

THE SMALL CLAIM COURT TO REALIZE THE FAST AND SIMPLE PRINCIPLE IN CIVIL DISPUTES RESOLUTION

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ABSTRACT

Civil dispute resolution in the public court requires a long time process and it is not as simple as expected. This is because the process of civil dispute resolution in the district court is carried out through several stages and procedures, including the preparation stage, the submission and registration of the lawsuit, and the trial phase which can sometimes be completed for more than a year at one level at the District Court, whereas The Supreme Court has also issued Circular Number 2 of 2014 which confirms that the settlement of cases at the First Level Court is no later than 5 (five) months and for settlement of cases at the Court of Appeal at the latest within 3 (three) months. It is expected that in a maximum of one year and a half, cases submitted to the court have been completed to the level of the Supreme Court. For this, a dispute settlement procedure is known as the Small Claim Court. Namely the dispute settlement procedure by giving authority to the court to settle cases based on the size of the object of the dispute, so that dispute resolution can be achieved quickly, simply and at a low cost, for those who lack financially, but still provide legal force in the form of a Judge's decision who have forced power (binding force) to carry out. PERMA No. 2 of 2015 as a guideline for justice seekers to resolve disputes with simple claims. Terms and conditions apply to using a simple lawsuit. The Small Claim Court is a solution to realize a simple, fast and low cost principle in the Indonesian judiciary. Regulated in the Supreme Court Regulation Number 2 of 2015, where in Article 5 paragraph 3 PERMA Number 2 of 2015, requires the completion of a Simple Claims case no later than 25 (twenty-five) days, but in fact there are still Simple Claims cases whose settlement exceeds 25 (two forty-five) days. These problems are the basis of the Researcher's research. This study uses a normative juridical approach with a focus on research on Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claim Court Resolution specifically in Article 5 paragraph 3. The results of the study show that: (1) Implementation of Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claim Court Resolution in the Special IA Class Sidoarjo District Court has not been implemented according to PERMA. (2) The policy of a judge who increases the time for completing a Simple Claim is due to several reasons.

Key words: Small Claim, Fast Principle, Civil Dispute Resolution

INTRODUCTION

Humans are social creatures that interact with each other. The interaction between parties creates specific legal relationships. The legal relationship will lead to rights and obligations that must be mutually fulfilled. But the fulfillment of rights and obligations between the two parties is often overlooked, giving rise to different interpretations or cross opinions that can lead to disputes, one of which is a civil dispute (Muhammad, 2010: 617). The law governing civil disputes is Civil Law or often referred to as Civil Law. Where in civil law regulates the settlement of disputes arising from private conflicts of interest between legal subjects with other legal subjects, both between people and people, persons with legal entities or legal entities with legal entities. Civil law also serves as a forum for legal subjects demanding losses, both material and immaterial losses (Buamona and Tri Astuti, 2014: 92). Whereas the Civil Procedure Code is a formal civil law that serves to maintain, maintain and enforce the provisions of material civil law. According to Muhammad Saleh and LilikMulyadi (2012: 7) civil procedural law is "legal regulations governing how a person processes civil litigation in front of a court session and how the process of judges (court) accepts, checks, hears and decides cases and how the decision process is carried out in order to maintain the existence of material civil law".

The legal proceeding herein means the process of resolving case through a judge (court). The process of resolving cases through the Judge aims to restore the rights of someone who has been harmed or disturbed, in order to restore the circumstance to its original state that everyone must comply with Civil Law regulations, that the Civil Law regulations run properly (Latifiani, 2015: 16).

One of the principles in the Civil Procedure Code is the simple, fast and low-cost judicial principle stated in Article 2 paragraph 4 of Act Number 48 of 2009 concerning Judicial Power. This is certainly the expectation of every disputing individual in the court. By applying simple, fast and low-cost judicial principles in resolving civil cases it is expected that the process of case resolution will not be delayed and can be resolved in a fast period of time, that the costs incurred by the parties are not excessively high (Makara, 2009:6). However, the resolution that takes place in the Indonesian judiciary, the principle of 'fast, simple and inexpensive' procedures has turned into the stigma of 'less fast, problematical and inexpensive' (Hernoko, 2009:3).

In practice, civil dispute resolution in the public court requires a long time process and it is not as simple as expected. This is because the process of civil dispute resolution in the district court is carried out through several stages and procedures, including the preparation stage, the submission and registration of the lawsuit, and the trial phase which can sometimes be completed for more than a year at one level at the District Court.

In addition to the lengthy stages and procedures, no distinguished of object values and claims and whether or not the proof is simple that makes the civil cases resolution is simple in nature requires prolonged time and inefficient. Moreover, the implementation of a tiered judicial system starting from the first court, the appeal court and eventually in the Supreme Court as the highest state court, also made the lengthy duration of the dispute resolution process. In order to overcome this, the Supreme Court has also issued Circular Number 2 of 2014 which confirms that the cases resolution at the First Level Court shall be no later than 5 (five) months and for the cases resolution at the Court of Appeal at the latest within 3 (three) month. It is expected that in a maximum of one year and a half, cases submitted to the court have been completed to the level of the Supreme Court.

This is still unfavorable for some parties, especially business people, especially for disputes in which the value of the lawsuit is small. Claims with small value when using long stages and procedures and a tiered judicial system, it is being apprehensive that the costs involved in resolving disputes exceed the value of the lawsuit itself.

Based on this problem, subsequently the procedure of dispute resolution established and known as *Small Claim Court* that is, dispute settlement procedures by giving authority to the court to settle cases based on the size of the object of the dispute, so that dispute resolution can be achieved quickly, simply and at a low cost, for parties who lack financial terms, but still provide legal force in the form of a decision Judges who have forced power (binding power) to be implemented (Fakhriah, 2014: 10). The existence of this Simple Suit is regulated in the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settling Simple Lawsuits, hereinafter abbreviated as PERMA Number 2 of 2015.

The issuance of PERMA is also in the context of preparing for the 2015 ASEAN free trade era which is predicted to cause a lot of small business / business case disputes that lead to trial, because in the era of free trade, Indonesia is in the spotlight of the world economy because it does not have a Small Claim Court therefore the Supreme Court issued Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settling Simple Lawsuit in an effort to realize a modern democracy and improve the best services for justice seekers (Meyrina, 2017: 26).

According to the Chief Justice of the Supreme Court, Hatta Ali, this PERMA was issued to accelerate the process of resolving cases according to simple, fast and low-cost judicial principles. The issuance of PERMA was also a way to reduce the volume of cases in the Supreme Court, because in the last three years, the Supreme Court has received a case load around 12 thousand to 13 thousand cases per year. Therefore, a small civil case that assesses a claim of a maximum of Rp 200,000,000.00 (two hundred million rupiahs) as referred to in Article 1 Paragraph 1 of the Supreme Court Regulation Number 2 of 2015 on the Procedures for Small Claim Resolution, it is not necessary to file an appeal or cassation, as the decision of the first court is the final court. Hatta also explained the PERMA that this Small Claim was adopted from the *Small Claim Court* justice system, which was the only one implemented in London, England (Sari, 2016: 336).

PERMA Number 2 of 2015 in addition to regulating the provisions regarding the value of the lawsuit, it also regulates other criteria for a case that can be resolved through the *Small Claim Court*. This *Small Claim Court* is expected to be a new breakthrough in resolving disputes that can fulfill simple, fast and low-cost judicial principles. Based on this background, it is the reason that the Simple Claim Procedure can realize the fast principle in resolving disputes.

RESEARCH METHOD

In this legal research, the author uses a type of normative juridical research that is legal research that examines law from an internal perspective with the object of its research being the legal norm. Normative legal research is legal research that uses secondary data sources in the form of legislation, legal theory, opinions of certain scholars. (Soemitro, 1990: 11) In other words, normative legal research is legal research conducted by researching library material. According to SoerjonoSoekanto and Sri Mamudji (2012: 23-24) in normative juridical legal research, library material is the basic data in research classified as secondary data which views law as positive norms in the national legal system of legislation. Normative legal research basically uses library materials or secondary data consisting of primary legal materials and is assisted by means of observation and interviews to strengthen secondary data.

Normative research (Soekanto and Mammudji, 2012: 62-88), is carried out on the following matters:

- a. Research draws on the principle of law, which is carried out on written and unwritten positive law.
- b. Legal systematic research, which is carried out on the basic understanding of systematic law which covers legal subjects, rights and obligations, legal events, legal relations, and legal objects.
- c. Research on the level of synchronization of legislation is carried out in two ways, namely:
 - 1) Vertically, what is analyzed is legislation with different degrees that govern the same field, and
 - 2) Horizontally, what is analyzed is legislation that has the same degree and regulates the same field.
- d. Comparative legal research, which is carried out on various legal systems that apply in the community.
- e. Research on legal history, which is carried out by analyzing legal events in chronological order and seeing their relationship with existing social phenomena.

In this study the researcher used a normative juridical approach by examining the implementation of Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claim Court, especially in Article 5 paragraph 3, then the researcher carried out the analysis as openly as possible. Furthermore, the researcher held a check and recheck between one source and another so that the researcher was sure that the information collected was true.

RESULT AND DISCUSSION

The position of the Supreme Court Regulation (PERMA) is regulated in Article 79 of Law Number 14 of 1985 on the Supreme Court (UU MA). PERMA, based on the law, has the role to fill the legal gap for material that has not been regulated in the law. The Supreme Court as a judicial institution is given with attributive authority to form a regulation, but this authority is limited in the administration of justice. The first paragraph of elucidation of Article 79 of the Law of the Supreme Court clarifies that in the course of the trial, there is a lack or legal gap in a matter (Sholikin, 2017:1).

There are three interesting things to be observed from the provisions of Article 79 and its elucidation. The first is related to the limitations of PERMA material; second, concerning the scope of PERMA regulation limited to the administration of judiciary related to procedural law; and third, elucidation of Article 79 in the second paragraph, among others, clarifies that the regulations issued by The Supreme Court is distinguished by regulations formed by legislators (Solikhin, 2017: 2).

A *Small Claim Court* is a mechanism for resolving cases quickly that those investigated in *Small Claim Court*, is certainly the small cases. Article 1 number 1 PERMA Number 2 of 2015 on the Procedures for Small Claim Resolution states that Small claim Resolution is interpreted as a procedure of investigation at the trial on the civil claims with the value of the material claim maximum of Rp. 200,000,000.00 (two hundred million rupiah) resolved by small procedure and proof (Priyanto, 2015: 1).

According to *Black's Law Dictionary*, (Bryan, 2004) *Small Claim Court* means "a court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, claims to collect small accounts or termed *small debts debts court, conciliation court*", in other words, this mean that as an informal court (outside the mechanism court in general) with a quick investigation in order to make decisions based on demands for compensation or debt with the small claim value.

John Kadwin, in his book defines that the Small Claim Court is one form of fast and low cost informal dispute resolution and has the legal power (Baldwin, 2003: 11). From this definition, we can understand that the Small Claim Court has several properties including (Fakhriah, 2014:11) (a) Informal means that it can be a mechanism outside the mechanism courtingeneral;(b)Performedquicklyandefficiently (expeditiously);(c)Compensationclaim with a specific monetary amount.

Small Claims Court focuses on the materialization of fast, simple and low-cost judicial principle in accordance with Article 2 paragraph 4 of Act Number 48 of 2009. Regarding Judicial Power stated that: "The judiciary is carried out with simple, fast and low cost" and Article 4 paragraph 2 "The court helps justice seekers and try to overcome all obstacles and hindrances in order to achieve simple, fast and low-cost judiciary. This simple, fast and low-cost principle can open wide access for the community in obtaining justice, that the Small Claim (*SmallClaim Court*) is expected to be an option in resolving a case based on simple, fast and low-cost judicial principles and it can avoid complex and formal litigation processes.

Following is a further explanation of the simple, fast and low-cost judicial principles as follows:

- a. **Simple Principle**
Simple in etymology means medium in the middle sense, less high and less low (Drafting Team of the Indonesian Dictionary of the Great Language, 1990:163). Whereas in the elucidation of Article 2 of the Act of Judicial Power, it is simple that investigation and resolution of cases are carried out in an efficient and effective manner.
- b. **Fast Principle**
Fast is interpreted as a strategic effort to make the justice system as an institution that can assure the materialization/achievement of justice in law enforcement quickly by justice seekers (Sidik, 2005: 47). The fast principle in the judicial process means that case resolution does not take excessively long. This quick principle is not intended to instruct the Judge to investigate and decide cases within a short period of one or half an hour, but a process that does not take long periods to many years in accordance with the simplicity of the expected procedural law (Harahap, 2003:71) .
- c. **Low Cost Principle**
Low cost means that in implementing procedural law, costs are kept to a minimum that it is affordable for all levels of society who want to seek justice. Low costs in this case means no other costs are required unless it is really necessary in real terms for resolution of cases. All payments in the court must be of clear use and provided with receipts. The court must account for the money to the person concerned by listing it in the case finance journal, that the person concerned can look over it at any time (Arto, 2001: 67) (Arto, 2001: 67).

Based on the explanation above, it is expected that the *Small Claim Court* can be an option in resolving case based on a simple, fast and low-cost judicial principle and it can avoid complex and formal litigation processes. The legal proceedings generally will take a long time. If it is further examined, the legal proceeding in the lawsuit generally starts from the first session with an event of mediation and investigation of the parties' identity by the judge or amicable settlement. Afterwards it proceeds to the following sessions, which is the defendant's reply, response to defense statement, counter-response by defense, intermediate decision, verification from the parties, conclusion and the final is the reading of the verdict. Moreover, if one party disagrees with the court decision, they can file a legal action (appeal and cassation). In fact, there were a number of such cases until their heirs resolved them as the party who had filed the lawsuit had departed. This can take not only months or even years (Feraldy&Anand: 2017:212)

The legal basis for proceedings in court refers to the Composition and Power of Judicial Board in Indonesia regulated in Act Number 48 of 2009 on the Judicial Power. Based on Article 2 paragraph 4 the Judicial Power Act states that the trial is carried out

simply, quickly and cost lightly. Accordingly, the Court makes an innovation on procedures for case resolution in order to materialize a simple, fast and low-cost judiciary known as *Small Claim Court* (Hutagalung, 2010:2)

Small Claim Court is new-fangled in Indonesia, as its existence in formal laws is marked by the promulgation of the Regulation of Supreme Court of the Republic of Indonesia Number 2 of 2015 on the Procedures of Small Claim Resolution. This PERMA will take effect when promulgated on August 7, 2015 through State Gazette of the Republic of Indonesia Number 1172 of 2015. PERMA Number 2 of 2015 consists of 9 (nine) chapters and 33 (thirty-three) articles.

A. Procedures for Small Claim Court Resolution

In the resolution of a Small Claim case, several stages must be passed through during the trial. The guidelines and procedures for implementing the law have been carried out the detailed in the Supreme Court Regulation Number 2 of 2015 on the Procedures for Small Claim Resolution.

The inquiry process begins with registration of a lawsuit in the Registrar's Office of the District Court that has the authority to try the case and end with the reading of the decision by the Single Judge. The Registrar determines the qualifications of the case first by analyzing whether the case submitted by the claim can be examined by the completion of a Simple Claim or will be examined by an ordinary civil event. If it turns out that the case is included in the object of a Simple Suit then it will be followed by a preliminary examination in which the Judge inspects the Simple Suit material based on the Small Claims conditions, then the Judge assesses whether the proof is simple or not, but if the case is not included in the Simple Claim object then the case will be checked with regular events.

Small Claim Court Resolution according to Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015 on the Procedures for Small Claim Resolution at the latest 25 (two twenty-five) days from the first trial day. The day referred to in Article 1 number 4 is a working day (Asnawi, 2016:658), that it does not cover the process of the response to Defense statement-counter-Response by defense, Provisions or Conclusion letter that took a long time.

By the resolution of cases that only takes 25 (twenty-five) days that it results in the lack of a Defense statement-counter and Response by defense process that is the hallmark of the Small Claim examination. Some parties are supportive as this method is considered to cut back the duration of examination but on the other hand, there are also those who disagree as the method is ineffective in the absence of the opportunity of each party to submit a Defense statement-counter and Response by defense. Small Claim Court is included in authority or scope of Public Court. Not all cases can be resolved by submitting Small Claim Court (Priyanto, 2015: 1-2), Not all cases with small claims can be submitted through Simple Claim, as some conditions have been arranged by Supreme Court Regulation No. 2 of 2015 on Procedures of Small Claim Resolution, especially Article 3 and Article 4 summarized as follows:

1. Claims filed against cases of default and/or acts against the law (tortious act) of which claims is not greater than Rp. 200,000,000.00 (two hundred million rupiahs);
2. The case in question is not under the jurisdiction of special courts such as the Commercial Court, Industrial Court, etc.;
3. It is excluding disputes over land rights;
4. The parties in the Small Claim consist of the Plaintiffs, each of whom must not be more than one, except having the same legal purpose;
5. The Defendant, whose location is unknown, cannot be submitted to Small Claim;
6. Both parties both the Plaintiff and the Defendant must be in the jurisdiction of the same court, and;
7. Both parties both the Plaintiff and the Defendant must attend all proceedings with and/or without the presence of their attorney.

The requirements in the Small Claim Court above must be fulfilled entirely, that when one condition is not fulfilled, the case cannot be examined and resolved through the *Small Claim Court* mechanism although the object of the dispute is worth under Rp 200,000,000 (two hundred million rupiah).

B. Implementation of Article 5 paragraph 3 PERMA No. 2 of 2015

Implementation of Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claims Court Resolution in this paper refers to a Simple Lawsuit case in the Special IA Class Sidoarjo District Court with Number 8/Pdt.G.S/2017/PN.SDA. We found a case with Number 8 / Pdt.GS / 2017 / PN.SDA through SIIP (Case Study Information System), where the case was one of the Simple Claims cases in the Special IA Class Sidoarjo District Court which in its completion was not in accordance with the provisions of Article 5 Paragraph 3 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Completion of a Simple Claim, because it takes more than 25 (twenty-five) days, of which the history is as follows:

Table 1 Case History Number 8/Pdt.G.S/2017/PN.SDA

No	Session Date	Time	Agenda	Reason for Delaying
1	Wednesday, Oct 18 2017	08:40:00s/d 10:15:00	First Session	The Defendant is not present
2	Wednesday, Oct 25 2017	08:15:00 s/d 12:15:00	The presence of parties	To make peace
3	Tuesday, Oct 31 2017	08:20:00 s/d 10:45:00	Peace determination	The Defendant is not present
4	Tuesday, Nov 7 2017	09:50:00 s/d 12:00:00	Reading of determination	The Defendant is not present
5	Tuesday, Nov 14 2017	09:00:00 s/d 12:15:00	Reading of determination	The Plaintiff requested time for this case's decision in connection with the Defendant's settlement to be made on Wednesday, November 15, 2017
6	Tuesday, Nov 21 2017	09:15:00 s/d 11:35:00	Reading of determination	Because the Plaintiff submitted evidence of the implementation of the agreement made by the parties and the Plaintiff requested the decision of <i>quo</i>
7	Tuesday, Nov 28 2017	09:15:00 s/d 11:35:00	Decision read out	

Source: sipp.pn-sidoarjo.go.id.

Based on this history, the author knows that the trial process lasts for 30 (thirty) working days as from the first hearing dated October 18, 2017 until the verdict was read on November 28, 2017. The case is a default or broken promise made by YuarsehTrianingseh as Defendant against PT. BPR PURIDANA ARTHAMAS, represented by the President Director, JokoSusanto, SE as the Plaintiff. In the case it was known that the Plaintiff filed a lawsuit against the Defendant to pay the debt and interest and the penalty amounting to Rp52,667,200.00 (Fifty two million six hundred sixty seven two hundred rupiahs) as well as voluntarily selling collateral objects in the form of 1 (one) vehicle unit with the brand/type Daihatsu Espass/S91, blue, 2009, frame number: MHKSPRRHC4K02547, engine number: 9260067, police number: W-8326-NF, BPKB number: K-06610069. It was known through SIPP that on Tuesday, November 14, 2017 the hearing was postponed on the grounds that the Plaintiff requested time for the case's verdict in connection with the settlement of the Defendant on Wednesday, November 15, 2017, according to which the author made the settlement of this Simple Claim case in accordance with the regulations in Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015.

That it was true that the case was included in a Simple Claim case which in its completion was not in accordance with Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015, because it took more than 25 (twenty five) days. In essence, the reason for making a claim with Number 8/Pdt.GS/2017/PN.SDA in its completion exceeds the time limit because "there is the wisdom of the Judge who decides to buy the trial due to the agreement of the parties to pay off the debt from the parties The Defendant told the Plaintiff, so that in the Simple Claim to be achieved and prioritized it was a peace so that the Judge decided to buy time if later justice for both parties could be realized".

Based on this, in the opinion of the authors that the implementation of the time limitation contained in Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claims Court Resolution still cannot be applied to the maximum, besides because there is no clear explanation of the time limitation in settlement of Simple Claims, also because there are things as mentioned above which result in Article 5 paragraph 3 cannot be implemented in accordance with Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claims Court Resolution.

According to John Rawls' theory of justice, justice is the same and equal situation based on the characteristics of rationality, freedom and equality (Faiz, 2009: 135). The first principle is expressed as the same principle of freedom as freedom of religion, opinion, etc., while the second principle is expressed as the principle of difference that hypothesizes on the principle of equality, which means that the income of authority is intended for the benefit of poor people.

If it is linked between the theory of justice from John Rawls, with the results of the research of the Researcher on the case Number 8/Pdt.GS/2017/PN.SDA which in its completion takes more than 25 (twenty five) days, then the Judge who gives wisdom to increase time the settlement of the case can be justified, because based on his theory justice is intended/prioritized for those who are weak or underprivileged, weak or capable of being here not only interpreted financially, but can also mean ignorance about the settlement of Simple Claim cases, where the parties do not understand the procedure for the settlement of a Simple Claim, for which the Judge applies to increase the time of settlement of case Number 8/Pdt.GS/2017/PN.SDA, because the Judge feels that if no time is added to the completion of a Simple Claim, then this will affect injustice seen by litigants from their lack of knowledge regarding settlement of cases in use a Simple Suit, then because the explanation related to a Simple Suit is also felt to be still inadequate, plus the addition of time is due to a request for the parties themselves, so that the Judge seeks to achieve peace between the two parties, then decides to give wisdom to add time in settlement of a Simple Suit case

CONCLUSION

he trial process for civil cases requires a long and long time, so that there is a buildup of cases in the court. Implementation of Article 5 paragraph 3 of the Supreme Court Regulation Number 2 of 2015 concerning limitation of 25 days is intended to realize the principle of fast, simple, low cost. But in its implementation there are cases that are resolved beyond 25 days. This is due to the postponement of the trial intended to bring about peace between the Plaintiff and the Defendant.

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