costs of the case or a separate payment by the plaintiff and submitted to the defendant through court registrar.

If in carrying out the mediation process, the parties reaches or results the mutual agreement between the parties, then the parties assisted by the mediator must formulate in writing the results of the agreement reached

and signed by the parties and the mediator. This is in accordance with Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court in Article 27 paragraph (1).

Before the parties sign the agreement, in this case the mediator is required to check the material of the reconciliation agreement that was produced. This aims to avoid the existence of agreements that are contrary to law, as well as to avoid agreements that contain element with bad faith so that in the mediation / reconciliation process that has reached mutual agreement among its parties, so there is no possibility that there are the things that can harm one of the parties because the character of the result of the reconciliation agreement is a win-win solution.

The above statement has been explained in Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court, Article 27 paragraph (2), which states that before the parties sign an agreement, the mediator checks the material for a reconciliation agreement to avoid the existence of agreement which is contrary to the law or which cannot be implemented or that contains bad faith. In the effort of reconciliation, good faith from both parties is needed because good faith in the reconciliation process is one of the requirements from a mediator to reconcile the cases of dispute between the parties.

In its principle, a reconciliation process can only be carried out with good faith from the parties to the dispute. The agreement that was reached was truly the result of a mutual consensus discussion, so that what was stated in the agreement / deed of the agreement is the result of the mutual agreement of the parties to the dispute and the decision / certificate of reconciliation was final and binding for the parties. Therefore, it closes the possibility for the existence of the legal effort of appeal towards the decision / the certificate of reconciliation that has permanent legal effort.

It can be said that there is no legal effort that can be done by parties who feel aggrieved by the existence of the certificate of reconciliation. In addition, the certificate of reconciliation cannot be canceled by one of the related parties who feel disadvantaged from the existence of the reconciliation decision / certificate. The statement has been regulated and explained in Article 130 paragraph (3) HIR, it states that "The appeal cannot be requested against such decision". From the sentence of this article, it is clear that the decision / certificate of reconciliation that has been agreed upon, jointly signed, and that has been corroborated by a District Court Judge cannot be requested for the legal effort of appeal from one of the parties that feels disadvantaged.

Therefore, from the discussion above, it is clear that a decision / certificate of reconciliation that has been agreed and signed jointly by the parties to the dispute cannot be requested for the legal effort of appeal. In addition, the certificate of reconciliation cannot be canceled by one of the parties who feel disadvantaged from the existence of the decision / certificate of reconciliation. This is in accordance with the provisions stipulated in Article 130 paragraph (3) of the HIR, which states "The appeal cannot be requested against such decision".

IV. CONCLUSION

In the Implementation of the Decision of certificate of reconciliation actually the judge is more likely to use *Acte Van dading* for the certificate of reconciliation made by the parties without / have not had the confirmation from the judge and *Acte Van Vergelijk* is a deed that has obtained confirmation from the judge, Reconciliation, in essence, can be made by the parties in front of or by the judge examining the case, the reconciliation also can be made by the parties outside the court and then is brought to the related court in order to get the confirmation *(pengukuhan)*.

The legal power of the reconciliation attached to the reconciliation decision is regulated in article 1858 of the Civil Code mentions that All reconciliation between the parties has a power like a judge's decision in the final level, the reconciliation cannot be denied on the reason of blunder about the law or on the reason that one of the parties is disadvantaged, the article provides a very strong legal position related to reconciliation, in which all reconciliation between the parties has a power like a judge's decision in the final level.

The legal consequences of an agreement that was not implemented by one of the parties or both parties who do not have good faith and therefore its legal consequences is that both parties must be subject to sanctions in the form of fines in accordance with applicable laws and the legal effort can be carried out if one of the parties does not implement the reconciliation agreement, in its principle, the purpose of conducting mediation / reconciliation is to resolve the dispute peacefully. And it is stipulated by a certificate of reconciliation which has legal force and is final in nature. So before the inspection of case is conducted, the district court's judge always attempts the reconciliation of the parties at the trial of court.

REFERENCES

Books:

[1]. Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan peradilan Agama*, Jakarta: Putra Grafika, 2005.
[2]. Aziz Syamsuddi, *Proses Dan teknik Penyusunan Undang-undang*, Cetakan Pertama, Jakarta: Sinar Grafika, 2011.
[3]. Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Yogyakarta: Laksbang Pressindo, 2010.
[4]. Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial (A Legal Sistem A Sosial Science Perspektive)*, translated by M. Khozim. Bandung: Nusa Media, 2009.
[5]. M. Fauzan, *Pokok-Pokok Hukum Acara Peradilan Agama dan Mahkamah Syar'iyah di Indonesia*, Jakarta: Kencana, 2007.
[6]. M. Yahya Harahap, *Segi-segi Hukum Perjanjian*, Bandung: Alumni, 1996.
[7]. M.R. Tresna, *Komentar HIR*, Jakarta: Pradnya Paramita, 1975.
[8]. Mariam Darus Badrulzaman, *KUHPerdata Buku III*, Bandung: Alumni, 2009.
[9]. Nurna Ningsih, *Mediasi Penyelesaian Sengketa Perdata Di Pengadilan Agama*, Jakarta: Rajawali Pers, 2011.
[10]. Nurna Ningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa di Pengadilan*, Jakarta: PT Raja Grafindo Persada, 2011.
[11]. Nurna Ningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata Di Pengadilan, Jakarta*: PT. RajaGrafindo Persada, 2012.
[12]. Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Jakarta: Kencana, 2008.
[13]. Purwahid Patrik, *Hukum Perdata II*, Semarang: Undip, 1988.
[14]. Retnowulan Sutantio, *Mediasi dan Dading, Proceedings Arbitrase dan Mediasi, (a) cet. 1*, Jakarta: Pusat Pengkajian Hukum Departemen Kehakiman dan Hak Asasi Manusia, 2003.
[15]. Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Perdamaian Mufakat*, Jakarta: PT. Raja Grafindo Persada, 2010.
[16]. Vitor M. Situmorang, *Perdamaian dan Perwasitan Dalam Hukum Acara Perdata*, Jakarta: Rineka Cipta, 1993.

Journal Articles:

[1]. Eltania Pratiwi, *Kekuatan Pembuktian Akta Van Dading Yang Dibuat Oleh Notaris Dalam Proses Penyelesaian Sengketa Dibandingkan Dengan Akta Van Vergelijk Yang Sudah Mendapat Pengukuhan Dari Hakim Dan Perlindungan Hukum Para Pihak Yang Bersengketa*, Jurnal Notaries Universitas Sriwijaya, 2017.
[2]. Mahyuni, *Lembaga Damai Dalam Proses Penyelesaian Perkara Perdata Di Pengadilan*, Jurnal Hukum, Vol. 16, No. 4. Oktober 2009, Fakultas Hukum Universitas Lambung Mangkuran Banjarmasin, 2009.

Legislation:

[1]. Undang-Undang Negara Republik Indonesia 1945.
[2]. Undang-undang Nomor 14 Tahun 1985 tentang Mahkamah Agung sebagaimana telah diubah beberapa kali terakhir dengan Undang-Undang Nomor 3 Tahun 2009 tentang Perubahan Kedua Undang-undang Nomor 14 Tahun 1985 tentang Mahkamah Agung.
[3]. Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.
[4]. Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
[5]. Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah.
[6]. Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015.
[7]. Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Perdamaian.

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