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The establishment of simple lawsuit rules in business disputes in Indonesia: an challenge to achieve fair 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 the execution of a simple lawsuit. This is important to do to provide clarity and legal certainty for the parties.

1. Introduction

The 1945 Constitution of the Republic of Indonesia (UUD 1945) expressly states that Indonesia is a state of law (rechtsstaat). The idea of the rule of law itself is related to the concept of 'rechtsstaat' and 'the rule of law'. It is also related to the concept of 'nomocracy', which comes from the words 'nomos' and 'cratos'.[1] The word nomocracy can be compared to 'demos' and 'cratos' or 'kratien' in democracy. 'Nomos' means the norm, while 'cratos' means power. So what is imagined as a determining factor in power

[1] M. Lutfi Chakim, 'Mewujudkan Keadilan Melalui Upaya Hukum Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi', *Jurnal Konstitusi*, 12.2 (2016), 328 <https://doi.org/10.31078/jk1227>.

administration is a norm or law.[2] Therefore, nomocracy is closely related to the rule of law or the principle of law as the supreme power.[3] In English terms developed by A.V. Dicey, it can be related to the principle of the rule of law that developed in the United States with the jargon of the Rule of Law and not of Man.

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).[4] 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.[5] 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.[6]

Law enforcement in a state of law such as Indonesia is essential to create justice in a society following Indonesia's national development goals.[7] The rule of law in running the government requires a judicial institution to maintain law and justice.[8] 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).[9] 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.[10] A judiciary is a place for resolving a problem or case, both in the form of criminal acts and civil disputes.

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2 Aan Eko Widiarto, Muchamad Ali Safa'at, and Mardian Wibowo, 'Pemaknaan Norma Hak Asasi Manusia Dalam UUD 1945 Berdasarkan Putusan Mahkamah Konstitusi', *Arena Hukum*, 11.2 (2018), 369–87 <https://doi.org/10.21776/ub.arenahukum.2018.01002.8>.

3 Mardian Wibowo, I Nyoman Nurjaya, and Muchammad Ali Safaat, 'The Criticism on the Meaning of "Open Legal Policy" in Verdicts of Judicial Review at the Constitutional Court', *Constitutional Review*, 3.2 (2018), 262 https://doi.org/10.31078/consrev326.

4 Benny Riyanto, Hapsari Tunjung Sekartaji, and Dewi Nurul Musjtari, 'The Repositioning Mediation Court Model in Civil Dispute Resolution with Justice', *IOP Conference Series: Earth and Environmental Science*, 175.1 (2018) <https://doi.org/10.1088/1755-1315/175/1/012183>.

5 Marie Gryphon, 'Assessing the Effects of a " Loser Pays " Rule on the American Legal System : An Economic Analysis and Proposal for Reform W', *Public Policy*, 8.2005 (2011), 567–613.

6 Jimly Asshiddiqie, *HTN dan Pilar-Pilar Demokrasi*, (Jakarta: Konstitusi Press, 2006), hlm. 147.

7 Firna Novi Anggoro, 'Pengujian Unsur Penyalahgunaan Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintah Oleh PTUN', *Fiat Justisia Journal of Law*, 10.4 (2016), 629–52.

8 Gabriel Kuris, 'Watchdogs or Guard Dogs: Do Anti-Corruption Agencies Need Strong Teeth?', *Policy and Society*, 34.2 (2015), 125–35 <https://doi.org/10.1016/j.polsoc.2015.04.003>.

9 Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), 72–83 <https://doi.org/10.1016/j.ijlcj.2017.07.001>.

10 Randy Pradityo, 'Restorative Justice Dalam Restorative Justice in Juvenile Justice System', *Jurnal Hukum Dan Peradilan*, 5.3 (2016), 319–30 <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

Civil disputes are one example of disputes that often occur in society.[11] 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).[12] 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).[13]

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.[14] 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.[15] 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.[16]

Regulations Number 2 of 2015 and 4 of 2019 are an effort 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, there are various problems in its application, especially regarding the execution of Court Decisions regarding simple lawsuits. The biggest obstacle is the

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[11] ERNA Purnawati, 'Penerapan Gugatan Sederhana (Small Claim Court) Dalam Penyelesaian Perkara Wanprestasi Di Pengadilan Negeri Selong', *JURIDICA : Jurnal Fakultas Hukum Universitas Gunung Rinjani*, 2.1 (2020), 17–40 <https://doi.org/10.46601/juridica.v2i1.179>.

[12] Nancy Welsh, 'The Place of Court-Connected Mediation in a Democratic Justice System', *SSRN Electronic Journal*, 117 (2012) <https://doi.org/10.2139/ssrn.1726218>.

[13] Dian Maris Rahmah, 'Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan', *Jurnal Bina Mulia Hukum*, 4.1 (2019), 1 <https://doi.org/10.23920/jbmh.v4i1.174>.

[14] Anita Afriana, 'A Fast Procedure As an Access To Justice in Order To Realize a Simple, Fast, and Low Cost Principle in Indonesia', *Jurnal Dinamika Hukum*, 16.1 (2016), 99–105 <https://doi.org/10.20884/1.jdh.2016.16.1.489>.

[15] Muhammad Noor, 'Penyelesaian Gugatan Sederhana Di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015', *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam*, 11.1 (2020), 53 <https://doi.org/10.21043/yudisia.v11i1.6692>.

[16] Wiryatmo Lukito Totok, 'EFEKTIVITAS PENERAPAN PERATURAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR 2 TAHUN 2015 (PERMA NO. 2 TAHUN 2015) TENTANG TATA CARA PENYELESAIAN GUGATAN SEDERHANA DALAM PENYELESAIAN PERKARA PERDATA (Studi Di Pengadilan Negeri Kabupaten Kediri)', *Mizan: Jurnal Ilmu Hukum*, 9.1 (2020), 35 <https://doi.org/10.32503/mizan.v9i1.1052>.

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.[17] 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.[18] 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. Research Method

This research is normative legal research, using a statutory, conceptual, and comparative law approach.[19] 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. 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.[20]

3. Results and Discussion

The concept of a simple lawsuit and its correlation with the principles of fast, simple, and low cost justice

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

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[17] Nevey Varida Ariani, 'GUGATAN SEDERHANA DALAM SISTEM PERADILAN DI INDONESIA', *De Jure*, 18.2 (2018), 381–96.

[18] Benny Riyanto and Hapsari Tunjung Sekartaji, 'Pemberdayaan Gugatan Sederhana Perkara Perdata Guna Mewujudkan Penyelenggaraan Peradilan Berdasarkan Asas Sederhana, Cepat Dan Biaya Ringan', *Masalah-Masalah Hukum*, 48.1 (2019), 98 <https://doi.org/10.14710/mmh.48.1.2019.98-110>.

[19] Muhammad Bagus Adi Wicaksono and Rian Saputra, 'Building The Eradication Of Corruption In Indonesia Using Administrative Law', *Journal of Legal, Ethical and Regulatory Issues*, 24.Special Issue 1 (2021), 1–17.

[20] Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <https://doi.org/10.53955/jhcls.v2i1.21>.

concerning the Supreme Court.[21] 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 the settlement of civil cases, especially related to cases with a small number.[22] 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).[23]

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.[24] 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.[25]

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.[26] There are reasons behind the need to settle simple civil cases through a special 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.[27] 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.[28] The criticism of the ordinary proceedings has inspired the courts to simplify the civil case settlement process to

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[21] Lutfil Ansori, 'Reformasi Penegakan Hukum Perspektif Hukum Progresif', *Jurnal Yuridis*, 4.2 (2018), 148 <https://doi.org/10.35586/.v4i2.244>.

[22] Karmawan, 'Mediation in The Religious Courts of Indonesia', *Ahkam: Jurnal Ilmu Syariah*, 20.1 (2020), 79–96 <https://doi.org/10.15408/ajis.v20i1.13249>.

[23] Marten Bunga, 'MEKANISME PENYELESAIAN SENGKETA MELALUI GUGATAN SEDERHANA', *Gorontalo Law Review*, 5.1 (2022), 41–51.

[24] Anita Afriana, 'Dasar Filosofis Dan Inklusivitas Gugatan Sederhana Dalam Sistem Peradilan Perdata', *University Of Bengkulu Law Journal*, 3.1 (2018), 1–14 <https://doi.org/10.33369/ubelaj.3.1.1-14>.

[25] Totok.

[26] Afriana, 'Dasar Filosofis Dan Inklusivitas Gugatan Sederhana Dalam Sistem Peradilan Perdata'.

[27] Shanti Riskawati, 'Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana Sebagai Instrumen Perwujudan Asas Peradilan Sederhana, Cepat Dan Biaya Ringan', *Veritas et Justitia*, 4.1 (2018), 131–54 <https://doi.org/10.25123/vej.2917>.

[28] Arman Tjoneng, 'Gugatan Sederhana Sebagai Terobosan Mahkamah Agung Dalam Menyelesaikan Penumpukan Perkara Di Pengadilan Dan Permasalahannya', *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 8.2 (2017), 93 <https://doi.org/10.28932/di.v8i2.726>.

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.[29] 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.[30]

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.[31] The Merriam-Webster Dictionary states that the small claims court is a special court intended to simplify and expedite the handling of small claims on debts.[32] John Baldwin defines a small claims court as an informal, simple and inexpensive court with legal force.[33] 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.[34]

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.[35] 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

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29 Ariani.

30 Bettina Nunner-Krautgasser and Philipp Anzenberger, 'General Principles in European Small Claims Procedure : How Far Can Simplifications Go?', *Lexonomica*, 4.2 (2012), str. 133-146.

31 Amy J. Schmitz, 'Expanding Access to Remedies through E-Court Initiatives', *Buffalo Law Review*, 67.1 (2019), 89–163.

32 W. B Rubenstein, 'Why Enable Litigation: A Positive Externalities Theory of the Small Claims Class Action', *UMKC L. Rev.*, 74 (2005), 709.

33 Peter A. Holland, 'The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases', *Journal of Business & Technology Law*, 6.2 (2011), 259–86.

34 Bruce Zucker and Monica Her, 'The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System', *University of San Francisco Law Review. The University of San Francisco. School of Law*, 37.2 (2003), 2.

35 Myriam Gilles, 'Class Dismissed: Contemporary Judicial Hostility to Small-Claims Consumer Class Actions', *DePaul Law Review*, 59.2 (2010), 305.

well, the settlement of civil lawsuits can be helpful for:[36] 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 it is necessary to make arrangements.[37] 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".[38] 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.[39] 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.[40] 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.[41] 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

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36 Riyanto and Sekartaji.

37 Tjoneng.

38 Kim Gould, 'Small Defamation Claims in Small Claims Jurisdictions: Worth Considering for the Sake of Proportionality?', *University of New South Wales Law Journal*, 41.4 (2018), 1222–62 <https://doi.org/10.53637/miat6116>.

39 Richard E Myers, 'Fourth Amendment Small Claims Court', *OHIO STATE JOURNAL OF CRIMINAL LAW*, 10.2 (2013), 571–600.

40 Afriana, 'Dasar Filosofis Dan Inklusivitas Gugatan Sederhana Dalam Sistem Peradilan Perdata'.

41 Ariani.

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.[42]

An excellent procedural law ensures that the judicial process can run smoothly, in other words, so that 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 that the costs required to obtain a court decision and its implementation are not too burdensome for justice seekers.[43] 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".[44] 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 for 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 guarantee requirements in the implementation of 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.[45] 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.[46]

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,

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42 Fais Yonas Bo'a, 'Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional Pancasila as the Source of Law in the National Legal System', *Jurnal Konstitusi*, 15.1 (2018), 27–49 <https://doi.org/10.31078/jk1512>.

43 Bayu Dwi Anggono, 'The Tenure Arrangement Of Primary Constitutional Organ Leaders In Indonesian Constitutional System', *Constitutional Review*, 2.1 (2016), 029 <https://doi.org/10.31078/consrev212>.

44 Jessica Steinberg, 'Demand Side Reform in the Poor People's Court', *Connecticut Law Review*, 47.3 (2015), 741.

45 Nunner-Krautgasser and Anzenberger.

46 Noor.

the length of time for justice seekers to obtain legal certainty is considered to have injured the values of justice in society.[47] Therefore, the principle of simple, fast, and low-cost justice must be pursued. However, the application of simple, fast, and low-cost principles in examining and settling cases in court must not override the thoroughness and accuracy in seeking truth and justice.[48]

Small Claims Court in Singapore

The Small Claims Tribunal in Singapore was established on February 1, 1985 by law (The Small Claims Tribunals Act), which was created with the aim of providing a fast, efficient, inexpensive service to resolve disputes arising from small claims. At first, it was in the subordinate court, but since 2014, with the change of the subordinate court to the state court, SCT is in the state court.[49] Since the establishment of SCT, the courts have expanded their role to provide fast and inexpensive judicial services. This is reflected in the increase in cases, from 3,788 lawsuits in 1985 and 2001 to 33,768 lawsuits. Since its establishment, the value of claims has increased, and the category of claims that SCT can examine has been expanded to include claims for damages (unless the damage is caused by an accident related to the use of a motor vehicle).[50]

The existence of SCT to resolve disputes with a loss value of not more than $ 2,000 does not need to be represented by a legal representative because the parties represent themselves, including when arguing in front of the referee. There are two methods used in SCT: mediation and adjudication with the help of the judge sitting on the disputed parties to agree and agree to resolve the problem. In the end, the clerk or referee will assist the parties in the settlement.[51] If it is not possible to agree on an agreement promptly / has been determined, the tribunal will determine the settlement by considering the goodness and fairness of both parties. Whether an agreement is reached by the parties themselves or determined by the SCT, the tribunal will make a binding decision and can be enforced on the parties disputing.[52]

Claims that can be resolved through the tribunal are limited to a maximum of 1 year, from

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47 LR Freedman and ML Prigoff, 'Confidentiality in Mediation: The Need for Protection', *Ohio State Journal on Dispute Resolution*, 2.1 (1986).

48 Hilman Syahrial Haq and others, 'The Institutionalization of Community Mediation for Resolving Merarik Marriage Disputes in Sasak Community', *Jurnal Media Hukum*, 26.1 (2019), 1–10 <https://doi.org/10.18196/jmh.20190118>.

49 Sri Wulan Hadjar, Osgar Sahim Matompo, and Irmawaty, 'Small Claim Court as a Refund State Losses Due to Corruption Crime By State Attorney', *Indonesian Research Journal in Legal Studies*, 01.01 (2022), 73–86.

50 Jeff Sovern and others, '"Whimsy Little Contracts" with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements', *SSRN Electronic Journal*, 2014 <https://doi.org/10.2139/ssrn.2516432>.

51 Patricia Munch Danzon and Lee A. Lillard, 'Settlement out of Court: The Disposition of Medical Malpractice Claims', *The Journal of Legal Studies*, 12.2 (1983), 345–77 <https://doi.org/10.1086/467727>.

52 Anjanette Raymond and Scott Shackelford, 'Technology, Ethics and Access to Justice: Should an Algorithm Be Deciding Your Case?', *SSRN Electronic Journal*, 35.3 (2014) <https://doi.org/10.2139/ssrn.2309052>.

the date of the purchase and sale event, for example, so that the evidence is the date stated in the memorandum/invoice. Settlement through the tribunal is done informally. When a claim is registered, the clerk will summon the parties to the tribunal to discuss the appropriate way to resolve the dispute. The clerk, in this case, is referred to as a consultant.[53] If the clerk cannot facilitate the parties to reach an agreement, the clerk will determine an appropriate date so that the claim can be resolved by adjudication by the referee. The adjudicator who acts as a judge at the hearing in the tribunal is called the referee. The atmosphere of consultations and hearings is informal and closed. Unlike in court, the clerks and referees cannot sit higher than the parties.[54] The tribunal does not strictly follow procedures in court, and the tribunal has its policy to assess evidence, such as witnesses without being sworn in and written evidence without being legalized.

Small Claims Court in Netherland

Examining and deciding small claims is the authority of the subdistrict court, which is under the District Court (*district court*).[55] The Subdict Court has the authority to examine and decide on claims up to 5000 Euros, claims of unspecified value not exceeding 5000 Euros, and such disputes occur due to default in various financial contracts, labor contracts, collective employment contracts, agent agreements, leasing, sale and purchase agreement, lease sale agreement, lease agreement, and others.[56]

There is no obligation to represent the attorney, examined and decided by a single judge, the procedure offered is faster than a lawsuit with more significant demand. A lawsuit can be filed in writing or orally, and the plaintiff submits a lawsuit by filling out claim form A as regulated in Annex 1 and bringing the lawsuit to the court according to the jurisdiction.[57] The claim submission can be by post or other communication, such as fax or email. The plaintiff must provide detailed contact information such as the defendant's name, court jurisdiction, type of case, and amount of loss. The lawsuit must include evidence supporting the claim, including the relevant documents. As for what is an exception, specifically for labor disputes with reasons for layoffs, proof of termination of work must be included when submitting a lawsuit.[58]

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53 Linda J. Demaine and Deborah R. Hensler, '"Volunteering" to Arbitrate Through Predispute Arbitration Clauses: The Average COnsumer's Experience', *Law and Contemporary Problems*, 67 (2004), 55–74.

54 Paula Hannaford-agor, 'Our New Normal ? How COVID-19 Accelerated Pre-Pandemic Trends in State Court Litigation', *DePaul Law Review*, 71.2 (2022).

55 ANNA LEONARDA HUBERTINA ERNES, 'The Payment Order Procedure in the Netherlands', *Lexonomica*, 2.2 (2010), 223–36.

56 Fokke Fernhout, 'The EU Small Claims Procedures in the Netherlands - Some Good and Some Bad News', *Revista Ítalo-Española de Derecho Procesal*, 1.3 (2022), 51–72 <https://doi.org/10.37417/rivitsproc/680>.

57 Bert Niemeijer and Machteld Pel, 'Court-Based Mediation in the Netherlands: Research, Evaluation and Future Expectations.', *Dickinson Law Review*, 110.2 (2005), 345–79.

58 Andrew Bartlett, Ashley Morgan, and Osborne Clarke, 'Enforcement of Judgments and Arbitral Awards in the UK (England and Wales): Overview Judgments : Legal Framework', *Thomson Reuters*, 2017, 1–28 <https://uk.practicallaw.thomsonreuters.com/6-619-3495?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1>.

If the lawsuit is filed outside the jurisdiction of the sub-district court, the Plaintiff will be notified and the lawsuit will be withdrawn. If the Plaintiff does not withdraw his lawsuit, then the lawsuit will be examined using the Netherland Private Law of The Court as stipulated in Article 4 paragraph 3 and Article 5 paragraph 7.[59] It can only be done through the subdistrict court to examine and decide on a lawsuit with a small value (proceedings in the sub-district court are the only option). If there is a lawsuit that is registered with the civil department in the district court which does not have the authority to investigate further, in practice, if the lawsuit is forwarded to the sub-district court, then what has been done by the civil district court is a wrong decision (not invalidate the decision judgment).[60]

The proof is done simply, using written evidence in documents and possibly testimony. For written evidence, it must be registered before being brought to trial (submitting a written document to the registry before the date set by the court). The judge will give a decision within a maximum of 30 days since the lawsuit is registered, while the contents of the decision according to the applicable conditions consist of the arguments put forward by the parties, the proceedings, the statements of the parties, legal considerations, the dictum of the decision, the name of the judge, and the date it was decided.[61] The Dutch legal system is not based on a jury but is decided by a professional judge. Some cases are examined and decided by 1 (one) judge, while more complex cases are examined by 3 (three) judges (assembly). 3 (three) judges examine the level of appeal, the Dutch legal system does not recognize dissenting opinions, and confidentiality of court decisions is absolute.

The establishment of simple lawsuit rules in business disputes in Indonesia: an challenge to achieve fair legal certainty

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

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[59] Ovidiu-Horia Maican, 'The Legal Regime of Competition in India', *Proceedings of the International Conference on Business Excellence*, 15.1 (2021), 952–62 <https://doi.org/10.2478/picbe-2021-0089>.

[60] Frans Van Dijk, 'Improved Performance of the Netherlands Judiciary: Assessment of the Gains for Society', *International Journal for Court Administration*, 6.May (2014), 1–22 <http://www.rechtspraak.nl/English/Publications/Documents/Improved-performance-of-the-Netherlands-judiciary.pdf>.

[61] Maican.

that justice is carried out in a simple, fast, and low cost.[62] 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.[63] 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.[64] 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.[65]

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 that determine the success of the implementation of 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.

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

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62 Sahira Jati Pratiwi, Steven Steven, and Adinda Destaloka Putri Permatasari, 'The Application of E-Court as an Effort to Modernize the Justice Administration in Indonesia: Challenges & Problems', *Indonesian Journal of Advocacy and Legal Services*, 2.1 (2020), 39–56 <https://doi.org/10.15294/ijals.v2i1.37718>.

63 Oksana MELENKO, 'Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis', *European Journal of Law and Public Administration*, 7.2 (2021), 46–63 <https://doi.org/10.18662/eljpa/7.2/126>.

64 Purnawati.

65 Tjoneng.

previously fulfilling the general and specific requirements of the Court Execution Auction in accordance with 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, either through ordinary lawsuits 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 the execution of a simple lawsuit. fast, simple and low cost.

4. Conclusion

The presence of legal ambiguity pertaining to the procedural framework for adjudicating a straightforward court case is a crucial aspect that necessitates careful consideration when contemplating the utilization of a basic lawsuit as a viable vehicle for resolving business and civil conflicts within the Indonesian context. The responsibility of providing unambiguous guidelines pertaining to the procedural aspects of executing a straightforward case should ideally lie with the government or the Supreme Court. This task holds significant importance as it ensures that the involved parties are provided with a clear understanding of the legal process, hence fostering certainty within the realm of law.

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