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JUSTICE IN THE IMPLEMENTATION OF SMALL CLAIMS JURISDICTION FOR THE PARTIES TO THE DISPUTE

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Abstract

This study aims to find a solution related to the initial dispute where so far, the settlement must be through the law, not through a small claim court, so that it can potentially violate human rights. So far, dispute resolution has not been regulated regarding the application for uit voerbaar bij voorraad, including the besla conservatoir. This research includes normative juridical research, namely research that emphasizes the use of legal norms in writing and is supported by the results of interviews with resource persons. This study examines whether applying the small claim court in civil law procedural law in Indonesia has fulfilled the sense of justice. This type of research is explanatory because it conducts a study and diagnoses the applicable laws and regulations and is associated with legal theories in their implementation practices related to problems. The formulation of the situation in this study is why justice is the main thing in small court courts? The results of the study state that substantive justice is the main thing in small courts because it accommodates the values that grow and develop in society compared to using the courts stipulated in the law, considering that small court justice prioritizes the principles of fast, cheap and straightforward.

Keywords: justice, small court, substantive justice

1. Introduction

This study aims to find a solution related to the initial dispute where so far, the settlement must be through the law, not through the small claim court (SCC). So that it has the potential to violate human rights, dispute resolution has not been regulated regarding the application for *uit voerbaar bij voorraad* including *conservatoir beslag* – PERMA Number 2 of 2015, while Article 17 a of PERMA Number 4 of 2019 is regulated regarding the confiscation of collateral. So this practice does not provide legal certainty, justice, and legal benefits for the parties. Dispute settlement should adhere to the principles of fast, simple, and low cost (Rahmadi, 2012) see (Huda, 2013) see (Fakhriah, 1992). This PERMA is also expected to help low-income people with minimal value disputes and take a long time to be resolved in court. he settlement of civil cases with a value of less than five hundred million will be resolved through a small court where this provision, in addition to the nominal value of the lawsuit, is also a short case settlement process period, namely a maximum settlement of twenty-five working days from the first trial (Purnawati, 2020). SCC is used in Civil Law Enforcement in Indonesia because it is helpful to the community. After all, it is fast, simple, and inexpensive. Hurry up because the case must be completed within twenty-five working

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days. Simple because the examination and settlement of patients are carried out efficiently and effectively. Cheap because the costs incurred by the parties in resolving the case are affordable (Ariani, 2018).
The SCC mechanism is a middle way for resolving cases - non-litigation and litigation - because dispute resolution is carried out based on the parties' agreement. Still, the decision is legally binding because it is decided in court (Fakhriah, 2013). The SCC, apart from being a middle ground for resolving cases, is also a trend that is widely used in determining civil cases in almost all developing countries, both in the standard law system and the civil law system (Afriana & Chandrawulan, 2019). From the various studies above, the author views that the justice side of the SCC is something interesting to study. How is justice, and why is it considered necessary?

2. Method

In this research, the author uses normative juridical, namely research that emphasizes the use of legal norms in writing and is supported by interviews with resource persons. This study examines whether the application of the small claim court in civil law procedural law in Indonesia has fulfilled the sense of justice. This type of research is explanatory because it conducts studies and diagnoses applicable laws and regulations. Associated with legal theories in their implementation practices related to Small Claim Court (SCC), and describes the findings that occur in the field reflect the implementation of laws and regulations and principles. Legal principles are related to legal theories and their implementation practices, in this case, the application of legal science, which is studied philosophically. The research approach follows a quantitative descriptive-analytical type of research, namely legal research that observes the facts of a legal event in the small claim court mechanism and then analyzes it.

3. Results and Discussion

This substantive justice rejects the view of legalism, which considers the law to be sacred, namely as a regulation confirmed by God Himself, or as a logical system that applies to all cases because it is rational (Paulus Hadi Suprapto, Surastini Fitriasih, 2009). Substantive justice holds that pure legalism is impossible. Because all the application of general and abstract legal rules to concrete cases is a new legal creation. The administration of an employee is a new law, let alone a judge's decision. Indeed, this juridical action presupposes the existence of minimum rationality in the legal system, but it is impossible to practice law according to a purely rational method. A judge's decision cannot be derived logically from the applicable regulations because the regulations are not perfect and may also be wrong or inaccurate, thus causing injustice. The SCC procedure must prioritize a settlement based on fast, cheap, and simple principles to achieve justice for the litigants. As stated by Aristotle, legal justice is synonymous with general justice and equality. Justice is not based on equality but based on proportionality. Equal is not necessarily fair, and similar means that everyone gets the same rights and before the law, all are equal (Prasetyo & L.Tanya, 2011).

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In the context of numerical equality, Aristotle's opinion above is intended to state that there is no difference for anyone in the effort to obtain justice. Proportional equality is designed to grant rights to anyone worthy of justice and deserves to receive it. According to Prasetyo and Tanya, justice must be realized, so that be able to interpret the rule of law, eliminate legal impartiality and remain in the entity of justice (Prasetyo & L.Tanya, 2011). At the same time, Asikin said that at the philosophical level of law enforcement practice. Advised the judge that the law should not be seen as a mere formal rule. Law is a human creation with minimal insight, knowledge, and scope. So that one-day standard legal rules will confront the realities of life—their community. Therefore, the judge's task must be able to revive the dead formal traditions so that they are conscientious and can provide the benefits of a fair settlement in concrete cases in society (Fauzan, 2010).

Aristotle said that justice is an ethical act of all citizens and their government. The law is only a shield from the existence of justice, for all citizens must obey and understand the justice of a rule that has been agreed upon and is binding and has coercion for all its citizens. The definition of justice is as follows: a. Numerical justice: the principle that in the eyes and before the law, all citizens are equal; B. Proportional justice: that justice does not mean equal, but proportional following the rights that citizens should receive; C. Distributive justice: justice is created according to the results of the efforts that have been made; D. Commutative justice: Justice is created for the majority of its citizens by ignoring individual benefits, where every citizen must get an equal share; e. Corrective justice: justice that emphasizes that the business results are following the rewards obtained (Fauzan, 2010).

Apeldoorn states that justice does not mean equal - justice does not mean that everyone gets an equal share - that the law merely requires a judge, as stated in the theories that the content of the law must be determined solely by ethical consciousness. We are about what is fair and what is unjust. However, sometimes they do not see the actual situation - exaggerating the level of legal justice without seeing a natural rectitude. If the law solely wants justice, judging from all people must be accepted. There will never be regulations on the function of the law, and there must be written and unwritten rules to see the functioning of justice. (Fauzan, 2010).

Apeldoorn said that the law must define general rules and must generalize. Justice forbids generalizing; justice demands that each case be weighed separately: *suum cuique tribuere*. So in direction, there are unavoidable clashes that constantly repeat between demands for justice and legal certainty. The more laws meet the requirements of 'fixed regulations,' eliminating as much uncertainty as possible, the more precise and sharp the legal regulations, the more pressing justice will be. That's the meaning of *summum ius, summa iniuria* (Rawls, 1970).

Justice as an effort to increase equality (basic structure) of the parties to resolve legal problems. Besides that, Justice as Fairness also provides the same welfare as widely as possible for the parties and is only fair if the parties resolve it through free competition. John Rawls was a proponent of formal justice, which he termed Formal Justice or Regulatory Justice. The Constitution and the rule of law serve as a benchmark in the implementation of individual rights and obligations in social interactions. The constitution stipulates minimum equality for all citizens. Furthermore, the existence of a society depends on formal arrangements through laws and supporting institutions. Therefore, in social life, law enforcers

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need consistency in implementing regulations and the law itself (Ujan, 2001).
The problem is, formal justice as mentioned above is not enough, because it cannot fully support and encourage the creation of a society which he terms as a well-ordered society. This is because the concept of justice can only effectively regulate society if it is generally accepted. In addition, formal justice tends to be imposed unilaterally, especially by the authorities. On that basis, John Rawls believes that justice that guarantees the interests of all parties fairly is contractual justice. That is why John Rawls then entered the ranks of the contract theory thinkers developed by political philosophers for a long time (Soetoprawiro, 2011).
The theory of justice from John Rawls, it can be concluded that: Everyone has the same right to the broadest basic liberties, as wide as the same freedoms for all. And every social and economic inequality must be regulated in such a way that it can be expected to provide equal benefits to everyone and all positions and positions are open to everyone. The second principle concerns the distribution of income and wealth. Where the two principle were developed by John Rawls that justice is fairness. John Rawls in many ways ignores the general conception of justice and will instead discuss specifically the two principles of justice. The advantage of John Rawls' two principles of justice is that from the outset the problem of priority is recognized and then an effort is made to find principles to overcome it. The fact that these two principles of justice can be applied in various institutions has certain consequences. First, the rights and freedoms recognized by these principles are the rights and freedoms defined by the public order of the most basic structures. Second, it demands that everyone benefit from the inequality in its basic form. Justice in the second principle shows that trying to suffer is not accepted by people because inequality in their future must be avoided so that their future is without inequality. One should not justify differences in income or organizational strength because weak people should benefit more from the advantages of others.

3.1 Small Claim Court in Indonesia

The SCC is often referred to as the "People's Court," where the small community. The people can resolve their disputes through conciliation courts with low costs and a fast process (Shaw, 2009). This SCC system it can reduce the accumulation of cases at various levels of the judiciary not to appeal and cassation (Huda, 2013). The position of the SCC institution is under the authority of the district court. Still, the examination of the case is different, with ordinary civil examinations - shorter, simpler and faster and the value of the lawsuit is relatively small so that proving cases can be carried out effectively and efficiently and the judge who decides is single - without ignoring aspects of accuracy and accuracy - the trial implementation of a maximum of 3 trials with a period of 1 month has been decided by the judge, and the proof is simple. As for money cases that can be resolved in this SCC, consumer disputes, accounts payable, buying and selling goods, claims for damage to goods, claims for services, and SME disputes. With the existence of this SCC, it can bridge and provide a sense of justice for parties who are financially deficient, so that these limitations do

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not become a barrier to being able to access legal protection and obtain justice, especially in cases where the number of lawsuits is not large (Mertokusumo, 2006).

Strengths and weaknesses in the SCC cannot be avoided, however, the role of the SCC has helped reduce the pile of case files in courts of various levels. Based on PERMA No. 2 of 2015 stipulates that In SCC, the judge's decision is in the examination of the case until the decision is made in a special court without any other legal remedies, because it is the first and last trial, where lawsuits against conventions, interventions, replicas, duplications, or trial conclusions are not allowed, where the mechanisms and stages in the SCC are registration, examination of completeness of files, determination of judges and appointment of clerks, preliminary examination, determination of trial day and summons of the parties, trial and reconciliation examination, evidence, and decision. Based on PERMA Number 2 of 2015 it is stated that the judge is obliged to the judge to play an active role in the form of providing an explanation of the procedure for a simple lawsuit in a balanced manner to the parties, seeking a peaceful settlement of cases, both at trial and outside the trial and guiding the parties in proving and explaining legal remedies that the parties can take. Regarding the final decision of the petty lawsuit court, PERMA No. 2 of 2015 stipulates that the parties can file an objection no later than seven days after the verdict is pronounced or after notification of the decision. The decision of the panel of judges on the objection is a final decision so that there is no legal appeal, cassation, or review (PK). (Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana (Berita Negara RI Tahun 2015 Nomor 1172), 2015).

Related to PERMA Number 4 of 2019 there are differences with PERMA Number 2 of 2015 in terms of the value of the lawsuit which was initially 200 million to 500 million. The author is of the opinion that the value of the lawsuit should be unlimited, as long as the proof is easy, so that economic principles (with minimal sacrifices, the maximum benefit can be obtained) can be applied to achieve justice and expediency. Soediman Kartohadiprodjo in Ujan believes that the law aims to create an orderly and just human society. The element of justice which is an essential element in the law is an assessment made by humans about human behavior in relationships with fellow humans in a social life. So, it is humans who make the assessment. What is judged is human behavior. Human behavior that is assessed is behavior that takes place or occurs in the association of human life, in social relations between humans. Soediman Kartohadiprodjo believes that the assessment of human behavior in essence will depend on the view of life of the human who gave rise to the assessment, namely on the vision of humans who make judgments from humans whose behavior is judged about the place of individual humans in social life. With that belief. Soediman Kartohadiprodjo began to focus his search on the substance of the worldview adopted which was reflected in the legal system that was grown in the society concerned (S. Kartohadiprodjo, 2010). This substantive justice also does not agree with the theory of natural law because this natural law theory does not provide clear boundaries about what nature is and what its essential characteristics are. The difficulty arises from popular assumptions that simply equate 'natural' with 'what is usually done', 'according to nature' and thus equated with what society accepts and recognizes as things that are commonly practiced in everyday life. Here there is a danger that what is the norm; done is deemed appropriate to be the norm of action. Even though what

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is common and commonly done is not necessarily good. Living according to the demands of natural law basically does not respect the honor or glory of a reasonable human being. Although the distinction between natural law that applies to rational beings and natural law that applies to non-rational beings is already a step forward out of the difficulties of deterministic natural law theory, this solution still brings difficulties in implementing positive law (Ujan, 2009).

Rahmadi stated that SCC is a mechanism for resolving cases quickly so that what is examined in the small claims court is of course simple cases. In Article 1 Number 1 PERMA No. 2 of 2015 in conjunction with PERMA 4 of 2019 it is stated that the SCC is defined as the procedure for examining in court against a legal civil lawsuit with a material claim value of at most five-hundred million rupiahs.. In addition to the provisions regarding the amount of the lawsuit, of course there are other conditions for a case to be resolved through the SCC (Rahmadi, 2012). Dini and Fakhriah said that the SCC is an informal mechanism inside the court but outside the court mechanism in general - which adjudicates compensation claims with/under a certain amount of claim value and is quick to make a decision on claims for compensation or debts with a small claim value (Fakhriah, 1992).

The principle of simplicity, speed and low cost is one of the principles of justice as mandated by Law Number 49 of 2009 concerning Judicial Power. However, the lengthy procedure in the examination of civil legal cases does not reflect this principle, besides the resulting settlement positions the winners and losers facing each other, even though it is stated in the form of a judge's decision which has binding legal force for the parties. For this reason, the community needs efforts to settle legal civil disputes that are in accordance with simple principles - especially business disputes that have a small lawsuit value - and the results of the settlement have binding power for the parties, so that they can be enforced if the parties do not carry out the decision voluntarily.

The judicial process with a SCC mechanism continues to prioritize the legal system in civil courts. According to Lawrence Friedman, the legal system includes first, the legal structure, namely the moving parts in a system mechanism or facility that exists and is prepared in the system. For example, the court, the Prosecutor's Office. Second, legal substance, namely the actual results published by the legal system. For example, Judge's Decision, Law. Third, legal culture, namely public attitudes or values, moral commitment and awareness that encourage the operation of the legal system, or the overall factors that determine how the legal system acquires a logical place within the framework of the community's culture (Lawrence M. Friedman, 1990).

SCC in a legal structure where judges in court can play a role in transforming ideas that are sourced from abstract moral values and display - visualize - in concrete cases, through their decisions. In each case it will be seen, acknowledged or justified that the event has occurred. Judges based on evidence will ensure that the lawsuit meets the requirements, in order to achieve legal certainty. The judge will look for provisions, apply and evaluate and decide on the legal events being litigated so that the decision will provide a sense of justice based on his opinions and beliefs. The role of judges in carrying out justice is in accordance with the reality that exists in society as stated in the SCC rules in Indonesia, where judges are required to play an active role in doing the following things, namely providing an explanation of the

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procedure for a simple lawsuit in a balanced manner to the parties, seeking settlement cases amicably, both in court and in peace in the courtroom, as well as guiding the parties and explaining legal remedies that can be taken (Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2019 Tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana (Berita Negara RI Tahun 2019 Nomor 942), 2019).

The legal substance in the Small claim court is stated in Article 1 of the Regulation of the Supreme Court (PERMA) Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits in conjunction with PERMA 4 of 2019 that a simple lawsuit is a procedure for examining in court against a legal civil lawsuit with a maximum material claim value. five hundred million rupiahs which was settled with simple procedures and proofs. Meanwhile, the legal culture in a small claim court is the opposite, where the process in which a formal settlement to the police or court is the last resort – the *ultimum remedium*. The legal culture is to "resolve" the conflict, without denying the fact that legal problems have occurred. The above legal culture can be realized if the law encourages more positive social change, for example, efforts to build attitudes to resolve conflicts that occur are based on the principles of togetherness and openness.

Through PERMA Number 2 of 2015 related to SCC, the principle of fast, simple and low cost can be realized. The principle of speed in the judicial process here is intended so that the settlement of cases does not take long, which is based on the provisions of the Circular Letter of the Supreme Court (SEMA) Number 1 of 1992 that the maximum limit for dispute resolution is six months from the registration of the case. unless otherwise provided in. The length of time in an SCC case is twenty-five days from the start of the trial. With the principle of the SCC trilogy, a sense of justice, efficiency and effectiveness of the judiciary can be fulfilled without ignoring the existing legal rules.

Next is a simple principle, namely in the judiciary, it should be clear that the proceedings are not complicated. The fewer formalities required in litigation in court, the better. If there are too many formalities, it will be difficult to understand and then it will lead to various kinds of interpretations which of course will have an impact on less guaranteeing a legal certainty and cause fear by the disputing parties to take proceedings before the court. This simple principle can be realized in the settlement of a simple lawsuit which refers to the provisions of Article 1 point 1 PERMA No. 2 of 2015 which essentially states that in the settlement of this simple lawsuit, the civil lawsuit filed is settled with simple procedures and evidence and the value of the material claim is a maximum of two hundred million rupiahs. low costs, namely in the judiciary to achieve justice, of course, are not charged with very large costs. This can be manifested in a simple lawsuit that does not require the parties to be present accompanied by a legal representative so that the parties do not have to incur additional costs to pay the fees for the attorney's services. Regarding this, it refers to the provisions of Article 4 paragraph (4) PERMA No. 2 of 2015 which contains the obligations of the parties to attend the trial with or without their legal counsel, so that later on getting justice is not hampered by costs. With the realization of the trilogy of justice principles through PERMA No. 2 of 2015, can provide protection of human rights (HAM) to the community in the form of the right to obtain legal protection. The legal protection referred to in this case is to avoid a complicated litigation

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process in court which can take a long time to have permanent legal force so that people who are litigating in court have to pay quite a lot of money to be able to feel a legal justice.
Determination of substantial justice is important considering that the implementation of substantial justice can encourage the government of the Republic of Indonesia to form a new institution for the settlement of disputes over debts or bad debts with a maximum value of one billion rupiahs which involves four elements, namely government elements, academic elements, elements of the Supreme Court, elements of businesses and consumers.
Substantial justice is found in legal reasoning where it is necessary to provide space for socio legal approaches. With a socio-legal approach, you will be able to understand legal issues in a more contextual society related to the socio-cultural conditions of the community. The things mentioned above can lead to substantive justice, where justice is not measured from quantitative aspects as seen in formal justice, but justice is based on qualitative aspects based on community morality and human values and is able to provide satisfaction and happiness for the community. Substantive justice does not only accommodate the rules that apply to most social stages in seeking justice, not only in terms of juridical, but also social aspects - the character of substantive justice which is based on the 'response' of society. The content of substantive justice in the judge's decision, further explained by Luthan and Syamsudin as follows: Substantive justice is related to the content of the judge's decision in adjudicating a case, which is made based on objective, honest, impartial and rational (logical) considerations (Syamsudin, 2014). Thus, the choice of substantial/substantive justice is more appropriate to use to form a simple, effective and efficient judiciary.
Legal developments always follow legal developments, Friedrich Karl von Savigny said that - das *Recht wird nicht gemacht, est ist und wird mit dem Volke*, law is not made, but grows and develops with the community - so that the enforcement of the law follows the habits of the people because it has a customary language. customs and constitution that are unique and understood by the community. So that the size of justice is not quantitative (formal justice) but qualitative justice which is based on public morality and human values and is able to provide satisfaction and happiness for the community.
In the practice of SCC in Indonesia, the author summarizes ten findings in the practice of SCC in Indonesia, as follows: First, based on PERMA No. 4 of 2019 concerning Procedures for Settlement of Simple Lawsuits, it does not regulate the existence of an Application for *uit voerbaar bij voorraad* (a decision that can be executed first), and its Settlement Mechanism is under the Authority of the General Courts but in proceedings and confiscations it still uses Civil Law Procedures in Practice – so the process does not meet the SCC philosophy which prioritizes a fast and inexpensive process; Second, the provisions regarding the limit on the value of the lawsuit in the provisions state a maximum of five hundred million rupiah, while the provisions on MSME capital state that the MSME category has a minimum capital of one billion rupiah;
Third, in Article 4 point one, it is alleged that there is ambiguity so that it is necessary to explain and confirm the criteria and conditions in the sentence that have the same importance. In the practice of SCC in Indonesia, the disputing parties still use the services of an advocate, while in the provisions it is not mandatory to use the services of a lawyer in the SCC trial, so that the SCC trial tends to be expensive. Fourth, the criteria for SCC courts are sometimes not

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simple because there are courts with land guarantees in dispute resolution, and the principle that is put forward is not seeking mutual satisfaction, but rather a zero sum game – as in civil cases in general. The involvement of judges in the SCC is often passive, even though the judge should provide an explanation to the parties to achieve peace in resolving disputes in court;
Fifth, in the practice of SCC in Indonesia, the capability of judges is still lacking in understanding the procedures for proceeding at SCC. For example, the judge allowed the Plaintiff's Principal to be absent, because the Plaintiff's Principal's presence has been authorized by Legal Counsel - Even though the Advocate is only a companion, the principal should be required to attend; Sixth, the settlement of SCC which carries the principle of fast, cheap and easy (simple) is still far from being burned, where there are still many people who cannot access the solution – especially the small community – of this SCC. The community's difficulties can be seen from the process of using the E-Court and the SCC Baku Blank – many people still don't understand it; Seventh, that the purpose of implementing the SCC trial is to cut back on the pile of cases, simple lawsuit objections are registered and submitted to the District Court that decides on the SCC case, meaning that the District Court, which is the court of the first level, also plays the role of the Court of Appeal which is the Second Level Court. However, in reality the losing party – because of the zero sum game principle – took other legal remedies such as the Execution Resistance and the *Contentiosa* Lawsuit, especially the land guarantee;
Eighth, if the losing party files an objection, then the objection examiner is carried out by the same panel of judges - because the breaker in the SCC is the sole judge - so that it is not objective in deciding the case. Besides that, the provisions related to the execution of the decision still cause uncertainty where, the result of the decision which is still based on PERMA No. 2 of 2015 which has no execution provisions, can it be executed after the PERMA No. 4 of 2019. Besides that, the execution of SCC uses the ordinary civil court process which has an impact on injustice - long time, high cost. In addition, it was still found during the actual execution of the SCC case; Ninth, the author still finds objects that are used as collateral change their shape and position, for example in land and building cases, where the building is demolished by the owner who lost the case, even though when the guarantee is guaranteed, appraisal is certainly an assessment to provide a loan, meaning the value of the object being executed is reduced and is detrimental to the winner. The difference between the SCC is complex, where the judicial system is very subjective and depends on the perspective of the judge and cannot be separated from the influence of advocates who make legal arguments in order to convince judges in deciding cases. In addition, the existence of a single judge is contrary to the Law on Judicial Power and HIR;
Tenth, in the implementation of the SCC, the parties can only submit material claims, while immaterial claims cannot be submitted. In the practice of SCC at the Court, the judge still believes that *Unus Testis Nulus Testis* (one witness is not a witness), even though in the SCC it is not a benchmark, besides that - POSBAKUM at the District Court (PN) - District Court (PN) - cannot assist in handling cases SCC and the absence of socialization from the PN and the Ministry of Law and Human Rights regarding SCC, in practice SCC does not recognize *Dwangsom* (forced money).

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Based on the above findings, the author is of the opinion that in the stages in the SCC it is necessary to have a new institution in the form of a quadruple helix involving four pillars, namely: 1. The Plaintiff files a simple application or lawsuit that is registered at the Registrar of the local District Court where the object of the simple dispute guarantee is located, the domicile of the Defendant, the domicile of the Defendant's daily activities in accordance with the mechanism of Article 118 HIR; 2. The value of the dispute is a maximum of one billion rupiahs; 3. The Plaintiff does not have to be in the same city and does not need to be present in court. He can appoint an advocate who already has a mediator and negotiator license because this advocate as the Plaintiff's attorney must have negotiation skills; 4. After the lawsuit is registered with the local District Court, the registration officer immediately sends the task to the court which within 1x24 hours forms a simple dispute resolution committee consisting of elements from the Supreme Court (1 judge), academics (1 person), government elements (1 person).) and elements of society (1 person). This committee is in the form of an assembly as in the industrial relations court where the trial is held for seven working calendar days (a process similar to pre-trial); 5. Decisions are final and binding; 6. The decision must be accompanied by an executorial confiscation as in the mortgage process; 7. In the judicial process, a homologation mechanism is established as in the bankruptcy court, so that the result of the decision is the establishment of a peace deed accompanied by the placement of guarantees (*conservatoir beslag*); 8. The judicial mechanism must be win-win solutions from the start.

3.2 Small Claim Courts in the Netherlands

SCC regulations in the Netherlands are governed by sub-district court procedures (sector canton van de rechtbank). This is an ordinary subpoena procedure, with the procedural simplification set out in the Civil Code of Procedure (*Wetboek van Burgerlijke Rechtsvordering*) - it does not contain a separate regulation for filing a trial before a district court.("Small Claims Court in Netherland," 2012). The Dutch SCC can also function in the settlement of SCC disputes within the scope of the European Union in accordance with the provisions of Law Number 29 of May 2009 implementing Regulation (EC) Number 861 of 2007 of the European Parliament and of the Council of 11 July 2007 which stipulates the SCC of European. Which can be settled in the SCC courts in the Netherlands and the European Union for the value of the lawsuit between two thousand euros to a maximum of twenty-five thousand euros the cases that can be handled in the SCC are related to employment cases, leasing, agents, consumer buying and selling contracts, appeals against traffic fines and minor violations. The trial process in the district court can be represented by an attorney who must officially be listed in the summons form. Which can be downloaded from the European e-justice portal. The application must be submitted to a court with jurisdiction. Courts must have jurisdiction in accordance with the provisions of Council Regulation (EC) Number 44 of 2001 concerning jurisdiction and recognition and enforcement of decisions in legal and commercial Civil matters. The Parties can carry out the trial process either accompanied or not by a lawyer – there is no obligation to be accompanied by a lawyer ("Small Claims Court in Netherland," 2012).

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In taking evidence under Dutch law on evidence, judges are in principle free to judge the evidence submitted - Article 9 of Regulation (EC) No. 861 of 2007 which regulates the collection of evidence. In European procedure. The filing of claims and answers can be made by sending a written document that can be submitted to the district court (in person or by post or fax) before the date of registration of the case, however, it is possible that a settlement can be made before the court if deemed necessary and upon request. the parties ("Small Claims Court in Netherland," 2012).

Determination of fees in Dutch law stipulates the registration fee for lawsuits. Other costs in the Dutch SCC are also determined by the cost of legal aid, costs of witnesses and expert witnesses, travel and subsistence expenses, extract fees and other out-of-court costs. Providing legal assistance in cross-border litigation within the European Union. This law implements the European Council Directive of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum general rules relating to legal aid for SCC disputes. In the SCC, the Netherlands and the European Union, appeals and cassation are allowed – except for cassation on the decision of the district court – if the value of the claim is more than one thousand seven hundred and fifty euros, and can be filed a maximum of three months after the date of sending the results of the court decision.

4. Conclusion

The results of the study state that substantive justice is the main thing in small courts because it accommodates the values that grow and develop in society compared to using the courts stipulated in the law, considering that small court justice prioritizes the principles of fast, cheap and simple.

The author defines substantial justice as one type of justice that can be applied in the SCC mechanism, however there are several weaknesses in the implementation of PERMA No. 4 of 2019 concerning Procedures for Trial of Simple Lawsuits as follows: The execution system which is accompanied by a guarantee from the Defendant is in fact not easy to execute because the Defendant files an appeal to the District Court. This means that the Defendant refuses to execute. This is because the small claims court is not final and binding; The simple lawsuit trial which requires the Plaintiff and Defendant to be in one area, including the object of the dispute, has not fulfilled justice when the Plaintiff is in the City of Jakarta and the Defendant is in the City of Bandung. This is because the provisions regarding the position of the Plaintiff and Defendant are not based on the provisions of Article 118 HIR;

The value of the object of dispute (debts) is limited to five hundred million rupiah, this causes the Plaintiff and Defendant - usually associated with banking and leasing institutions - to limit the opportunities for other business actors who want to use the services of a simple lawsuit court because the value is above five hundred million rupiah; The simple lawsuit trial turns out to be inefficient and effective because although it is not determined or is not required to use an advocate, in practice it still uses an advocate; The simple lawsuit trial is within the scope of the power of the Supreme Court which causes a choice of forum so as to obscure the role of the simple lawsuit court.

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Similarities between the Indonesian SCC and the European Union, especially the Dutch courts, are substantially the same, namely resolving disputes with a small claim value – even though the nominal amount is relative, the difference is that in the Dutch SCC it is possible to have lawyer assistance and also further legal remedies – appeals and cassations – whereas in Indonesia is not allowed because of the different motives for the existence of the SCC, where in the court system in Indonesia, the existence of this SCC is one of the reasons for reducing the pile of case files at all levels of the court.

Furthermore, based on the discussion and conclusions above, the authors suggest that the SCC is as follows: 1. Patterns of dispute settlement of civil procedural law in Indonesia. Civil procedural law is a formal law that functions to enforce, maintain and ensure compliance with material civil law. One of the principles in civil procedural law in Indonesia is the principle of simple, fast and low cost; 2. The right theory of justice used for the simple lawsuit justice mechanism is the theory of substantive justice, because the decision of a simple lawsuit must accommodate the values that grow and develop in society in addition to statutory regulations; 3. Simple Lawsuit Settlement Mechanisms That Can Create Legal Certainty, Justice and Benefits for the Community, currently can be seen from the perspective of legal certainty from the process of implementing a simple lawsuit contained in PERMA Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Governance Simple Lawsuit Settlement Method. Legal certainty should create legal awareness for both law enforcers and justice seekers, however, this has not provided a guarantee of legal certainty for justice seekers because most simple lawsuit court decisions cannot be executed unless the lawsuit is revoked or carried out through reconciliation; 4. It is recommended that efforts be made to reformulate the Supreme Court Regulation Number 2 of 2015 jo. The Supreme Court Regulation Number 4 of 2019, will not only pay attention to the principle of a fast, simple and low-cost trial, but also pay attention to substantive justice, so that the benefits can be directly felt by the justice-seeking community by establishing a Simple Dispute Settlement Institution; 5. It is recommended to the Supreme Court to draft a Civil Procedure Code to replace the HIR and the PERMA regarding simple lawsuits specifically for simple courts to form a quadruple helix institution.

References

Afriana, A., & Chandrawulan, A. A. (2019). Menakar Penyelesaian Gugatan Sederhana di Indonesia. *Jurnal Bina Mulia Hukum*, *4*(1), 53–71. https://doi.org/10.23920/jbmh.v4n1.4

Ariani, N. V. (2018). Gugatan Sederhana dalam Sistem Peradilan di Indonesia. *De Jure*, *18*(3), 381–396.

Fakhriah, E. L. (1992). Eksistensi Small Claim Court dalamMewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan. *Jurnal UNPAD*, 1–23.

Fakhriah, E. L. (2013). Mekanisme Small Claims Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan. *Mimbar Hukum*, *25*(2), 258–270.

Fauzan, H. M. (2010). Pesan keadilan di balik teks hukum yang terlupakan. *Varia Peradilan No. 299*.

Huda, C. (2013). *Penerapan Mekanisme Small Claim Court Dalam Sistem Hukum Nasional (Perspektif Hukum Pidana)*. BPHN.

Kartohadiprodjo, S. (2010). *Pancasila Sebagai Pandangan Hidup Bangsa* (A. S. Kartohadiprodjo (ed.)). Gatra

The Seybold Report
ISSN 1533-9211
DOI 10.5281/zenodo.6616873

Pustaka.

Lawrence M. Friedman. (1990). *The Republic of Choice: Law, Authority, and Culture*. Harvard Press.

Paulus Hadi Suprapto, Surastini Fitriasih, S. (2009). *Menemukan Substansi dalam Keadilan Prosedural: Laporan Penelitian Putusan Kasus Pidana Pengadilan Negeri*. Komisi Yudisial Republik Indonesia.

Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2019 Tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana (Berita Negara RI Tahun 2019 Nomor 942), Pub. L. No. Berita Negara RI Tahun 2019 Nomor 942 (2019).

Prasetyo, D. I., & L.Tanya, B. (2011). *Hukum Etika & Kekuasaan* (pp. 44–46).

Purnawati, E. (2020). Penerapan Gugatan Sederhana (Small Claim Court) Dalam Penyelesaian Perkara Wanprestasi Di Pengadilan Negeri Selong. *JURIDICA : Jurnal Fakultas Hukum Universitas Gunung Rinjani*, *2*(1), 17–40. https://doi.org/10.46601/juridica.v2i1.179

Rahmadi, T. (2012). *Naskah Akademik RUU KUHPerdata*. BPHN.

Rawls, J. (1970). Justice as Fairness: A Restatement. In E. Kelly (Ed.), *harvard press*. Harvard University Press.

Soetoprawiro, K. (2011). Keadilan sebagai Keadilan. In *Diktat Kuliah Program Doktor Ilmu Hukum*. Universitas Katolik Parahyangan. http://journal.unpar.ac.id/index.php/projustitia/article/view/1064

Syamsudin, M. (2014). Keadilan Prosedural dan Substantif dalam Putusan Sengketa Tanah Magersari (Kajian Putusan Nomor 74/PDT.G/2009/PN.YK). *Jurnal Yudisial*, *7*(1), 18–33.

Ujan, A. A. (2001). *Keadilan dan Demokrasi: Telaah Filsafat Politik John Rawls* (pp. 171 p.; 23 cm). Saint Joseph's University.

Ujan, A. A. (2009). *Filsafat Hukum*. Kanisius.