



Tort claims settlement of disputes through a simple review of the effectiveness of the application of perma no. 4 year 2019 regarding changes to perma no. 2 year 2015 regarding simple lawsuit settlement procedures

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Abstract

Civil law is a formal law that serves to uphold, maintain and ensure compliance with substantive civil law. The principle of the civil law in Indonesia, one of which is the principle is simple, fast and inexpensive. So far, this principle has not been implemented effectively due to the settlement of civil disputes practice always takes a long time and huge costs. In 2015, a new idea arose to simplify the process of resolving civil cases. The Supreme Court published a regulation in order to fill the legal vacuum in the form of Supreme Court Regulation No. 2 of 2015 on Procedures Simple Action Settlement that has been converted into the Supreme Court Regulation No. 4 of 2019. Methods of study of this writing was done by using empirical juridical methods through field research methods. As for the type or types in this research is descriptive. This study applied primary data. Primary data was the data obtained through interviews with the parties on a case. The collected data was then processed and discussed by using the method of qualitative normative analysts, the analysts normative since the starting point of positive legal norms, then the purpose of the qualitative data analysis. The results showed modest settlement through a lawsuit can expedite dispute settlement cases of tort so that the principles of justice becomes quick, cheap and simple can be achieved.

Keywords: perspective of dispute resolution, tort, simple lawsuit

Introduction

Background

Simple lawsuit (Small Claims Court) has long been well developed in countries applying the Common Law and countries with legal systems Civil law. Even grow and thrive not only in developed countries like US, UK, Canada, Germany, the Netherlands but also in developing countries, both in the continent of Latin America, Africa and Asia. This is because the business dispute resolution forum through the courts efficient, fast and cost of court fees for cases which the total value of small case is required in the business world. The formation of such a forum is needed especially for developing countries like Indonesia, to boost the confidence of investors at home and abroad in order to develop the business world ^[1].

Court dispute resolution (litigation) is not considered effective and efficient so that it will interfere with or inhibit business activities. This is because: the process of settlement of disputes through the courts is very slow and time-consuming as a result of the examination system is highly formalistic and very technical, costly court fees (given for registration of any lawsuit about Rp500.000,00 - Rp750.000,00 costs trial many times, attorney fees, foreclosure fees, the cost of examination of witnesses, as well as other costs related to the purposes of the trial-period of practical experience the author) judicial response defend common interests and often unfair and the court decision is often not solve the problem but rather creates new problems considering litigation process always ends with the losers and winners. It has the potential to prolong the process of dispute resolution in spite of the principle of justice that is fast, simple and low cost.

Of thought above, it is the opinion of the writer needs to be a form of dispute resolution procedures, in particular business disputes, as it is known in developed countries by giving powers to the court to resolve the case based on the size value of the object of dispute, so as to achieve the settlement of disputes especially businesses, in a fast, simple and cheap, through a mechanism called small claims court. The problem is how the implementation of the practice of dispute resolution mechanism of the small claims court ^[2].

The Supreme Court (MA) has issued a Supreme Court Regulation (Perma) No. 2 of 2015 on Procedures and Procedures Simple Action Settlement that has been converted into Perma No. 4 of 2019 on the change Perma No. 2 of 2015 on Procedures Simple Action Settlement. Lawsuit simple terms are also known as the small claims court, which is lightweight with a civil suit settlement process faster. Some restrictions have been set in Perma No. 4 of 2019, for example, in the lawsuit filing, the maximum value of the object matter Rp. 500.000.000'- (five hundred million rupiah) with a simple verification process, led by single judge.

The period of this case a maximum of 25 working days must have been decided. Its decision was final and binding on the first level. Simple procedures for filing suit is also not required represented the attorney or advocate as well as in the case of ordinary civil lawsuit. Advocates the use of services of course will cost quite a bit. The rule actually contains an emphasis of the parties do not need to use the services of an advocate to make the process more effective and efficient judicial (litigation of efficiency). Therefore, the case is simple lawsuit is not designed as a dispute,

but searching for a solution to the legal issues faced by the parties in a fast and simple.

Judicial Process Simple, Fast and Lightweight fee pursuant to Act No. 48 of 2009 under Article 2 Paragraph (4) and Article 4 Paragraph (2) requires the existence of an important principle in the Civil Procedure Code that is simple, fast, and inexpensive. Simple is the examination and settlement is done with an efficient and effective manner, at low cost is the cost of the case that are accessible to the public, however, the principle is simple, fast and low cost in the inspection and the settlement does not rule precision and accuracy in the search for truth and justice. Settlement of the Case in principle Appropriate Grace Period. To that end, the court especially in the first instance, be so designed as to be able to serve the interests of society characterized by the low-cost, simple, In PERMA No. 4 of 2019 mentioned interpreted as a Simple Action Settlement procedure of examination in the trial of a civil suit with the suit material value at most Rp 500 million which was completed with the procedures and simple proof. The period of this case is not more than 25 days apart, two types of cases that cannot be solved in the Small Claims Court that the dispute settlement cases is done through special courts and court disputes over land rights. These systems recognize dismissal process, where the preliminary hearing judge authorized to assess and determine whether the case is a simple lawsuit entry criteria and if the judge believes the lawsuit is not a simple matter, then issued the determination of the case does not continue.

In a simple breach of contract is not performing feats, or performing feats, but not implemented on time, and not as it should be. In the restatement of the law of contracts (United States), default or breach of contracts divided into two total and partial breach *brechts*. Total *brechts* means the execution of the contract may not be implemented, while the partial *brechts* means the implementation of the agreement is still possible to be implemented. In the Dutch language the tort is interpreted as bad maintenance, *wanhebeer*: bad management *wandaad*: bad deeds.

Tort can be in the following form:

1. Absolutely not meet achievement;
2. Achievements which are not perfect;
3. Late for an achievement;
4. Doing what is in the agreement are forbidden to do ^[3]

Based on the above tort division, there are two possibilities that can be sued by the injured party, namely the cancellation and contract fulfillment. If elaborated further, possibly as a result of tort it is divided into four:

1. Cancellation of contracts;
2. Cancellation of the contract a claim for compensation;
3. Fulfillment of contracts;
4. Fulfillment of the contract a claim for compensation.

Not always the debtor must meet the feat, because the debtor may file a rebuttal to free themselves from the harmful effects of such default. Defense or defense can be:

1. Non-compliance with the contract (default) occurred because the state was forced instance performs a contract of sale of cement with the B, to deliver the cement to be by sea, but the waves are still big, so that the cement can not be delivered, even if the use of aircraft to transport the cement

to be expensive. Then wait until the surf or sail requirements are met.

2. Non-compliance with the contract occurred because the other party is also in default (non *adimpleiexceptiocontractus*), for example, Person A has not paid the remaining balance on the car bought debt from B, because B has not yet submitted Si also BPKB the car.
3. Non-compliance with the contract (default) occurred because the opponent has waived his right for the fulfillment of interpretation, for example, Person A to send rice to Si B inferior than the rice that is usually sent, but the B still ordered rice the same again without protest against the quality rice previously submitted (read: low-quality rice).

Formulation of the problem

How is the process for approval of a Simple Lawsuit case in Indonesia based on applicable legal provisions?

Problems Approach Method

Methods of the study of this writing was done by using empirical juridical methods through field research methods. Juridical empirical approach used in an attempt to analyze the legal facts with reference to legal norms as outlined in the legislation, as well as the principles of the law, legal history, doctrine and jurisprudence. Juridical empirical method itself using approaches including law approach (statue approach) and the approach of the case (case approach). Legal materials needed in the study to examine the rules of Indonesian laws relating to the Contract Law and the Civil Procedure Code.

Discussion

Simple lawsuit process stipulated in the Supreme Court (PERMA) No. 2 of 2015 Concerning Procedures Simple Action Settlement. As a positive law, then, this relatively new legislation since come into force on August 7, 2015. The Supreme Court Regulation (PERMA) No. 2 of 2015 Concerning Procedures Simple Action Settlement is a new breakthrough and a positive legal product that is needed by the search for justice for legal vacuum in times before.

Simple lawsuit is a new legal concept in Indonesia is different to some developed countries in Europe and America that have implemented a lawsuit Simple Process for decades. The lawsuit simple process known abroad as the "Small Claims Court".

According to the HDI Ranuhandoko, "Small Claims Court" is a civil court who handles small, In the United States case of less than \$ 100, - (one hundred dollars). 9 minimum value within the restrictions of a civil action that can be checked with a simple claim procedure by each country given a minimum threshold different ^[4].

According to EfaLaelaFakhriah, Simple Action Settlement is an informal judicial mechanisms (in court but the mechanism outside the court system in general) with the case investigation were quick to take decisions on claims for losses or debts that the value of the small claim ^[5].

Simple lawsuit is a product of positive law issued to accelerate the process of settlement according court principle is simple, fast, low cost. Regulation of the Supreme Court (PERMA) No. 2 of 2015 Concerning Procedures Simple Action Settlement consists of 9 Chapters and 33 Articles. Apart from that Supreme Court tries to give a solution to the accumulation of a civil settlement in

Supreme Court. Be shared in accordance with the Law of the Republic of Indonesia Number 48 of 2009 on Judicial Power, that the Supreme Court is the judiciary is the last in examining cases both civil and criminal in Indonesia, and is therefore predicted the magnitude of the number of civil cases of the whole territory of the Republic of Indonesia is piled on Supreme Court.

According to the Financial, Wikipedia Dictionary, small Claims Court; A special court, sometimes called conciliation court, that Provides expeditious, inexpensive adjudication of your informal. 11 (Simple lawsuit is a special court, which is also called the judicial consolidation with a simple settlement, out of court should at reasonable cost). According to Article 1 of the Supreme Court Rules (PERMA) No. 2 Year 2015 Simple Claims Process resolved:

The simple -Tata Inspection Procedures

a) Led by a Single Judge

Article 1, paragraph 3 states; The judge is a Single Judge. Furthermore, Article 5, paragraph 1 states; Simple lawsuit examined and decided upon by a judge appointed by the Chairman of the Court. From the second chapter we can conclude that the settlement process in the court of Simple lawsuit led by the Single Judge.

As stated by M. YahyaHarahap, that after receiving PN Chairman docket immediately for panels that will examine and decide upon, all the court to examine and decide the case, at least 3 (three) hakim.¹²

Clearly the teaching of law that a court hearing is universally led by the judge in the form of assembly or plural with an odd number. It thus required for the purpose of decision-making when in deliberation by the judges there is no one opinion that voting efforts must be taken with an odd number.

Unlike the case with the Supreme Court Regulation (PERMA) No. 2 Year 2015 Simple Claims Process in which the single judge-led judicial process as described in Article 1, paragraph 3 and Article 5, paragraph 1. This exception is possible in accordance with the authority granted by a higher law. Article 11 paragraph 1 Law of the Republic of Indonesia Number 48 Year 2009 concerning Judicial Authority stated: Court to examine, hear and decide the case with the composition of the panel of at least three (3) judges unless the law determines lain.¹³

b) The process for filing a lawsuit and the answer is filed in a Form/ Blank

The lawsuit as proposed in the Civil Lawsuit in general, the Plaintiff is obliged to make a Lawsuit as a description of the subject matter referred to in Article 118 HIR/ 142 Rbg. According to Darwan Prints, a written lawsuit was filed with the court in writing so that the Court Clerk only needed to register it. It is different from the Simple Claims Process. The Plaintiff does not need to make a Lawsuit to complete it by simply filing the lawsuit in/ by filling out the forms provided by the District Court. Article 6 paragraphs 2 and 3 of the Supreme Court Regulations (PERMA) Number 2 of 2015 Simple Lawsuit Process.

c) Time Simple Action Settlement 25 days

One of the characteristics of the simple nature visible from the process/ procedure of a lawsuit settlement Simple is from the point of turnaround time.

Civil case generally takes quite a long time in the process of its solution. As set forth in the Supreme Court Circular No. 2 of 2014 On the Settlement of the Case in the Court of First Instance and Appellate In four (4) Courts declare the Settlement case to the Court of First Instance later than five (5) months and settlement in the Court of Appeal of the most 3 (three) months. Article 5, paragraph 3 of the Regulation of the Supreme Court (PERMA) No. 2, 2015 Simple Claims Process stating: simple action Settlement later than 25 (twenty five) days from the day of the first trial.

d) There shall be no demand provisioning, exception, reconciliation, Intervention, Replik, Duplik or conclusion

In the principle, the proceedings should hear both sides equally. Hearing both sides in a balanced and fair/ proportional is the duty of judges in upholding the principle of *audialterampartem* to this case M. YahyaHarahap said that technically the case investigation before the court through the process-answer answer, this rule is not contained in the HIR and Rbg but under Article 142 Rv which confirms the parties are able to submit a letter of reply as well as *replikduplik*.

Examination of such cases would require quite a long time because both parties are given time to respond to each other on each proposition in some agenda time trial. Regulation of the Supreme Court (PERMA) No. 2 Year 2015 Simple Claims Process shorten Simple lawsuit case investigation by eliminating process of *duplikreplik* and even negate the demands of provisioning, reconciliation and conclusions. It really save a lot of time in the case investigation process lawsuit Simple. In full Article 17 Rules of the Supreme Court (PERMA) No. 2 of 2015, the lawsuit stated in the inspection process is simple, it cannot prosecute provisions, exceptions, reconciliation, intervention, *replik, duplik* or conclusions.

e) There is no known appeal and appeal or PK

Simple shorten lawsuit settlement process with the intention of giving the constraint that the civil case is resolved in a simple, then the Supreme Court Regulation (PERMA) No. 2 of 2015 is not known an appeal, an appeal and judicial review or examination of known merely attempts objection.

Article 21 Regulation of the Supreme Court (PERMA) No. 2 of 2015 states Remedies against decisions as simple lawsuit referred to in Article 20 is to raise objections. Article 30 Regulation of the Supreme Court (PERMA) No. 2 of 2015 Decision objection is a final decision that is not available an appeal, an appeal or reconsideration.

In tabular form, the author will compare these two simple rules on the lawsuit. As for the differences in the second Perma4 2015 and 2019 as follows:

Table 1

Differences	Perma No. 2 2015	Perma No. 4 2019
value lawsuit	The maximum value of a material lawsuit Rp200,000,000	The maximum value of a material lawsuit Rp 500,000,000
Competence	Plaintiff and the defendant should be in the same legal position Courts	Plaintiffs and defendants are not allowed in the area of the same legal domicile of origin plaintiff Court pointed Incidental Counsel, to the power which is located at the domicile of the defendant.
Litigate party	1. Plaintiff and the defendant should be in the same legal position court. 2. Plaintiff and defendant shall attend the trial in person without legal counsel.	Plaintiff and defendant shall attend the trial and allowed accompanied by an attorney or incidental power.
filing lawsuit	Registration is only manually lawsuit directly to the court registry	Plaintiffs can electronically filed a law suit regulations
Dialing the Parties	1. If the defendant is not present at the first and second trial, the judge can decide in <i>verstek</i> (disconnected without the presence of the defendant). Defendants may file an objection (in the absence <i>verzet</i> stage). 2. If the defendant is present at the first session and was not present at the second trial, the verdict is contradictoir. Decisions can not be lodged by the defendant.	1. If the defendant is not present at the first and second trial, the judge can decide in <i>verstek</i> (disconnected without the presence of the defendant). Defendants may file <i>verzet</i> (Resistance). Against the decision after <i>verzet</i> , the defendant may appeal. 2. If the defendant is present at the first session and was not present at the second trial, the verdict is contradictoir. This ruling can be lodged by the defendant.
Examination process	The judge cannot order confiscation	Can be carried out sequestration
Verification process	The lawsuit is recognized and/ or are not refuted, not necessary proof	Lawsuit recognized unanimously not need to do additional verification.
the implementation of decisions	If the verdict is already legally binding it must be carried out voluntarily.	Arranged more about Aanmaning (summoning the parties executed to implement the decision voluntarily).

Interest in the Lawsuit Simple Things is an obligation for judges to actively participate in:

1. Giving explanation of events equally simple lawsuit to the parties;
2. Striving for peaceful settlement includes suggest to the parties for peace outside the court;
3. Guiding the parties in the proof; and
4. Explaining the remedy which can be taken by the parties.

Closing

Conclusion

Simple lawsuit (Small Claims Court) has long been well developed in countries applying the Common Law and countries with legal systems Civil law. Pruning is to realize the justice that is simple, fast and inexpensive. Simple can be seen from the process from registration, court, legal remedies and enforcement of the award. Quick can be seen from time to only 25 (twenty five) working days from the day of the first trial. Soft costs can be seen from the number of the side a little, if at the first session of the plaintiff was not present for no apparent reason, cases are terminated, and if the defendant is not present in a row without a valid reason, the case was decided, so the court fees to be mild.

Suggestion

Simple lawsuit, Conditions and Procedures for the Settlement of this, is one example of a major breakthrough that made the Supreme Court in the field of settlement, in order to improve public services and restore public confidence in the judiciary Indonesia. Thus, all kinds of walks of life to get treatment and the same legal services, as well as facilitate the public in seeking justice, as the desire for this.

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