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Simple Claim Execution Reorientation in Civil and Business Disputes for Legal Certainty

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Abstract.
This study aims to prescribe the importance of rethinking the regulation of the execution of simple lawsuits in the justice system in Indonesia, considering that simple lawsuits have many advantages as an alternative for resolving civil and business disputes. This research is normative legal research with a law approach, a conceptual approach, and a comparative law approach. The countries used for comparison are Singapore, the Netherlands, and the United States. The study results show that legal uncertainty regarding the mechanism of the simple lawsuit court decision is a factor that must be considered if you want a simple lawsuit to be one of the models of dispute resolution in the business and civil disputes that exist in Indonesia. This should be the homework of the government or the Supreme Court in establishing clear rules regarding the procedure for executing a simple lawsuit. This is important to provide clarity and legal certainty for the parties.

Keywords: simple lawsuit, judicial system, legal certainty

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1. INTRODUCTION

Philosophers have long developed the idea of the rule of law from ancient Greece. In “the Republic”, Plato initially argued that it is possible to realize the ideal state to achieve goodness, which has the core of goodness. For that power must be held by people who know better, namely a philosopher (the philosopher king).[1] However, in his books “the Statesmen” and “the Law”, Plato states that what can be realized is the second best form that places the rule of law. A government that can prevent the decline of one’s power is a government by law.[2] According to Plato, the goal of the State, according to Aristotle, is to achieve the best life possible, which the rule of law can achieve.

Law enforcement in a state of law such as Indonesia is essential to create justice in a society following Indonesia’s national development goals.[3] The rule of law in running the government requires a judicial institution to maintain law and justice.[4] In

principle, law enforcement related to dispute resolution is only carried out by judicial power, which is constitutionally commonly called the judiciary (Article 24 of the 1945 Constitution).[5] Thus, the only judicial bodies under the judiciary's jurisdiction, culminating in the Supreme Court, are authorized to examine and adjudicate disputes. Article 2 paragraph (3) of Law no. 48 of 2009 concerning Judicial Power (from now on referred to as the CoW Law) explicitly states that all courts in the entire territory of the Republic of Indonesia are state courts regulated by law. Beyond that, it is not justified because it does not meet the formal and official requirements and is contrary to the principle under the authority of law.[6] A judiciary is a place for resolving a problem or case, both in the form of criminal acts and civil disputes.

Civil disputes are one example of disputes that often occur in society.[7] Civil disputes are caused by imbalances in the obligations and rights of the parties involved in an agreement, causing one of the parties to experience actual losses or loss of expected profits from an agreement which in this case is called the breach of contract (default).[8] So, in this case, many people choose litigation for dispute resolution, both severe and minor disputes, which is the leading cause of the accumulation of cases in the first-level courts, and appellate courts, especially in the cassation court (Supreme Court).[9]

The accumulation of cases described above is one of the biggest problems in the judicial environment, which also causes the ineffectiveness of implementing justice following the principles of the Trilogy of Justice, which includes fast, simple, and low-cost trials.[10] The Supreme Court issued a strategic policy to anticipate this problem by implementing a simple lawsuit system adopted from the application of small claim courts in several countries, one of which is the United States and Australia.[11] The Supreme Court of the Republic of Indonesia regulates it in Supreme Court Regulation Number 2 of 2015, which was promulgated on August 7, 2015, concerning Procedures for Settlement of Simple Lawsuits in conjunction with Perma Number 4 of 2019 concerning Amendments to Perma Number 2 of 2015 concerning Procedures for Settlement Simple Lawsuit which was promulgated on 20 August 2019.[12]

Regulations 2 of 2015 and 4 of 2019 aim to optimize the settlement of straightforward claims (small claim courts) to be simpler, faster, and less expensive as one of the principles in resolving judicial disputes. Theoretically, the Small Claim Court is the right step to fix the problem of accumulating cases in the judiciary. However, applying a simple lawsuit system is not an option because many people still do not know or are still unfamiliar with simple lawsuits. Hence, they still choose to use conventional litigation.

In addition, its application has various problems, especially regarding the execution of Court Decisions regarding simple lawsuits. The biggest obstacle is the absence

of rules regarding the procedure for executing a simple lawsuit, which is the primary basis for the competent authorities (in this case, the District Court and the Directorate General of State Wealth) to execute the execution.[13] The existence of these laws and regulations is one of the critical factors that determine the success of implementing a simple lawsuit to realize a fast, simple, and low-cost trial.[14] Because Perma No. 2 of 2015 only generally regulates the implementation of simple lawsuit decisions and does not provide details regarding the mechanism, agencies have the authority to carry out executions, assets placed as confiscation of executions, and costs incurred for the execution process.

Therefore, this legal writing is intended to provide a solution to the execution of a simple lawsuit which is later expected to make a simple lawsuit as an alternative dispute resolution that is in line with the principles of fast, simple, and low-cost justice. Based on the problems above, the title of this paper is “Reorientation of Simple Lawsuit Execution Arrangements in Business Disputes to Ensure Legal Certainty”.

2. METHODOLOGY/ MATERIALS

This research is normative legal, using a statutory, conceptual, and comparative law approach. Singapore, the Netherlands, and the United States are used as comparison materials. This research stems from the reality that simple lawsuits in the practice of dispute resolution within the judiciary have not become the choice of justice seekers.[15] One of the problems is that it is not clear how to execute court decisions from these simple lawsuits. Then a comparative approach is used to see how the practice in several countries regarding the execution mechanism of court decisions from simple lawsuits in several countries can be used in setting simple lawsuits in the future.[16]

3. RESULTS AND DISCUSSIONS

The Supreme Court, as the top judicial institution in Indonesia, has a mandate to carry out continuous renewal and development of the judiciary in Indonesia. This is a mandate from Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.[17] One of the powers to carry out this mandate is to issue internal court regulations in the form of a Supreme Court Regulation. One of the biggest challenges of the judiciary today is the inefficiency in settlement of civil cases, especially related to cases with a small number.[18] Sometimes in small nominal cases, the costs and time spent do not match the amount of money in dispute. This has led to

several problems, namely, the obstruction of public access to settle their cases in court, the proliferation of informal debt collectors, which sometimes cause problems, and obstacles to the ease of carrying out business activities, especially those categorized as Small and Medium Enterprises (Small and Medium Enterprises). SMEs).[19]

This is not only identified by the Supreme Court (MA) but also to be felt by the government. Therefore, in Presidential Regulation Number 2 of 2015, Book of the National Development Agenda in the Legal Sector. It is stated that the target for implementing the Reformation is that the government plans to develop a mechanism for resolving civil cases that is easy, fast, and inexpensive by developing small claims courts.[20] Based on this, the Supreme Court then formed a Working Group based on the Decree of the Chief Justice of the Supreme Court Number 267/KMA/SK/X/2014 concerning the Establishment of a Working Group for Drafting a Draft Supreme Court Regulation on Procedures for Settlement of Simple Lawsuits.[12]

The Supreme Court considers that the community needs an alternative mechanism to settle civil disputes that is easily accessible and effective in defending their legal rights. From an economic point of view, economic growth can run optimally if there is an honest and trustworthy legal system to resolve disputes between buyers and sellers efficiently.[20] There are reasons behind the need to settle simple civil cases through a unique mechanism. The reason for that is the need to resolve disputes quickly, cheaply, and fairly.

This is inseparable from the problems in Indonesia's ordinary civil proceedings currently in force. Ordinary civil procedural law mechanisms often require expensive, lengthy, complicated costs to resolve a case.[21] Creating a quick, cheap and fair dispute mechanism leads to a second background: access to justice. The settlement of a simple lawsuit mechanism encourages access to justice for the community to the court to resolve the civil law cases they face.[22] The criticism of the ordinary proceedings has inspired the courts to simplify the civil case settlement process to make it easier, more efficient, and less expensive, especially for cases of small value, through a simple lawsuit mechanism.

Straightforward claims in foreign literature are widely known as small claims. The term signifies the distinction of cases based on the value of the lawsuit, which is considered small. At the same time, the institutional or simple lawsuit settlement mechanism is known by various terms.[13] As in several states in the United States using a small claims court, the term small claims tribunal is used in Singapore, the minor claims procedure used in Europe (European Small Court Procedure), and a particular summary procedure used in China.[23]

Based on the Black's Law Dictionary, a small claims court is an informal court (outside the court mechanism in general) with a quick examination to decide on claims for compensation or debts with a small claim value.[24] The Merriam-Webster Dictionary states that the small claims court is a special court intended to simplify and expedite handling small claims on debts.[25] John Baldwin defines a small claims court as an informal, simple, inexpensive court with legal force.[26] Meanwhile, according to Leslie Sherida Feraz, the small claims court is a court that is informal, inexpensive, fast, focused on mediation, relating to restrictions on lawsuits and, in some instances, for example, those relating to consumers, motor vehicle damage, debts, and other services.

Judging from these definitions, it can be noted that the role of judges is required to take a more active and intensive approach in trying and deciding cases. Furthermore, in another explanation, Reginald H. Smith explained that the small claims court gives complete control to judges in the trial process, which will have an impact on reducing the density of case settlement compared to the standard case settlement process with formal and rigid procedures.[27] The whole definition given cannot be separated from the purpose of establishing a small claims court, namely resolving lawsuits in a fast time, at a low cost, and avoiding complex and formal litigation processes.

Some considerations are that the absence of an alternative mechanism for settlement through a simple civil lawsuit can create several conditions that have a negative impact. First, injustice is caused by significant barriers for marginalized groups to access the courts. Second is the development of non-legal mechanisms of vigilante behavior, where the parties use non-legal mechanisms and tend to be against the law to resolve the problem. Therefore, if it goes well, the settlement of civil lawsuits can be helpful for:[14] a. A fair settlement of civil cases; b. Reducing vigilante behavior from the parties to resolve the dispute; and c. Identifying social phenomena that continue to emerge in simple lawsuit courts can inspire the government to be further regulated.

With a simple lawsuit settlement, the government can make cases in a simple lawsuit court to identify problems and social phenomena in the community and then formulate further arrangements if necessary.[22] This is because the cases settled in settlement of simple lawsuits are cases with certain specific characteristics. These typical cases occur daily, "ordinary day-to-day grievances" and involve the general public "common man".[10] Settlement through a simple lawsuit can be a fulfillment of the implementation of a simple, fast, and low-cost judicial principle which is also in line with the National Medium-Term Development Plan.

Settling civil or business cases through a simple lawsuit system simplifies the mechanisms and procedures for settling civil cases in district courts. This simplification of

straightforward claims aims to provide fast, efficient, effective, and low-cost civil court settlement services and infrastructure for civil cases with small values. The presence of a simple lawsuit settlement is very much needed to support economic activities and provide access to the courts. The simple lawsuit system seems to be empowered through a particular “trajectory or path” for resolving disputes by “simplifying the process” as a form of court access to economic activities.[28] Quick settlement of cases has a significant correlation to economic growth. Fast and efficient case resolution minimizes litigation costs in case of a civil dispute relating to the business. However, the need for a simple lawsuit mechanism is not only seen from its supporting capacity for the business aspect. More than that, a straightforward settlement mechanism is also intended to provide access for poor and marginal groups to access the settlement of cases in court.

The fundamental philosophical basis of making this simple lawsuit is implementing the principles of a fast, inexpensive, and low-cost trial. This principle is the implementation of the mandate contained in the main objectives of the state as stated in the preamble to the 1945 Constitution.[20] Law provides order and justice in society, which in turn can create a conducive environment for Indonesia as a nation to achieve its goals. However, the law question is a law that corresponds to a sense of justice and the needs of the community to solve its problems.[13] Such a law can only be created by implementing the law transparently and openly.

The implementation of the law (statutory regulations) is a requirement to bring out the positive aspects of humanity and inhibit the emergence of negative aspects of humanity. In other words, efforts to create public order are an absolute requirement for efforts to create a peaceful and prosperous Indonesia. If the law is enforced fairly and order is realized, legal certainty, a sense of security, peace, or a harmonious life will be realized. Improvements in the aspect of justice will facilitate the achievement of prosperity and peace.[29]

An excellent procedural law ensures that the judicial process can run smoothly. In other words, the court’s decision on how the law is in the case before he can be obtained in the shortest possible time, runs fairly, is impartial, and the costs required to obtain a court decision and its implementation are not too burdensome for justice seekers.[30] These are usually arranged in a simple, fast, low-cost judicial principle. This principle is also stated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power.

What is meant by simple is that the examination and settlement of cases are carried out efficiently and effectively. This simple principle is the value of harmonization found in

almost all countries after the second world war, which is known as “informal procedure and can be put in motion quickly”.[31] The fewer and more straightforward the formalities required or required in court proceedings, the better. The more formalities that are difficult to understand or the more unclear rules allow various interpretations to arise. This results in less guarantee of legal certainty and causes a reluctance or fear to speak before the court.

What is meant by the principle of procedural law refers to the course of the judiciary. Article 14, paragraph 3 (c) of the International Covenant on Civil and Political Rights (ICCPR) regulates the minimum requirement in implementing criminal justice, one of which is the right to be tried without undue delay. The aim is to ensure legal certainty for the accused. Not only that, this principle is essential to ensure the interests of justice in general. According to the UN Human Rights Council in its General Comment No. 32, speedy trial also applies to civil cases. This principle of expeditious justice must also be applied to courts of the first instance and courts of the next level.[23]

In addition to being simple and fast, low costs are also included in the principle of procedural law so that the public can reach them. The high cost of the case causes interested parties to be reluctant to litigate before the court. The high cost of the case cannot be separated from the length of the judicial process. The length of time to settle cases is generally due to a very formal and highly technical examination process. These three things are closely related to each other during the judicial process.[11]

In line with a simple, fast, and inexpensive trial, in 1993, the Supreme Court issued a policy in the form of SEMA Number 6 of 1993 in conjunction with Kep. KMA Number MA/007/SK/IV/1994. The SEMA essentially urges the Court to examine and decide on civil cases within a maximum of 6 (six) months. In practice, the judicial process running so far has been inefficient, not fast, and expensive, causing losses to the litigants in court. Not only that, the length of time for justice seekers to obtain legal certainty is considered to have injured the values of justice in society.[32] Therefore, the principle of simple, fast, and low-cost justice must be pursued. However, applying straightforward, fast, and low-cost principles in examining and settling cases in court must not override the thoroughness and accuracy in seeking truth and justice.[33]

Based on the explanation above, it can be concluded that the implementation of SCC in the Netherlands and Singapore is under the judiciary’s jurisdiction. The SCC applied in Singapore is more informal with mediation and adjudication methods, although the proceedings are carried out at the Small Claims Tribunals. The countries used for comparisons have implemented SCC for a long time, different regulated laws, and integrated it into civil procedural law.

In Indonesia, how to file a simple lawsuit adopts the principles that exist in the SCC in general, especially the SCC, which is applied to the Netherlands to achieve access to justice through the principles of fast, simple, and low-cost dispute resolution. The principle of the Judicial Trilogy is one of the principles in the Civil Procedure Law, which consists of the Quick, Simple, and Low-Cost Principles. The principle of a simple, fast, and low-cost trial is stated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which states that justice is carried out in a simple, fast, and low cost.[34] The principle of simple justice implies that a process stage is carried out through a mechanism that is not complicated, easy to understand, and easy for people from any group background to follow.[35] Sometimes the litigants do not always have the sufficient educational background to understand legal procedures, but sometimes the litigants come from people with low educational backgrounds or even complete illiteracy.

In applying a simple lawsuit in Indonesia, when registering a case, Plaintiff submitted evidence, including nezegeling the original document. At the Registrar's Office, it will be checked whether the registered lawsuit can be examined quickly and classified as a simple lawsuit or not, as well as the sole judge examining the case at the first trial may declare a refusal to examine the case further if it does not meet the criteria as a simple lawsuit.[7] There are two types of cases that cannot be resolved in the SCC, namely cases where dispute resolution is carried out through special courts and cases of land rights disputes. This system recognizes a dismissal process, in which the judge has the authority to assess and determine whether the case falls within the criteria for a simple lawsuit or not. If the judge thinks the case is not a simple lawsuit, then a decision is issued stating that the examination of the case is not continuing.[22]

Based on the author's search, it is known that the examination of civil cases using a simple lawsuit as regulated in Perma No. 2 of 2015 is still relatively small in number compared to the regular examination. This is because the execution of a simple lawsuit has not been carried out correctly. This happens because many obstacles are experienced due to the factors determining the success of implementing a simple lawsuit that has not been fulfilled. The biggest obstacle is the absence of rules regarding the procedure for executing a simple lawsuit, which is the primary basis for the competent authorities (in this case, the District Court and the Directorate General of State Wealth) to execute the execution. The existence of these laws and regulations is one of the critical factors that determine the success of implementing a simple lawsuit to realize a fast, simple, and low-cost trial. Because Perma No. 2 of 2015 only generally regulates the implementation of simple lawsuit decisions and does not specify the mechanism,

which agencies have the authority to carry out executions, assets placed as confiscation of executions, and costs incurred for the execution process.[36]

The absence of rules regarding the procedure for the execution of this simple lawsuit, although in its development it has been overcome by the relevant agencies, for example, the role of the Directorate General of State Assets (DJKN) in implementing decisions related to simple lawsuits is at the stage of implementing the decision, if the contents of the decision are in the form of returning a sum of money then Against this guarantee, an auction of Court execution can be applied to the DJKN KPKNL (Office of State Assets and Auction Services) by previously fulfilling the general and specific requirements of the Court Execution Auction following the provisions of Article 200 HIR, Article 214 to Article 247 RBg.

Following the Regulation of the Director General of State Assets Number 2/KN/2017 concerning Technical Instructions for Auction Implementation, auction applications originating from district court decisions from simple lawsuits are carried out through the mechanism regulated in Article 6 number 2, namely through Court Execution Auctions. In the Perdirjen KN, the terms of the Court Execution auction are not distinguished through ordinary or simple lawsuits. The collateral goods cannot be requested for an execution auction of Mortgage Rights because Mortgage Rights do not bind the guarantee. It can be concluded that practice does not always go according to the rules or execution. In practice, there is still a lot of uniformity and confusion over implementing court decisions (execution). This creates legal uncertainty that can impact injustice for the parties to the dispute and the community in general. This should be the homework of the government or the Supreme Court in establishing clear rules regarding the procedure for executing a simple lawsuit. fast, simple, and low-cost.

4. CONCLUSION AND RECOMMENDATION

Legal uncertainty regarding the mechanism for the decision of a simple lawsuit court is a factor that must be considered if you want a simple lawsuit to be one of the models of dispute resolution in business and civil disputes in Indonesia. This should be the homework of the government or the Supreme Court in establishing clear rules regarding the procedure for executing a simple lawsuit. This is important to provide clarity and legal certainty for the parties.

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