



The legal strength and executory nature of a settlement deed in the resolution of civil disputes in court

Faradilla Syahnaz, M Jafar, Iskandar A Gani

Faculty of Law, Universitas Syiah Kuala, Aceh, Indonesia

Abstract

A settlement deed (akta perdamaian) is a legally binding instrument with executory power equivalent to a court decision that has permanent legal force. In civil litigation practice, such deeds are often the outcome of successful mediation as regulated in Supreme Court Regulation (PERMA) No. 1 of 2016. This article aims to analyze the legal strength and formal requirements of a settlement deed, along with its implementation mechanism, including execution in case of default. Through a normative juridical approach, this study finds that a formally and materially valid settlement deed can serve as an effective means for resolving civil disputes, provided it is made by competent parties, resolves all aspects of the dispute, is written, and is ratified by a judge.

Keywords: Certificate cancellation, third parties, legal protection, liability, legal certain, settlement deed, civil dispute, executory power, mediation, PERMA.

Introduction

Resolving civil disputes through litigation is often time-consuming and costly. To address this issue, Indonesia's civil procedural law accommodates resolution through settlement. A court-endorsed settlement documented in a settlement deed has the same legal force as a final and binding court decision and is enforceable. This strength is grounded in Article 1858 of the Civil Code (KUHPdata), Article 130 of the HIR, and reinforced by PERMA No. 1 of 2016.

In recent years, the shift towards mediation and alternative dispute resolution has gained momentum, not only to expedite the judicial process but also to foster reconciliation between disputing parties. The Indonesian judiciary encourages this trend through the institutionalization of mediation within the court system. However, not all settlement deeds carry legitimate legal force. Certain formal and material requirements must be fulfilled for a deed to be enforceable. Therefore, it is important to systematically analyze the juridical elements required for a settlement deed to be legally valid and binding.

Moreover, even when a settlement deed is formally ratified, practical challenges often emerge in its implementation. Many parties fail to comply with the terms agreed upon, leading to enforcement difficulties. Some parties make verbal or private agreements without proper court registration, thus lacking legal enforceability. Others may even exploit legal loopholes such as the absence of clear timeframes in the deed, which leads to ambiguities in enforcement. As such, this paper also aims to examine not only the theoretical strength of the settlement deed but also its practical implications in the realm of dispute resolution.

Another pressing concern is the legal vacuum regarding the role of notaries in executing settlement deeds post-judgment. While authentic deeds prepared by notaries are often relied upon for evidentiary strength, their executory force remains uncertain without judicial ratification. This ambiguity can potentially harm parties involved, especially if one side fails to honor the agreement and the other lacks proper legal recourse. Hence, the study seeks to explore how

this legal gap affects the enforceability of settlement deeds.

Finally, the broader objective of this paper is to emphasize the necessity of drafting clear, comprehensive, and enforceable settlement deeds that can genuinely serve as a final resolution to disputes. Legal certainty, effectiveness, and procedural efficiency are the ultimate goals in civil justice, and this paper argues that well-structured settlement deeds can significantly contribute to achieving them.

Research Method

This study employs a normative juridical method, focusing on the examination of

- Legislation: Civil Code, HIR, PERMA No. 1/2016, and Law No. 30/1999
- Legal literature: books, journals, and doctrinal opinions
- Court decisions as concrete examples, notably Supreme Court Decision No. 1944 K/Pdt/1991

Data collection is conducted through document studies with a descriptive-analytical approach.

Research Findings

1. Legal Strength of Settlement Deed

A settlement deed ratified by a judge has binding and executory power, as stipulated in

- Article 1858 of the Civil Code – equivalent to a final court ruling;
- Article 130(2) HIR – settlement decision has permanent legal force;
- Article 195 HIR – basis for execution if a party fails to comply.

2. Formal Requirements of Settlement Deed

To be valid and enforceable, the deed must

- Resolve the entire dispute (Article 1851 Civil Code)
- Be made in writing and signed (Article 1851(2) Civil Code)
- Be made by competent legal parties (Articles 1320 and 1330 Civil Code)
- Be attended by all parties to the dispute

3. Implementation of Civil Decisions and Executory Power

The legal strength of a settlement deed is governed by PERMA, the Civil Code, and HIR/RBg. However, in practice, not all parties comply with the settlement terms. Verbal settlements, authentic deeds, or private deeds lack executory power unless registered with the District Court.

According to Article 6(7) of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, written settlement agreements must be registered with the District Court within 30 days of signing to acquire legal force. Article 60 of the same law suggests that the finality principle should also apply to mediation outcomes recorded in a settlement deed.

Settlement deeds cannot be appealed (Article 130(3) HIR). Once read in an open court session, the parties are legally obliged to comply. A settlement is a win-win solution that does not declare a winner or loser, and must be based on good faith.

4. Role of Authentic Deeds and Notaries

Settlement deeds made before a notary are governed by Article 1851 of the Civil Code. However, not all notarial deeds have executory power, leading to a legal vacuum. Thus, out-of-court settlements should be documented in authentic deeds to ensure evidentiary strength if brought before a court.

Despite their formality, notarial deeds do not inherently have executory force unless incorporated into a court ruling. The lack of legal regulation concerning notarial deeds post-judgment creates a legal gap that may be exploited, especially if a notarial settlement causes future losses to third parties.

5. Practical Issues: Absence of Time Clauses

A common weakness in settlement deeds is the absence of a time frame for fulfilling obligations. This hinders execution due to the lack of objective benchmarks for noncompliance. Including a time clause is essential for courts to assess breaches or defaults.

Despite meeting formal requirements, the lack of time stipulations weakens the executory power of the deed. Therefore, judges and parties must carefully draft the deed with precise language.

While legally binding, the effectiveness of execution depends greatly on the clarity of its provisions. Without time-bound obligations, courts face challenges in determining breaches and issuing execution orders. For this reason, time clauses should be regarded as an essential component in drafting settlement deeds.

Conclusion

Settlement deeds possess strong legal and executory force if they fulfill formal and material requirements. However, in practice, their implementation is often hindered by substantive flaws, particularly the absence of time clauses for obligations. Hence, the drafting of settlement deeds must account for both legal and practical aspects, including explicit timeframes, to ensure the deed serves as a final solution in civil dispute resolution.

References

1. Indonesian Civil Code (KUHPerduta)
2. Herziene Inlandsch Reglement (HIR)

3. Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court
4. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution
5. Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Sinar Grafika, 2021
6. Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 2020
7. Supreme Court Decision No. 1944 K/Pdt/1991