POINT OF VIEW: NOTARIAL DEED MAKING BASED ON DISPUTE RESOLUTION OUTSIDE THE COURT

YULI PRASETYO ADHI[1], DEWI SULISTIANINGSIH[2] HERNI WIDANARTI[3] INDRIATI SAFITRI[4]

Civil Law Department, Faculty of Law, Diponegoro University[1]

Civil Law Department, Faculty of Law, Universitas Negeri Semarang[2]

Civil Law Department, Faculty of Law, Diponegoro University[3]

Civil Law Department, Faculty of Law, Diponegoro University[4]

yuliprasetyoadhi@lecturer.undip.ac.id[1]

dewisulistianingsih21@mail.unnes.ac.id[2]

herniwidanarti13@gmail.com[4]3

indriatisafitri74@gmail.com[4]

Abstract *–This research explores dispute resolution outside the court, involving the crucial role of Notaries in making deeds. The advantages of non-litigation alternatives include efficiency, speed, and lower costs, in accordance with the values of Indonesian society. However, there are still obstacles such as the lack of public understanding of these advantages. The role of Notaries in providing understanding to clients and including articles of dispute resolution outside the court is the focus. The results showed that the final decision remained in the hands of the parties who signed the deed. Obstacles include rudimentary client understanding, lack of Notary Education and some arbitration-related issues. Therefore, more parties and regulatory adjustments are needed to strengthen alternative dispute resolution outside the court. This research delves deeper into the aspects of making articles related to dispute resolution outside the court by Notaries. The research uses a qualitative approach with a focus on empirical juridical aspects. It was found that the selection of out-of-court dispute resolution requires the agreement of the parties, and Notaries play a significant role in providing them with legal understanding. However, most of the deeds made by Notaries have not included articles related to out-of-court dispute resolution, due to a number of obstacles.*

Keywords: *Alternative Dispute Resolution; Arbitration; Deed; Dispute*

INTRODUCTION

People's lives take place and interact with each other with their own goals. The interaction of one person with another person in society with individual characteristics. Interactions can run well and provide benefits, and interactions can also end badly and cause disputes. Sustainability and interaction in society can run well or badly. These two things are not always an option but can be conditions that arise from the consequences of interaction and sustainability in society.

The need for social interaction that occurs in community life can sometimes cause differences, such as differences in opinions, disagreements, and sometimes cause conflicts. In interacting can sometimes cause good things and provide benefits, but in fact it is also not spared that interacting can also cause terrible things that can trigger conflicts and even cause disputes.

It is natural if in trade relations at any time experience a dispute or conflict, this is one form of social interaction in community life. Conflict will develop into a dispute if the aggrieved party expresses dissatisfaction with the party that caused harm to the other party(Muryati & Heryanti, 2011). Social interactions that occur dynamically in the bargaining process can realize changes in values that appear simply as shifts between values, or disputes (*conflict*) between values or can even be a clash between these values(Muslim, 2013). Disputes arise when there are conflicting values, perceptions, ideas, needs, interests(Dewi Sulistianingsih & Pujiono, 2021). Disputes that occur may occur not by choice, but a situation that cannot be avoided. A dispute is a dispute that occurs between two or more people or between one legal subject to another and there is a difference or difference.

Disputes that occur in society in general occur a lot. Civil disputes, criminal disputes, State Administration (TUN) disputes, inheritance disputes, and other civil disputes. These disputes are a

concern for legal experts to find the right formulation so that dispute resolution provides not only legal certainty but also justice and benefit for the parties to the dispute.

Disputes that occur in the realm of trade or business become an urgent dispute to be resolved, because business disputes will affect the business activities conducted. The dispute has an adverse impact on the business of the disputing parties, even though the party is the prevailing party in the dispute. Whoever wins or loses the war, the dispute is still the result of the war will cause terrible things for the business of the parties.

In business relationships, the occurrence of disputes is often inevitable. Although the contract underlying the relationship has been carefully prepared, the implementation of the rights and obligations of each party is often not in line with each other. Disputes arise when one party or both parties default, in the sense of not fulfilling achievements at all, not cashing in fulfilling achievements, being late in fulfilling achievements, or incorrectly fulfilling achievements(Nurlani, 2022). Prevention of the significant impact of business activities after the settlement of the dispute, the concept of dispute resolution emerged outside the court.

In Indonesia, there are already regulations that govern, namely Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution(Sari, 2019). Juridically alternative dispute resolution means "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment"(Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, 1999). Since the law came into force, there has been a development of civil dispute resolution outside the court.

In Indonesia, the dispute resolution process through ADR is not something new in the nation's cultural values, because the soul and nature of Indonesian society is known for its familial and cooperative nature in resolving problems(Lestari, 2013). ADR is the same as the concept of deliberation for consensus that has always been conducted by the people of Indonesia.

Disputes that occur can be resolved by litigation and non-litigation means. The resolution of such disputes is an option for the parties. Dispute resolution using litigation means that the dispute is resolved through court channels while dispute resolution outside the court is also referred to as an alternative dispute resolution.

Alternative Dispute Resolution (APS) is increasingly used by businesspeople to resolve disputes outside the court. Business people are reluctant to use the litigation route because the reputation of Indonesian courts is not conducive to business development(Hariyani, 2017). Out-of-court dispute resolution can be done using arbitration, mediation, negotiation, conciliation, consultation, and expert determination.

The requirement to resolve disputes using arbitration is in the deed of agreement drafted article regarding dispute settlement outside the court called acta *compromitendo*. If there is no acta *compromisetendo*, an *acta compromise* is made by a notary and signed by the parties after the dispute.

Notaries are not robots that can only write and take notes. Notaries are dignified human beings who can think, have policies, considerations and consciences(Freddy Harris & Leny Helena, 2017). Notaries have their own considerations to take actions in accordance with the provisions of applicable laws and regulations. Including the authority of Notaries in making notarial deeds is full of legal considerations.

As a countermeasure and method of resolving business disputes, in the preparation or drafting of contracts or business agreements, clauses of procedures for dispute resolution can be made(By Nyoman Adi Astiti & Jefry Tarantang, 2018). A notary is an official who makes the deed of agreement of the parties. Before the occurrence of the deed, the parties can be given an understanding or advice and input from a Notary regarding the articles agreed, including articles relating to the settlement of disputes outside the court.

The role of notaries is important because they are used by parties who want to make various agreements, on the grounds that authentic notary deeds are considered by the public to be more guaranteed legal force than deeds under hand. This is very reasonable considering that the Notary Deed is included in an authentic deed that has perfect evidentiary power(Afriana, 2020). Philosophically, a

Notary Deed is an authentic evidence tool that contains wills, information and data on subjects and objects in the deed. Legal acts contained in a notary deed are not legal acts from a Notary, but legal acts that contain deeds, approvals, and determinations from parties who request or want their legal deeds to be stated in an authentic deed. So, it is the parties who make the deed who are bound to the contents of the authentic deed. A notary is not a craftsman who makes deeds or a person who has the job of making deeds, but a Notary in performing his duties based on or equipped with various legal sciences and other sciences that must be mastered in an integrated manner by a deed maker. Notaries and deeds made before or by Notaries have a position as proof(Michael Wenata Delafare, Slamet Suhartono, 2023).

As a comparison through previous research, the author uses three studies that are still within the same scope, first, a study entitled "Making a Peace Deed in the Settlement of Customary Land Disputes Through Notaries in Agam Regency" (Rashad, 2019), revealing the process of resolving customary land disputes in Agam Regency. In this study, Mamak the chief of Tanjuang Jorong Durian Kapeh Nagari Tiku Utara played a vital role by gathering the disputing parties. The approach involves listening to the opinions of each side, then reaching the best agreement that is mutually agreed upon and followed by the signing of a peace deed. The importance of this process is emphasized by the provision of stamp duty as a sign of the validity of the agreement. After the peace deed is made, the next step is registration or bookkeeping at the Lubuk Basung Notary office of Agam Regency. These findings provide insight into the practice of law and the resolution of customary land disputes through notaries in the local context of Agam Regency.

Second, a study entitled "Notarial Dispute Resolution through Notary Mediation Efforts"(Puspita Sari, 2022) presents an analysis of the Notary's role as a mediator in the settlement of notarial disputes outside the court. Research highlights that Notaries, as general officials, can concurrently serve as mediators on condition that they have a certificate issued by the Supreme Court of the Republic of Indonesia. However, the study also confirmed that the prohibited concurrent positions include strategic positions related to state officials, in accordance with the Notary Position Law and notary professional ethics. Notaries are expected to have wisdom in assisting dispute resolution in the field of civil law. The legal basis for the role of Notary mediator can be seen from the authority it has. Notaries who function as mediators can be involved when the conditions of the dispute or the parties involved have not found mutual agreement. The importance of the Notary's role as a mediator arises when there is a need for a third party who helps find solutions and mutual agreements that reflect the interests of the parties. Emphasis on professionalism, moral integrity, expertise, knowledge, and experience is a demand for Notaries who concurrently function as mediators. This is in line with the ethical principles of the notary profession. The role of the Notary as a mediator does not conflict with the provisions of laws and regulations and the notary code of ethics. Dispute resolution through mediation by a Notary Public involves resolving the deed he has made, focusing on the notary's role as a facilitator in handling conflicts that arise between the parties. In this context, the problem does not lie in the authenticity of the notary deed, but in disputes between parties that require prudent and neutral handling from a notary who also acts as a mediator.

Third, the research entitled: "The Existence of Notaries as Mediators of Notary Disputes in Review of Law Number 2 of 2014 concerning Notary Positions (Case Study of Notary Office in Singaraja City)"(Hutasoit et al., 2021), presents interesting results. First, research shows that Notaries function as mediators in mediating land sale and purchase deed cases because mediators are considered neutral and impartial third parties. There is no prohibition for Notaries to be mediators because the role is not as a state official. Second, research reveals the legal consequences of a sale and purchase deed, where if there are legal problems, the deed can be canceled. For example, Notaries can be witnesses in court, but need permission from the Regional Notary Supervisory Board beforehand. This finding provides an in-depth understanding of the role of Notaries in mediating land sale and purchase deed cases and their legal impacts.

This research in-depth explores out-of-court dispute resolution with emphasis on the crucial role of Notaries. The advantages of non-litigation alternatives, including efficiency, speed, and lower costs, are in line with the values of Indonesian society. However, obstacles such as lack of public understanding of these advantages need to be overcome. The focus of research is the role of Notaries in providing understanding to clients and including articles of out-of-court dispute resolution in the deed. The

findings show that although Notaries have a significant role, the final decision still depends on the party who signed the deed. Obstacles include the client's lack of full understanding, lack of Notary Education, and some arbitration-related issues. Therefore, regulatory adjustments and the involvement of more parties are needed to strengthen alternatives to out-of-court dispute resolution. This research reveals that despite the potential for dispute resolution outside the courts of large, a number of obstacles need to be overcome to increase their effectiveness, and this is the focus of exploration in the empirical juridical aspects of this research.

This paper will focus on how to make clauses / articles related to out-of-court dispute resolution in deeds conducted by notaries and what are obstacles or obstacles in making articles related to out-of-court dispute resolution in deeds made by notaries.

1. Research Methods

This research is qualitative research with empirical juridical research type, where this research is centered on field studies(Amiruddin & Zaenal Asikin, 2012). Empirical juridical research is conducted by looking for relationships between various symptoms or variables as a data collection tool consisting of document studies, observations, and interviews. This research focuses on how the formulation of articles regarding dispute resolution conducted outside the court in deeds made by notaries and what are the obstacles or obstacles for notaries to formulate these articles in their deeds.

The data collection technique is by conducting interviews with notaries who are the location of research and interviews with notary clients. Observation is made by making observations on the deed made by the notary and the situation in making articles related to alternative dispute resolution in the deed made by the notary. Not only field studies but the author also conducts literature studies. The literature study conducted by the author found several laws and regulations related to the author's writing topic, namely primary legal material and secondary legal material and tertiary legal material. So, in this case it can help provide clarity of data in this study. In this study also, researchers not only observed and interviewed one but several notaries from various regions in Central Java Province, the following is a list of notaries that researchers successfully interviewed: (a) Notaries in the Kebumen Regency area of Central Java Province, Indonesia; (b) Notary in Batang Regency, Central Java Province, Indonesia; (c) Notary in the area of Pekalongan Regency, Central Java Province, Indonesia; (d) Notary in Pemalang Regency, Central Java Province, Indonesia; (e) Notary in Tegal Regency, Central Java Province, Indonesia; (f) Notary in Jepara Regency, Central Java Province, Indonesia.

2. Making Clauses / Articles Related To Dispute Resolution Outside The Court In Deeds Conducted By Notaries

Disputes can also arise in various fields such as economics, law, and others. The study of public international law recognizes two types of disputes, namely legal disputes (*legal or judicial disputes*) and political or non-justiciable disputes(Adolf, 2020). But in general, what is widely used or occurs is legal disputes. In the settlement of legal disputes, two ways can be used, namely the litigation route and the non-litigation route. Dispute resolution in the litigation route (court) is the resolution of disputes through the trial process. This settlement began with the filing of a lawsuit to the District Court and ended with a judge's decision(Hanif, 2020). Most disputes that occur usually use the dispute resolution method using litigation channels. But that does not mean the non-litigation route is not used. Dispute resolution through non-litigation channels (outside the court) or commonly referred to as Alternative Dispute Resolution or Dispute Resolution through ADR(Diah, 2008).

People's lives cannot be separated from interaction. Sometimes in interacting there are disagreements, differences of opinion or even conflicts that cause disputes. Disputes themselves can arise from various fields such as legal, economic, social, and others.

In the settlement of disputes most use litigation, which is the solution of disputes through the conference process. This settlement begins with the filing of a lawsuit to a state court and concludes with the judge's decision(Hanif, 2020). In dispute resolution, there are also other ways to resolve it besides using litigation methods, namely using non-litigation methods.

Non-litigation is one way of dispute resolution where the dispute resolution method is carried out outside the settlement or can be called alternative dispute resolution(Munandar et al., 2023). Dispute

resolution using this method is more easily accepted by the community because it is more efficient, effective, and cheap.

Dispute resolution outside the court (known as APS in Indonesia) already has a legal basis stipulated in Law 30/1999 on Arbitration. Although in practice dispute resolution outside the court is the cultural values, customs, or customs of the Indonesian people and this is in line with the ideals of the Indonesian people as stated in the 1945 Constitution.

Dispute resolution outside the court (non-litigation) is contained in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. It is explained in Article 1 point one regarding arbitration that "Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute". Meanwhile, regarding Alternative Dispute Resolution, it is explained in Article 1 number 10 that "Alternative Dispute Resolution is a dispute resolution institution or disagreement through a procedure agreed by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment".

However, Law No. 30 of 1999 prioritizes the discussion of arbitration rather than the discussion of alternative dispute resolution. The law does not even discuss further about the 5 (five) alternative dispute resolution offers that can be used to resolve disputes, what disputes can be resolved through this channel and how the process of resolving the case(Panjaitan, 2022). In this case, Law No. 30 of 1999 lacks detail about Alternative Dispute Resolution.

This does not mean that 5 (five) alternative dispute resolution offers cannot be used. Among several alternative dispute resolution offers, most use mediation offers/channels. Mediation is the resolution of disputes through the negotiation process of the parties assisted by a mediator(Hutasoit et al., 2021). In the mediation process the mediator is a Notary. The mediator is the party who mediates between the disputing parties.

The advantages of dispute resolution outside the court include reducing the accumulation of cases in court, fast and cheap, not constrained by strict bureaucracy, in accordance with consensus and values that live in Indonesian society. But in addition, dispute resolution outside the court also has obstacles including, most people do not understand comprehensively the advantages that exist in dispute resolution outside the court. Because of this, the implementation of dispute resolution outside the court requires the role of many parties. One of the parties who plays a role in resolving this dispute is the Notary.

Notaries are constructed as general officials. A general official himself is a person who performs duties to serve the interests of society as a whole(H.S., 2021). Notaries themselves have the authority to make notarial deeds. In addition to having the duty to serve the interests of the community, Notaries have the duty to ensure the legality and validity of a legal document and provide legal protection to the parties involved in the agreement.

The role of notaries is particularly important because it is used by parties who want to make various agreements, on the grounds that authentic notary deeds are considered by the public to be more guaranteed legal force than deeds under hand. This is very reasonable considering that the Notary Deed is included in an authentic deed that has perfect evidentiary power(Afriana, 2020). Because of this, the role of a notary is necessary in the settlement of disputes outside the court.

The agreement made by the parties before the Notary Public is set forth in a Notary Deed. The deed is an authentic deed that has perfect force and is valid evidence without the need for other evidence in a civil law dispute.

After the creation of the deed, the contents of the agreement must be executed by the parties. At this time, the successful implementation of the agreement depends on the parties to realize what has been stated in the agreement. The principle of good faith and *pacta sunt servanda* have a significant role in the implementation of the agreement. There are times when agreements are not executed properly due to default or force majeure. Such a situation needs to be resolved by dispute resolution methods(Wicaksono, 2021).

Disputes that occur would be better resolved peacefully and deliberately, but not infrequently these disputes cannot be resolved through deliberation. The next way is that the dispute can be conducted by settlement by litigation or non-litigation. This is an option for the parties to the dispute. Civil disputes can be resolved through two channels, namely the litigation route and the non-litigation route. The litigation route is conducted by filing a lawsuit with the court, while the non-litigation path can use the Arbitration and APS mechanisms in accordance with the mandate of Law No. 30 of 1999.

Strategy in dispute resolution is an effort to find and formulate ways to end disputes that arise between the parties, such as by means of mediation, reconciliation negotiations, and others. Dispute resolution is an effort to end conflicts or conflicts that occur in society. With the settlement of the dispute, the relationship between the parties will return to normal. To end disputes that arise in society, it is necessary to have laws and regulations that regulate it(Panjaitan, 2022).

In general, dispute resolution can be done by Adjudication and Non-Adjudication. In dispute resolution through Adjudication, it is divided into Litigation, namely Court, and Non-Litigation, namely Arbitration. On the resolution of Non-Adjudication disputes *(Alternative Disputes Resolution)*, can be done by means of Mediation, Negotiation and Conciliation(Ainun Fadillah &; Amalia Putri, 2021).

1. Litigation (Court) is a pattern of dispute resolution that occurs between the parties to a dispute, in dispute resolution it is resolved by the Court. The verdict is binding.
2. Non-Litigation / Alternative Dispute Resolution is a group. procedures or mechanisms that function to provide alternatives or choices for a way of dispute resolution through the form of APS / arbitration to obtain a final award and bind the parties.

In line with the development of society, both regarding the economy and social life of a society, especially in (large) cities, traditional values are shifting towards modern. The development that society prioritizes material over ethical, moral, religious, and moral considerations. The conflicts that occur are no longer based on deliberation for consensus to achieve harmony but have been based on losing or winning. This shift in mindset makes the Court Institution a place to resolve disputes with the aim of obtaining victory and not seeking justice. Therefore, to achieve this, all available legal remedies (appeals and cassation) are taken so that disputes become protracted which eventually accumulate in the Supreme Court.

The principle of quick, simple, and light cost of justice became the basis of the Court which was only a letter of death without meaning. The Supreme Court as the executor of judicial power has made various efforts to overcome or minimize the arrears of cases that occur every year, including by increasing the number of Supreme Court Justices from academics and other legal practitioners in addition to career judges, revamping the internal organization *(self organization regulation)* and the empowerment of supervisory functions, to the one-stop imposition of all financial, organizational and administrative matters under the Supreme Court itself, but these efforts have not been able to show significant results(Gara, 2015).

In resolving disputes, in addition to dispute resolution through adjudication, there is dispute resolution through non-adjudication known as Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR). The term out-of-court dispute resolution here is only to describe ways of settlement other than adjudication dispute resolution. APS or ADR has been widely known in developed countries such as the United States, Europe, Australia, Canada, the United Kingdom, Japan, and Hong Kong(Diah, 2008).

In the United States, efforts to develop and use dispute resolution methods through APS, such as negotiation, mediation, conciliation and arbitration are welcomed by the community. This is done to avoid the way of resolving disputes (national and international) through the courts. In the Philippines, traditionally the use of APS has been known through familial and cooperative dispute resolution at the rural level (*barangay* or *Barrio*). In countries such as China, South Korea, Japan, and Singapore it is taboo to settle a dispute directly in court. They first seek to resolve disputes by deliberation or peace. In Australia, the development and structuring of APS institutions is already at the consolidation stage, by means of which APS is organized and managed in one place called *Centre for Dispute Resolution* which was founded in 1988. Formally, APS in Indonesia has a place with the regulation of APS in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as in Law Number 2 of 2004

concerning Settlement of Industrial Relations Disputes which expressly mentions mediation as a way of resolving disputes involved in industrial relations. However, materially for the Indonesian people have long carried out traditional patterns of dispute resolution carried out through customary courts or village courts (*Village Justice*)(Mala, 2009).

The litigation route is the last resort or *ultimatum remedium*, which is as a last resort if family dispute resolution or peace outside the court does not find common ground or a way out. Conversely, dispute resolution through non-litigation channels is a dispute resolution mechanism outside the court that uses mechanisms that live in deliberation, peace, kinship, customary settlement and so on. As one way that is now developing and in demand is through the institution of Alternative Dispute Resolution (ADR)(Astarini, 2013).

In the development and implementation, especially in Indonesia, there are 6 (six) ADR described as follows:

a. Consultation

There is no formulation or explanation given in Law 30/1999 on Capital Market regarding the meaning or understanding of consultation. But if we look at *Black's Law Dictionary,* we can see that what is meant by consulting is: "act of consulting or conferring, e.g. patient with doctor, client with lawyer. Deliberation of persons on some subject". From this formulation, in principle, consultation is a personal action between one party called the client and another party who is a consultant who gives his opinion to the client to meet the needs and needs of his client. Clients can use the opinions that have been given or choose not to use is free, because there is no formula that states the nature of "attachment" or "obligation" in consulting (Hajati, 2010).

b. Negotiation

The term negotiation is listed in Article 1 Number (1) of Law 30/1999. The definition of negotiation is not explicitly regulated in the Law, but it can be seen in Article 6 paragraph (2) of Law 30/1999 on Arbitration that basically the parties can and have the right to resolve disputes themselves arising in direct meetings and the results of the agreement are set forth in written form agreed by the parties. Apart from these provisions, there is no further regulation regarding "negotiation" as an alternative dispute resolution by the parties.

c. Mediation

According to Article 1 point (1) of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (hereinafter referred to as PERMA 1/2016) that mediation is a way of resolving disputes through the negotiation process to obtain agreement of the Parties assisted by the Mediator.

Mediation arrangements can be found in the provisions of Article 6 paragraphs (3), (4), and (5) of Law 30/1999 on Arbitration that for disputes that cannot be resolved through negotiation, the dispute resolution is resolved through the assistance of one or more expert advisors or through a mediator.

Mediation is a negotiation that involves a third party who has expertise regarding effective mediation procedures, so that it can help in conflict situations to coordinate their activities so that they can be more effective in the bargaining process. Mediation can also be interpreted as an effort to resolve the parties' disputes by mutual agreement through a mediator who is neutral and does not make decisions or conclusions for the parties but supports as a facilitator for the implementation of dialogue between parties with an atmosphere of openness, honesty, and exchange of opinions to reach consensus.

d. Conciliation

The definition of conciliation is not explicitly regulated in Law 30/1999. However, the mention of conciliation as one of the alternative dispute resolution institutions can be found in the provisions of Article 1 number (10) and paragraph 9 (Nine) in the general explanation.

Black's Law Dictionary gives the definition of conciliation, namely:(Yani, Gunawan Widjaja, 2000): “Conciliation is the adjustment and settlement of a dispute in a friendly, antagonistic manner used in courts before trial with a view towards avoiding trial and in a labor disputes before arbitration”. “Court of Conciliation is a court which proposes terms of adjustment, so as to avoid litigation.”

Conciliation is a continuation of mediation. The mediator changes its function to a conciliator, in this case the conciliator performs a more active function in seeking forms of dispute resolution and offering it to the parties if the parties can agree, the solution made by the conciliator will be a resolution. The agreement that occurs will be final and binding on the parties. If the disputing party is unable to formulate an agreement and a third party proposes a way out of the dispute. Conciliation has similarities with mediation, both ways involve third parties to resolve disputes peacefully (Hajati, 2010).

e. Member Assessment

As can be concluded from the definition of Alternative Dispute Resolution in Article 1 Number (10) that Expert Assessment is one way to resolve disputes outside the court. Expert assessment is a way of resolving disputes by the parties by asking for expert opinions or assessments of disputes that are occurring. That it turns out that arbitration in an institutional form is not only tasked with resolving differences or disputes of opinion or disputes that occur between parties in a principal agreement, but also can provide consultation in the form of opinions or legal opinions at the request of each party that requires it is not limited to the parties to the agreement. The provision of opinions or opinions (law) can be an input for the parties in drafting or making agreements that will regulate the rights and obligations of the parties to the agreement, as well as in providing interpretations or opinions on one or more provisions in the agreement that have been made by the parties to clarify its implementation (Hajati, 2010).

f. Arbitrage

The legal basis for arbitration can be seen in several laws and regulations in Indonesia. Arbitration is regulated in Article 59 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law 48/2009 concerning Judicial Power) that arbitration is a way of resolving civil disputes outside the court based on an arbitration agreement made in writing by the parties to the dispute. Article 1 paragraph (1) of Law 30/1999 on Arbitration explains that arbitration is a way of resolving civil disputes outside the general court based on an arbitration agreement made in writing by the parties to the dispute. Arbitration is used to anticipate disputes that may occur or are experiencing disputes that cannot be resolved by negotiation or consultation or through third parties and to avoid resolving disputes through judicial institutions that have been felt to require a long time.

The dispute resolution mechanism outside the court is considered more effective, efficient, fast, and low cost and benefits both parties to the dispute (win-win solutions). Settlement of intellectual property rights disputes is considered better done through non-litigation channels or through mediation institutions because it is faster and cheaper. However, in its implementation there are still many parties involved (Notaries, Advocates, disputing parties, etc.) who resolve their disputes through litigation(Sulistianingsih & Prabowo, 2019).

There are two deeds that can be made by Notary related to dispute resolution outside the court, namely the deed de *compromitendo* and the deed of *compromise*. Agreements in the form of *pactum de compromittendo* in disputes have a function as a prerequisite so that disputes can be resolved through Arbitration or ADR, not through the courts. Provisions regarding dispute resolution through arbitration or ADR must be contained in an agreement called *pactum de compromittendo*.

While *compromise acten* is an arbitration clause made in writing by the parties to the dispute after a dispute arises, so that this *compromise acten* is not in the same agreement as the main agreement but is made separately outside of the main agreement where there is agreement or agreement from the parties in advance to resolve the dispute or dispute through a new arbitration institution will be made an agreement that In essence, it contains a clause that will resolve disputes and disputes of the parties through an arbitral institution. Compromise itself means a settlement of differences that aims to avoid settlement through court channels (to prevent a lawsuit). So that compromise acten is a deed that contains the rules for resolving disputes that have arisen between people who promise(Pujiono, 2019).

The creation of articles related to out-of-court dispute resolution in deeds conducted by notaries reflects a response to the complexity of the rapid development of society. In an era where economic needs are increasing, notaries play a crucial role as authentic deed makers who record agreements involving large capital. The deed, which mostly involves companies or businesses, not only covers legal aspects but also becomes an important instrument in handling disputes that may arise. The existence of notary institutions is becoming increasingly significant because people value the legal protection provided by authentic deeds. Articles related to out-of-court dispute resolution can be seen as a response to the need for legal guarantees in conducting business. Although the parties may have confidence in each other, the addition of the article aims to provide extra protection, especially if problems arise later. Notaries, in accordance with the law, must meet a number of conditions, including having sufficient legal authority and understanding. However, obstacles such as lack of client understanding, and some arbitration-related issues can be obstacles. Therefore, better education and understanding of out-of-court dispute resolution mechanisms need to be improved.

In practice, deeds made by a notary, especially in the context of a business agreement, should reflect aspects of dispute resolution. The use of clear clauses related to out-of-court dispute resolution is a major step to ensure clarity and continuity of contracts. However, the results showed that there are still deeds that do not include the article, providing room for improvement and refinement of regulations. The importance of public understanding of various dispute resolution options, both through arbitration and non-litigation channels, was the focus in drafting the article. This creates awareness of the diversity of effective ways of dispute resolution, allowing communities to choose alternatives that best suit their needs. Notary's creation of articles related to out-of-court dispute resolution is not only about compliance with regulations, but also about empowering communities to manage disputes in the most effective and efficient way in the face of the complexities of social and economic change.

3. Obstacles or obstacles in making articles related to out-of-court dispute resolution in a deed made by a notary.

The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law where the rule of law has principles in certainty, order, and legal protection that ensure truth and justice. In public life, people have the right to certainty, order, and legal protection from the state(Muchtar, 2017). Therefore, the community needs evidence that determines the rights and obligations owned by the community.

The term deed comes from the Latin "*Acta*" which has the meaning "*writing*" or letter, In Algra's opinion, a deed in a broad sense is a deed, a legal deed (recht handelling), a writing made to be used as evidence of a legal act(Algra, 1983). In general, a deed is a writing that is used as evidence of an event and signed by the party concerned.

A deed is a written statement signed and made by a person or by parties to be used as evidence in legal proceedings. Deed comes from the word *ACTE* which in French means deed. Subekti emphasized that the word deed cannot be equated with a letter but must be interpreted with a legal act(Subekti, 1980). This shows an important part of the content of the deed, which contains legal acts which are the basis of rights for the parties who make them. The legal act is manifested in one writing that is used as evidence that a bond has occurred. Because the deed contains a legal act between the parties and is used as evidence, the letter even though it is made in written form, but because it does not contain any unlawful act, the writing cannot be called a deed, but an ordinary letter(Adjie, 2011). Based on this opinion, it can be concluded that what is meant by a deed, is:

a) Legal acts (*rechtshandeling*) in a broad sense and
b) A writing that is made to be used / used as evidence of the legal act, which is in the form of writing submitted to prove something.

The conditions that must be met so that a letter or writing can be referred to as a deed and have the power of proof against the existence of legal acts that have been committed by the interested parties, then the deed must meet the following requirements(Adjie, 2011):

a) The presence of a signature on the letter.
b) Contains events on which a right or agreement is based; and
c) Allocated as a means of proof.

There are two types of deeds, namely authentic deeds, and underhand deeds. The definition of an authentic deed is stated in Article 1868 of the Civil Code which reads, "an authentic deed is a deed in the form prescribed by law made by or before public officials authorized for that purpose at the place where the deed was made." Based on this article, it can be dissected that a deed can be said to be authentic if it has fulfilled the following elements:

a) The form is determined by law.
b) Made by or before a public official authorized for the legal act.
c) It is made by or in the presence of a general official who resides at the place where the deed was made.

Based on these provisions, it is also known that there are two types of authentic deeds, namely deeds made "by" authorized general officials or commonly known as *relaas* deeds (*ambtelikien akten*), and

deeds made "in the presence" of authorized general officials or commonly known as party deeds (*partij akten*).

A party deed is a deed that contains information from the faces to be stated in a deed, while a *relaas* deed is a deed made by an official in conducting his office on what he saw, witnessed, and experienced himself.

Article 1867 of the Civil Code states that deeds have two types, namely Authentic (Notarial) Deeds and Underhand Deeds. A deed under hand under Article 1874 of the Civil Code is a deed made without the intermediary of a general official. While the Authentic Deed (notarial) based on Article 1868 of the Civil Code is a deed whose form is determined by law or authorized general officials.

Authentic Deed is made by a general officer or authorized employee. The authorized employee in question is a Notary Public(Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning Notary Positions, 2004). There are several types of deeds in authentic deeds, one of which is a notary deed. A Notary Deed is an authentic deed that has legal force with a guarantee of legal certainty as perfect written evidence (*Full Evidence*), does not require additional means of evidence, and the judge is bound accordingly(Prajitno, 2010).

A very visible difference between the two types of authentic deeds lies in the necessity of a signature on the deed. Therefore, it is mandatory to have a signature on the deed. So the party deed contains information from the face so that the party deed is threatened with losing its authenticity or being fined if it is not signed by the deed or at least in the deed explained what is the reason for not signing the deed, for example the parties or one of the parties has sick hands and so on. Thus, a deed by the parties in the party deed is necessary. Conversely, for the deed of *relaas,* because the deed is the "testimony" of the official to what he personally saw, witnessed, and experienced, the signatures of the parties to the deed are not a necessity which does not interfere with the authenticity of the deed. This can happen, for example, when making the minutes of the general meeting of shareholders (GMS) of a limited liability company, the people present have left the meeting before the deed is signed, then the general officer in this case the notary simply explains in the deed that the parties present have left the place before signing the deed and the minutes remain an authentic deed.

A deed made by not fulfilling Article 1868 of the Civil Code is not an authentic deed or also called a deed under hand. An underhand deed is a deed made by or without the intercession of a general official, but made and signed by the parties themselves. Therefore, there is no formality in making a deed under hand because it can be made in the desired form and in any place.

A particularly significant difference between an authentic deed and a deed under hand lies in its evidentiary strength. If there is a dispute relating to the deed in which the deed is evidence, for the judge the deed under hand is "free evidence" (vrije bewijs). It is different from an authentic deed, because when the evidence of the deed under the hand is refuted, consequently those who use the deed under the hand as evidence must prove that the deed is true. In contrast to an authentic deed which is perfect evidence, meaning that if someone submits an authentic deed to the judge as evidence, the judge must accept and consider what is written in the deed to be an event that happened. If the truth of an authentic deed is denied, then unlike the deed under hand, the burden of proof lies with the denying party. The deed under the hand only has perfect evidentiary power when recognized by both parties so that the deed under the hand is said to be the beginning of written evidence(Notodisoerjo, 1982).

The distinction referred to above becomes important in relation to the strength of proof. The truth of the contents of the deed of *relaas* cannot be challenged, except by alleging that the deed is false, while the deed of party can be challenged in its contents, without alleging that the deed is false, by stating that the information of the parties in question exists and is described according to the truth in the deed, but the information is not true, meaning that the information given is allowed to prove otherwise.

The deed also has a function, there are two functions of the deed, namely the formal function (*formalitatis causa*) and functions as evidence (*probationis causa*). Formal function (*formalitatis causa*) which means that for the perfection (not for validity) of a legal act, it must be made or must be by the existence of a deed. While the function of the deed as evidence (*probationis causa*) is where when the

deed was made from the beginning deliberately for later proof, with the written nature of the agreement in the form of a deed it does not make the agreement valid but only so that it can be used as evidence in the future(Kholik, 2023). Therefore, the deed has two functions, namely the formal function as a complement to a legal act and the function as evidence where the deed is used as evidence in the future in case of default.

The duties and functions of Notaries are to provide responsibility for legal certainty to the public in ratifying bindings and to provide legal reinforcement for legal bindings provided by the Law. In addition to duties, Notaries can also be experts in legal discovery and legal advisors because in addition to making authentic deeds. The forms of precautionary principles carried out by notaries in the process of making deeds are, recognizing the identity of the face, carefully verifying the data of the subject and object of the face, giving a grace period in working on the deed, acting carefully, carefully and meticulously in the process of working on the deed, fulfilling all the techniques required for making a deed. Notaries in conducting a legal action must always act carefully so that notaries, before making a deed, must examine all relevant facts in their consideration based on applicable legislation. Examining all the completeness and validity of evidence or documents shown to a notary, as well as hearing statements or statements of the faces must be conducted as a basis for consideration to be stated in the deed. If the notary is not careful in checking the main facts, it means that the notary is acting imprudently. It is expected that notaries in the process and receiving requests for making deeds are more careful, careful and careful in applying the legal rules that will be stated in the deed, and notaries can first provide legal advice (legal counseling) by the face in accordance with their notarial knowledge, so that the deed they make is in accordance with applicable legal rules and does not conflict with laws and regulations(Khafid Setiawan et al., 2021).

In general, obstacles or obstacles in making articles related to out-of-court dispute resolution in deeds made by notaries can be encountered in daily practice. Some of these obstacles involve practical, legal, and public perceptions of dispute resolution. Some of them are:

1. Limited Access to Arbitration Bodies: Constraints arise because the offices of the National Arbitration Board (BANI) are in only a few major cities, creating difficulties in the event of disputes in distant areas.
2. Principle of Desire of the Parties: The articles contained in the notarial deed are based on the wishes of the parties involved. If they do not want an out-of-court settlement, this could be an obstacle.
3. Change in Client Mindset: It is difficult to change the mindset of clients who are accustomed to dispute resolution through the courts. Good education and explanations can help overcome these obstacles.
4. Legal Uncertainty in the Deed: Notaries need to be careful that articles related to dispute resolution do not conflict with the legal principles of drafting notarial deeds, so as not to cause doubts or cancel the deed.
5. Refusal of the Parties: Even if the parties initially agree, they can reject the article of out-of-court dispute resolution, creating obstacles in the process. To overcome these obstacles, a notary public needs to have extensive knowledge of legal provisions, especially related to arbitration and out-of-court dispute resolution. In addition, client education, a change in mindset, and prudence in the preparation of deeds are important keys to managing this situation effectively.

CONCLUSION

In the discussion of obstacles or obstacles in making articles related to out-of-court dispute resolution in deeds made by notaries, several conclusions can be drawn. First, major barriers arise from limited access to the National Arbitration Board (BANI), which exists in large cities, making it difficult to resolve disputes in distant areas. Second, the principle of the parties' wishes and the client's mindset that is accustomed to settlement through the court is a challenge in drafting articles related to dispute resolution outside the court. In addition, legal uncertainty in the deed and the potential refusal of the parties are also factors that need attention.

Provision of Information and Education: Notaries need to proactively provide information and education to clients about the benefits and process of out-of-court dispute resolution. This can help change the mindset of clients and increase their understanding of alternative dispute resolution. Increased Access to Arbitration Bodies: Efforts are needed to improve public access, especially in remote

areas, to dispute resolution institutions such as National Arbitration Bodies. Collaboration with related parties and the use of technology can be a solution to overcome geographical constraints. Notary's Role in Mediation: Notaries can take on the role of mediators or facilitators in out-of-court dispute resolution. The legal knowledge that notaries have can help create solutions that are fair and acceptable to all parties. Accuracy and Clarity in the Deed: Notaries need to remain careful so that articles related to dispute resolution outside the court do not conflict with the legal principles of drafting notarial deeds. Clarity in formulating articles and overcoming legal uncertainty is key in avoiding these obstacles. Cooperation with Related Parties: Notaries can cooperate with related parties, such as dispute resolution institutions and advocates, to facilitate the out-of-court settlement process. This collaboration can create an environment that supports alternative dispute resolution efforts. By implementing the above suggestions, it is expected to overcome obstacles and obstacles that may arise in making articles related to out-of-court dispute resolution in deeds made by notaries, as well as improve the effectiveness of notary services in providing legal services to the public.

ACKNOWLEDGEMENT

The author would like to specifically thank the Dean of the Faculty of Law, Diponegoro University, Prof. Dr. Retno Saraswati, S.H., M.Hum., for her material and immaterial support.

REFERENCES

[1] Adjie, S. & H. (2011). *Aspek Pertanggungjawaban Notaris Dalam pembuatan Akta*. CV Mandar Maju.
[2] Adolf, H. (2020). *Hukum Penyelesaian Sengketa Internasional*. Sinar Grafika.
[3] Afriana, A. (2020). Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Di Indonesia Terkait Akta Yang Dibuatnya. *Jurnal Poros Hukum Padjadjaran*, *1*(2), 246–261. https://doi.org/10.23920/jphp.v1i2.250
[4] Ainun Fadillah, F., & Amalia Putri, S. (2021). Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, *2*(6), 744–756. https://doi.org/10.31933/jimt.v2i6.486
[5] Algra, N. E. (1983). *Kamus Istilah Hukum*. Bina Cipta.
[6] Amiruddin & Zaenal Asikin. (2012). *Pengantar Metode Penelitian Hukum*. RajaGRafindo Persada.
[7] Astarini, D. R. S. (2013). *Mediasi Pengadilan*. P.T. Alumni.
[8] Dewi Sulistianingsih & Pujiono. (2021). *Pengenalan Sengketa Hak Kekayaan Intelektual*. BPFH UNNES.
[9] Diah, M. M. (2008). Prinsip Dan Bentuk-Bentuk Alternatif Penyelesaian Sengketa di Luar Pengadilan. *Hukum Dan Dinamika Masyarakat*, *5*(2), 113. https://doi.org/http://dx.doi.org/10.56444/hdm.v5i2.378
[10] Freddy Harris & Leny Helena. (2017). *Notaris Indonesia*. PT. Lintas Cetak Djaja.
[11] Gara, A. (2015). Penerapan Asas Peradilan Cepat Dalam Penyelesaian Perkara Perdata Di Pengadilan Negeri. *Lex Administratum*, *3*(3), 73–78. https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/7635/7193
[12] H.S., S. (2021). *Peraturan Jabatan Notaris*. Sinar Grafika.
[13] Hanif, R. N. F. (2020). *Arbitrase Dan Alternatif Penyelesaian Sengketa*. Kementerian Keuangan Republik Indonesia. https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html
[14] Hariyani, I. (2017). Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin. *Jurnal Legislasi Indonesia*, *14*(3), 345–358. https://e-jurnal.peraturan.go.id/index.php/jli/article/view/136/pdf
[15] Hutasoit, B., Ketut, N., Adnyani, S., Dantes, K. F., Studi, P., Hukum, I., & Ganesha, U. P. (2021). Eksistensi Notaris Sebagai Mediator Sengketa Kenotariatan Ditinjau Dari Undang-Undang (Studi Kasus Kantor Notaris Di Kota Singaraja). *Jurnal Komunitas Yustitia*, *4*(2), 405–415. https://doi.org/https://doi.org/10.23887/jatayu.v4i2.38093
[16] Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, (1999).
[17] Khafid Setiawan, Bhim Prakoso, & Moh Ali. (2021). Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian. *Jurnal Ilmu Kenotariatan*, *2*(2), 43–52. https://doi.org/10.19184/JIK.v
[18] Kholik, M. & S. (2023). Kekuatan Hukum Legalisasi Notaris Terhadap Perjanjian Hutang Piutang Jika Terjadi Wanprestasi. *Audi Et AP : Jurnal Penelitian Hukum*, *02*(1), 8–17. https://doi.org/https://doi.org/10.24967/jaeap.v2i01.2072
[19] Lestari, R. (2013). Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia. *Jurnal Ilmu Hukum Riau*, *3*(2), 9080.
[20] Mala, A. M. Z. (2009). *Studi Tentang pelaksanaan Mediasi Di Pengadilan Negeri Kelas 1A Semarang* [Institut Agama Islam Negeri Walisongo]. https://eprints.walisongo.ac.id/id/eprint/5113/

[21]Michael Wenata Delafare, Slamet Suhartono, E. P. (2023). Legal Protection for Notary That Doesn'T Attach Letter and Document To Minuta Deed. *Russian Law Journal*, *11*(3), 571–581. https://doi.org/10.52783/rlj.v11i3.1197
[22]Muchtar, O. (2017). *Dasar-Dasar Teknik Pembuatan Akta*. Airlangga University Press.
[23]Munandar, A., Sudiarto, & Kurniawan. (2023). Pilihan Penyelesaian Sengketa Di Luar Pengadilan. *Citra Aditya Bakti*, *8*(1), 5. https://doi.org/https://doi.org/10.29303/jkh.v8i1.131
[24]Muryati, D. T., & Heryanti, B. R. (2011). Pengaturan dan Mekanisme Penyelesaian Sengketa Nonlitigasi di Bidang Perdagangan. *Jurnal Dinamika Sosbud*, *13*(1), 49–65.
[25]Muslim, A. (2013). Interaksi Sosial Dalam Masyarakat Multietnis. *Jurnal Diskursus Islam*, *1*(3), 1–11.
[26]Ni Nyoman Adi Astiti & Jefry Tarantang. (2018). Penyelesaian Sengketa Bisnis Melalui Lembaga Arbitrase. *Jurnal Al Qardh*, *5*, 1–23.
[27]Notodisoerjo, R. S. (1982). *Hukum Notariat Di Indonesia: Suatu Penjelasan*. Rajawali.
[28]Nurlani, M. (2022). Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia. *Jurnal Kepastian Hukum Dan Keadilan*, *3*(1), 27. https://doi.org/10.32502/khdk.v3i1.4519
[29]Panjaitan, W. N. (2022). Akta Perdamaian Oleh Notaris Sebagai Mediator Alternatif Penyelesaian Sengketa Di Luar Pengadilan. *Pattimura Legal Journal*, *1*(3), 222–230. https://doi.org/10.47268/pela.v1 i 3 . 7507
[30]Prajitno, A. A. A. (2010). *Apa dan Siapa Notaris di Indonesia?* Putra Media Nusantara.
[31]Pujiono, D. S. &. (2019). *Pengenalan Sengketa Hak kekayaan Intelektual*. BPFH Unnes.
[32]Puspita Sari, E. (2022). Penyelesaian Sengketa Kenotariatan Melalui Upaya Mediasi oleh Notaris. *Jurnal Multidisiplin Indonesia*, *1*(3), 944–952. https://doi.org/10.58344/jmi.v1i3.89
[33]Rasyad, M. (2019). Pembuatan Akta Perdamaian Dalam penyelesaian Sengketa Tanah Ulayat Melalui Notaris Di Kabupaten Agam. *Soumatera Law Review*, *2*(1), 18–23. https://doi.org/https://doi.org/10.22216/soumlaw.v2i1.3569
[34]Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, (2004).
[35]Sari, I. (2019). Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan. *Jurnal Ilmiah Hukum Dirgantara*, *9*(2), 47–73. https://doi.org/10.35968/jh.v9i2.354
[36]Subekti. (1980). *Pokok-Pokok Hukum Perdata*. Intermasa.
[37]Sulistianingsih, D., & Prabowo, M. S. (2019). Out of Court Intellectual Property Right Dispute Resolution. *1st Borobudur International Symposium on Humanities, Economics and Social Sciences (BIS-HESS 2019)*, *436*, 112–116. https://doi.org/10.2991/assehr.k.200529.023
[38]Wicaksono, S. (2021). Reformulasi Pengaturan Penilaian Ahli Oleh Notaris Sebagai Alternatif Penyelesaian Sengketa. *Mimbar Keadilan*, *14*(1), 117–130. https://doi.org/10.30996/mk.v14i1.4334
[39]Yani, Gunawan Widjaja, A. (2000). *Hukum Arbitrase*. PT Raja Grafindo Persada.