LEGAL CHALLENGE ON SMALL CLAIM IMPLEMENTATION: EMPIRICAL CASE IN BOJONEGORO DISTRICT COURT INDONESIA

Salman Alfarasi
I Gede AB Wiranata
H.S. Tisnanta

ABSTRACT

The objective of this article is to examine the legal challenges on small claims in the practice area, mainly focusing on legal studies related to the executions in small claim courts. Concerning those situations, this article discusses the problem of the small claim court, primarily the execution mechanism in the Bojonegoro District Court. This article expected to contribute to science thoughts, especially in the field of civil law, while also providing ideas for the Supreme Court of Republic Indonesia as input for formulating suitable policy, especially for judges as a standard guide in carrying out their daily duties in upholding the law and justice. The results of the discussion concluded that the contextualization of the small claim court which is contested in the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court is only limited to procedural justice. This issue needs to be taken into consideration by undertaking further studies of the theoretical perspective of the nature of justice itself. In realizing a civil justice system based on the principles of simple, fast and low cost, the fundamental legal norms of small claim must be reconstructed, particularly regarding the execution procedures. Simplification of the execution procedure needs improvement, and the Court is authorized as an implementing agency execution (selling itself) without involving other agencies (offices auction). All the things are to realize aspects of substantive justice in addition to elements of legal certainty and usefulness.

Keywords: Legal Challenge, Small Claim, Execution Procedure

INTRODUCTION

Facing many problems in the public domain, the civil law system as an integral part of the national legal system divided into two things, namely (1) substantive civil law governing the rights and obligations of one individual to another in family relations and the community association the implementation of which is submitted by each party; and (2) formal civil law or civil procedural law as a legal norm governing how to ensure compliance with material civil law by the Judge. (Sudikno Mertokusumo, 1986) (Titik Triwulan Tutik, 2008)

Examine more deeply the existence of formal civil law that runs in Indonesia; the basic understanding will always be directed to the principles that reside in the civil procedural law itself. Based on Mertokusumo's thoughts (Sudikno Mertokusumo, 2006), the fundamental principles contained in procedural civil law can be known, among others (1) the Judge is waiting, (2) the Judge is passive, (3) the open nature of the trial, (4) *the audi alteram partem*, (5) decisions must be accompanied by reasons, (6) fees are charged, and (7) there is no obligation to represent.

Slightly different from Mertokusumo, Setiawan revealed that the principles contained in the civil procedural law are at least (1) the principle of simplicity, (2) the equality of the parties' position, (3) the activeness of the Judge presiding the trial, (4) the trial is conducted in the form of question-and-answer oral, (5) open to the public, (6) decision based on sufficient consideration, and (7) case resolution within a reasonable time. (Setiawan, 1992) If examined further, the whole mindset related to the principles of civil procedural law contains philosophical guidelines, which the enforcement of substance of civil law can provide legal certainty, justice, and benefits for all parties, protect human rights, and also can provide legal certainty guarantees towards human rights and obligations of all parties.

The procedural civil law in its position as a juridical reference in enforcing material civil law, in the implementation phase is felt to have many weaknesses. One of them is in some ways very behind the development of society and legal science that runs so dynamically. This colonial legacy of procedural law, in fact, raises several problems in society including (1) the process of execution of court decisions that have a permanent legal force which sometimes takes a long time in implementation, (Dwi Agustine, 2017) so they cannot accommodate the aspirations of the world economy that require immediate resolution. In the business world, long time means higher losses; (The World Bank Group, 2019) (2) In a civil case the Judge adopted the principle of judges passively, so often some parties are weak solely because of their ignorance of procedural law, even if the Judge is allowed to advise on the case which is being faced, afterward the conditions will be different; (3) In the case of the petition, the legal procedure does not provide a solution or legal remedy to correct the wrong decision, if the applicant does not submit a legal remedy; and (4) the speed of case settlements at the first level and appeals, resulting in the influx of cases to the Supreme Court (cassation level) getting heavier, resulting in the accumulation and arrears of cases that exceed the settlement capacity by the institution fairly. (The National Legal Development Agency, 2014)

The facts regarding the implementation of the formal civil legislation of colonial heritage as exemplified above have obscured the essence of the principle of civil justice which should be carried out by basing on the principle of simple, fast, and low cost that can be reached by all levels of society. This problem, if it is not immediately resolved, it will indirectly result "*to delay justice is injustice*". (William Penn, 1905) The phrase implies that the current judicial process takes time to drag on, through convoluted

stages, and tends to take high costs so common sense says that these conditions contribute significantly to the existence of legal uncertainty and elimination of the essence of legal justice which justice seekers themselves seek. For this reason, it is time for the existing civil justice system to immediately improve both in terms of administrative-procedural and in terms of accountability of judicial institutions. (Linn Hammergren, 2002)

One of the legal breakthroughs that are considered significant from several steps to improve the justice system so that it always follows the times is through a small claim court. (Eric H. Steele, 1981) (Mahkamah Agung Republik Indonesia, 2018) At a glance, the definition of a small claim court is a procedure for examining a trial against a civil suit with a material claim amounting to a maximum of Rp. 200 million, which is currently being Rp. 500 million, resolved by simple procedures and verification. The duration of the settlement of the case is no more than 25 days apart from that, two types of cases that cannot be resolved in a small claim court are cases where the dispute settlement carried out through a special court and a dispute over land rights. In contrast, in the procedural law, there is no answer and no conclusions, thus shortening the process but about the execution of the Supreme Court regulation is still use civil law.

From the description above, the substantial content of the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court seeks to nullify the provisions of civil procedural law which is commonly used in the mechanism of civil litigation. Still, on the side the same, this regulation also enforces the rules of civil procedural law. The article argues that concerning the elimination of several provisions in civil procedural law, it is indirectly oriented to the existence of legal certainty, but tends not to favour the principle of legal justice. While the execution decisions that continue to use the provisions of civil procedural law, on the one hand, reflects the principle of legal justice, but on the opposite side, it marginalizes the existence of the principle of legal certainty.

By looking at the problems in the small claim court above, this article only limits writing to the aspect of execution whether the simplicity of the process is also followed in the implementation of its decision because The Supreme Court regulation does not regulate whether execution is also carried out simply by cutting down the execution process regulated by HIR /Rbg (known as old colonial regulation) or vice versa is simple in the process but will be lengthy in the execution. In order to sharpen the empirical results, the data was obtained from the Bojonegoro District Court. Even though it only came from one Court, presumably what happened in all courts experienced the same problem related to the execution of the small claim court in Indonesia.

IMPLEMENTATION OF SMALL CLAIM EXECUTION IN INDONESIAN COURTS

Before discussing more deeply related to the small claim court that has been running since 2015, it would be better if necessary to be briefly described in relation to the general description of the implementation of small claims in Indonesia as stipulated in the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court. The definition of small claims as Article 1 number 1 the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court states that the settlement of a small claim is defined as the procedure for examination in a trial of a civil claim with the value of the claim Rp. 200,000,000.00 (two hundred million rupiahs) has been changed to Rp 500,000,000.00 (five hundred million rupiahs) which has been settled by simple verification procedures.

Small claim cases are not compelling competencies but are limited to the choice of forums that contain several requirements, which means that when the Plaintiff submits his dispute as an ordinary lawsuit despite fulfilling the requirements as regulated in Article 3 and Article 4 of the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court, the Judge may not declare the authority to examine the case. The small claim arrangement regulated in the Supreme Court Regulations is the authority given under the Indonesian Law to issue regulations which are to fill in the blanks or to complete deficiencies in the procedural law to facilitate the administration of justice.

Supreme Court Regulation based on number 1 point A following the attachment of the Supreme Court Decree No. 271 / KMA / SK / X / 2013 concerning the Guidelines for the Preparation of Policy of the Supreme Court of the Republic of Indonesia is a regulation that contains provisions on procedural law, while procedural law is the law governing the procedures and procedures for implementing material law. Article 7 of Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Formation of Regulations of Laws states that the order of legislation in Indonesia consists of the 1945 Constitution, the Decree of the People's Consultative Assembly, Laws, Regulations Government in-lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations and Regional Regulations. Based on the above provisions, the Supreme Court Regulations are not regulated as part of the order of the legislation. Still, the appointment of Supreme Court Regulations as part of the legislation can be found in Article 8 paragraph (1) which reads "types of legislation other than as Article 7 Paragraph (1) includes regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court hierarchy definitively

The requirements for filing a small claim include simple lawsuit material only related to breach of dispute and unlawful conduct. In small claim procedure, the Plaintiff must be present at the Court with or without a lawyer, and the Defendant must know his place of residence. The Parties must be domiciled in the same jurisdiction. Whether the Plaintiff is outside the jurisdiction of the Defendant's domicile, the Plaintiff in filing a lawsuit designates a power of attorney, incidental power or representative having the address in the jurisdiction or domicile of the Defendant with a letter of assignment from the Plaintiff's institution. The scope area of small claim defined a material value of the claim no more than Rp. 200,000,000.00 (two hundred million rupiahs) currently to Rp 500,000,000.00 (five hundred million rupiahs). The party in the small claim lawsuit does not recognize the Defendant. The

Defendant can use the case administration in Court electronically following the provisions of the Statutory Regulations. If a small claim case is decided by a non-appearance party (Verstek), then legal action against resistance (Verzet) may be filed within seven days of being notified.

METHODOLOGY

This article is the result of normative legal research, in which the source of information is focused on secondary legal material in the form of books, articles, and newspapers, all of which are obtained using document analysis techniques. By using a legal approach, concepts, and comparisons, the study and conclusion drawing from research information sources are then carried out using the deductive syllogism method.

FINDING: LEGAL PROBLEMS OF SMALL CLAIMS EXECUTION IN THE BOJONEGORO DISTRICT COURT

Academic study at the domestic level, the presence of the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court has benefits for the parties and at the same time also brings some juridical consequences that cannot be ignored. On the positive side, the benefit of the issuance of this regulation is the trimming of the process in the proceedings, so that the process of examining and resolving cases can be done more quickly and simply. This weakness makes justice seekers in the scope of civil service do not need to wait too long to get legal certainty from disputes that are being faced because the settlement process is sufficient to be tried and ended in a court of the first instance. On the same side, the Supreme Court also indirectly benefited from the limitation because cutting legal proceedings would undoubtedly reduce the number of piles of civil cases that were submitted for trial.

However, this article argues that the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court also contains several weaknesses at the theoretical level. When it was reviewed article by article and linked to aspects of access to justice, namely regarding the execution. The end of a civil dispute is a decision of a permanent judging decision (*inkracht van gewijsde*) which is awaited by the parties in conflict, where the Judge's decision or also referred to as a court decision should reflect the principles of legal justice, the principle of legal certainty, and as well as the principle of legal use in a balanced and proportional manner.

It is interesting when the theoretical study of The Supreme Court Regulation relating to execution actually creates legal uncertainty. This article argues that the root of problem lies in Article 31 paragraph (3) of the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court, where if the execution cannot be carried out voluntarily, the execution of executions of judges' decisions is carried out based on applicable civil procedural law. Of course, the content of the intent of Article 31 paragraph (3) The Supreme Court Regulation indirectly contradicts the spirit of The Supreme Court Regulation itself, which is to realize a quick and straightforward dispute resolution, thus implementing the execution decision which still uses legal provisions civil procedure on one side reflects the principle of legal justice. Yet, on the opposite side, it actually marginalizes the existence of the principle of legal certainty.

The presence of the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court is an effort to balance the costs incurred in the litigation process with the value to be sued. Cases with broad object claims and complicated shreds of evidence indeed become reasonable and require a long time to be resolved. Another example with the value of a small lawsuit, so that a high cost to get something little certainly does not provide benefits. (Ridwan Mansyur and D.Y. Witanto, 2017) On that basis, a simple lawsuit instrument is aimed at resolving cases in small categories through a simple and easily understood way by the wider community. In line with the purpose of the formulation of a simple lawsuit concept, exposure to statistical data shows that the development of society tends to prefer to use a simple lawsuit channel, where this can be observed through sample data at the Bojonegoro District Court during 2017-2019.

Table 1: Number of Small Claim Cases in the Bojonegoro District Court
Source: Civil Registrar of the Bojonegoro District Court

Year	Granted	Withdraw	Reconciliation	Dismissal	Inadmissible (*Niet Onvankelijk Verklaard*)	Abort	Reject	Sum
2019	11	12	1	2	1	0	0	27
2018	10	10	1	1	0	0	0	22
2017	7	1	0	1	0	0	1	10

Based on the summary table above, the number of cases resolved has increased from year to year. In 2017 the number of cases resolved through the small claim mechanism was 10 cases, in 2018 there were 22 cases, and in 2019 there were 27 cases. By looking at the table above, there is an increase in the volume of cases each year, but in the execution stage of the small claim case, only one has been carried out where the parties execute by peace (voluntary). The small claims facilities at the Bojonegoro District Court are mostly carried out by the corporate legal entity, and primarily Bank Rakyat Indonesia is completing its credit with its debtors.

From the data above, the obstacle in carrying out the execution is because the losing party does not want to make a decision voluntarily so that the decision is carried out based on applicable procedural law. Stages of execution as stipulated in Article 195 HIR, in essence, the Court authorized to implement the decision of a judge who has permanent legal force is the Court that examines

and decrees the dispute petitioned for execution. If it turns out that the object to be executed is in the jurisdiction of another court, then the head of the Court who is being asked for execution by the winning party will ask for assistance (delegation) execution to the chief of the Court where the object of the execution is located. If there is a request for assistance (delegation) the execution comes from a court outside of Java and Madura, then the execution provisions stipulated in the HIR will apply within two days after the execution request is carried out, the head of the Court requested by the execution delegation must notify the head of the Court who is examining the case for the execution. In the event of resistance, the resistance is filed in the Court that executes the execution, within two days after it is decided. Regarding the issue of resistance, the chief of the Court where the resistance was filed had to notify the results to the chief of the Court who examined the case for the execution.

The execution mechanism or procedure that must be carried out by the petitioner begins with the filing of an Execution Request, and the Chairperson of the Court gives *aanmaning*, the execution of seizures and auction sales. The whole process requires no small cost or even exceeds the obligation to be paid, so this factor is the problem. In general, legal issues that occur in the implementation of small claim decisions due to resistance by other people / third parties (deden verzet) and review. Other factors that are no less important include the number of costs not yet met by the execution applicant, obstacles caused by the Editorial of Judge decision, the execution auction cannot be carried out due to rebuttal by a rebuttal or auction execution that requires a fee. Furthermore, in general, the losing party in a case is not "voluntary" to carry out the decision to exert time to obstruct the execution, the lawyer of the petitioner in making an unprofessional lawsuit so that the decision cannot be executed means the substances of judgment is not condemnatory. From the description above, it is necessary to establish a simple execution procedure and low cost by not providing opportunities for further legal remedies and the need to authorize the Court as an execution agency that can carry out simple lawsuit decisions without involving the auction office.

CONCLUSION

Analyzing the above phenomena, the conclusion of this article states expressly that (1) the Supreme Court Regulation Number 4 of 2019 concerning Amendments to the Supreme Court Regulation Number 2 of 2015 regarding Procedures for Small Claim Court does not explicitly regulate the implementation of executions so cause problematic. The problem is the implementation of executions that still use the Civil Procedure Code as in the usual lawsuit; and (2) With the execution of the small claim court not yet arranged, and the small claim cannot be categorized as a simple problem as expected by the Supreme Court Regulation. Empirical facts show that in the Bojonegoro District Court, from the small claims case register, only a few of them filed an execution of a small claim because of the lengthy and complicated process of execution. In addition to the number of costs involved in carrying out the execution, according to this article, it is necessary to simplify the execution procedure, which does not provide an opportunity for further legal efforts against the execution and the need for authorization to execute without involving the auction office.

References

Badan Pembinaan Hukum Nasional. (2014). *Naskah Akademik Rancangan Undang-Undang tentang Hukum Acara Perdata* (*Small Claim Court*), Kementerian Hukum dan HAM RI, Jakarta.
Dwi Agustine. (2017). Pembaharuan Sistem Hukum Acara Perdata, *RechtsVinding Journal*, Vol. 8 No. 3.
Eric H. Steele. (1981) The Historical Context of Small Claims Courts, *American Bar Foundation Research Journal*, Vol. 6, No. 2
Linn Hammergren. (2002). *Diagnosing Judicial Performance: Toward A Tool To Help Guide Judicial Reform Programs*, World Bank Working Paper
Mahkamah Agung Republik Indonesia. (2018). Laporan Tahunan Mahkamah Agung 2018: Era Baru Peradilan Modern Berbasis Teknologi Informasi, MARI, Jakarta.
Ridwan Mansyur and D.Y. Witanto. (2017). Gugatan Sederhana: Teori, Praktik dan PermasalahannyaPustaka Dunia, Jakarta.
Setiawan. (1992). *Aneka Masalah Hukum dan Hukum Acara Perdata*, Alumni, Bandung.
Sudikno Mertokusumo. (1986). *Mengenal Hukum: Suatu Pengantar*, Liberty, Yogyakarta.
Sudikno Mertokusumo. (2006). *Hukum Acara Perdata di Indonesia*, Liberty, Yogjakarta.
The World Bank Group. (2019). *Doing Business 2019: Training for Reform*, World Bank Publications, Washington.
Titik Triwulan Tutik. (2008). *Hukum Perdata dalam Sistem Hukum Nasional*, Prenadamedia Group, Jakarta.
William Penn. (1905). *Some Fruits of Solitude*, Headley Publisher, London.

Salman Alfarasi
Faculty of Law, Universitas Lampung
Jl. Prof. Dr. Ir. Sumantri Brojonegoro, Gedong Meneng, Lampung 35141
Email: salmanalfarasiunila@gmail.com

I Gede AB Wiranata
Faculty of Law, Universitas Lampung
Jl. Prof. Dr. Ir. Sumantri Brojonegoro, Gedong Meneng, Lampung 35141

H.S. Tisnanta
Faculty of Law, Universitas Lampung
Jl. Prof. Dr. Ir. Sumantri Brojonegoro, Gedong Meneng, Lampung 35141
Email: s.nymus@yahoo.com