

Resolving Business Disputes Through Small Claims Court To Support The Ease Of Doing Business In Indonesia (Comparison: Netherlands And Malaysia)

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Abstract

Abstract: *In a business conflict, dispute resolution process that fast and provides legal certainty are necessity for justice seekers. The principle of justice that is fast, effective, efficient and low-cost is something that is highly expected in the process of settling a civil case in court. However, in reality, the dispute resolution procedure under the Civil Procedure Code in the court is still felt to be too long process, and the procedure is complicated and raises costs that are quite high. Therefore, addressing these conditions requires a Civil Procedure Law mechanism that can resolve a business dispute whose value is not too expensive with a simple and fast procedure. To overcome this problem, the Supreme Court Regulation No. 2 of 2015 concerning Simple Laws was issued as one of the mechanisms for resolving business disputes. This shows that basically the Supreme Court strongly support the process of resolving a case quickly, easily, cheaply and does not too long process. Law enforcement through the handling of business disputes in the Court that are fast, effective, efficient, light costs with a relatively short period of time become one of the indicators in creating a climate of easy going business in the business field in Indonesia. The problems that are to be examined are how to implement business dispute resolution through a small claim court in creating a climate of business convenience in the business field in Indonesia. This research in relation to the mechanism of settlement of disputes through small claim court was carried out in 2 (two) courts, the Denpasar Bali District Court, Depok District Court In addition, the research was also carried out by comparing of small claim court procedures in the Netherlands and Malaysia. The research method used in reviewing the legal issues examined is to use a normative juridical research method through library studies to obtain secondary data, as well as using a comparative approach.*

Keywords: *Small Claim Court, Easy Going Business, Business Dispute Resolutions.*

I. INTRODUCTION

Background

Over the last two centuries trade has grown remarkably, completely transforming the global economy. As well, the rapid dynamics of the business world have quite basic implications for institutions and legal institutions. To support economic and business activities, it is necessary to carry out legal reform in the economic field, by making efforts to renew legal products that are not in line with the times, as well as making new regulations that support developments in the economic and business fields.²

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² Eman Suparman, *Arbitrase & Dilema Penegakan Keadilan*, Jakarta : PT. Fikahati Aneska, 2012, pg 1-2.

This is in line with the 2015-2019 National Medium-Term Development Plan (RPJMN) which mandates the reform of the Civil Law System which is easy and fast to regulate obvious matters related to the economy.³ Law enforcement is one indicator of the ease of doing business. With regards to such issues, in carrying out law enforcement related to handling the settlement of a civil dispute in the court, this includes starting from the process of filing a case through case registration until the trial process reaches the final stage of the decision by the judge. In principle, the Supreme Court and its involved people strongly support the process of resolving a case quickly, easily and does not take a long time, as an effort to support business for business people.⁴

This is in line with the fast, simple and low-cost judicial principles stipulated in Article 2 paragraph (4) and Article 4 paragraph (2) of the Judicial Power Act. Article 4 of the Law on Judicial Power has provided a special mandate for courts to assist justice seekers and try to overcome all obstacles and obstacles to achieving a simple, fast and low-cost judiciary. Besides, based on Circular of the Republic of Indonesia Supreme Court (SEMA) Number 2 of 2014 concerning Settlement of Cases in the Local county court and High Court, the Supreme Court calls on the First Level Court to settle disputes within a maximum of 5 (five) months. For Appellate Courts, a maximum period of 3 (three) months is given to settle a case, not only to the verdict but to the mutation. In general, it can be illustrated that in the ordinary judicial process for the first to appeal stages it can take up to 8 (eight) months.⁵

Following guidance outlined to this issue, certainty in resolving disputes by district judge in a local county court is very important especially for the success of the agenda for increasing the ease in the Indonesian justice sector. Increasing ease of doing business in Indonesia continues to be encouraged along with the implementation of the 2015-2020 RPJMN program. In this case the government has planned to increase the ease of doing business ranking from 109 to 40, and the survey on ease of doing business is carried out every year by the World Bank.⁶ Based on the results of the global ranking in 2017, the justice sector in Indonesia managed to occupy the 91st position, and in 2018 managed to reach 73rd position.⁷ This was followed up with the issuance of KMA Decree Number 043 / SK / 11/2017 concerning the Establishment of Working Groups in the Framework of Coordination Increasing the ease of doing business.

Rapid civil dispute resolution in the sense that it no longer requires long and protracted time is needed in Indonesia, given the following reasons:⁸

1. large number of Indonesians, so that disputes tend to occur high enough,
2. with a quick examination will reduce the accumulation of cases both at the level of the First Level Court, the High Court and the Supreme Court,
3. to realize a judicial principle that is fast, simple and low-cost,
4. civil procedural law that currently still does not meet low-cost justice, because it remains complicated and protracted,

³Research and Development Center for Training of Law and Justice of the Supreme Court of the Republic of Indonesia, *Kompilasi dan Re_Publikasi Putusan-Putusan Tentang Gugatan Sederhana*, 2018, pg. V.

⁴Research and Development Center for Law and Justice Research and Development Agency Diklat Kumdil of the Supreme Court of the Republic of Indonesia, *Kewenangan Pengadilan Dalam Eksekusi Putusan Perdata Untuk Mendukung Kemudahan Berusaha*, 2018, pg. 147-148.

⁵Muh. Ridha Hakim, "Implementasi Gugatan sederhana Sebagai Upaya Mewujudkan Keadilan Melalui Pemenuhan Asas Peradilan Sederhana, Cepat dan Biaya Murah," *Evaluasi Perma Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana*, Research and Development Center for Law and Justice Research and Development Agency Diklat Kumdil of the Supreme Court of the Republic of Indonesia, 2018, pg. 36.

⁶Research and Development Center for Law and Justice Research and Development Agency Diklat Kumdil of the Supreme Court of the Republic of Indonesia, *Op.Cit.*, pg. 83.

⁷<http://www.doingbusiness.org/rankings> - accessed on 24 July 2019 at 15.08 WIB.

⁸Takdir Rohmadi "Pengadilan dengan Acara Cepat (Small Claim Court)", makalah disampaikan dalam *Diskusi Publik Draft naskah Akademis Rancangan Undang-Undang tentang hukum Acara Perdata : Small Claim Court*, Jakarta : 28 May 2019, organized by the National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia.

5. to prevent vigilante.

Resolving disputes in civil cases through simple lawsuits is a new step in the settlement of civil cases aimed at providing the means for justice seekers in order to settle civil cases in the General Court environment in a fast, simple, and costly manner in simple civil matters. Through the simple settlement mechanism, civil dispute settlement becomes faster and simpler, and further provides legal certainty by promoting access to justice to litigants in connection with resolving disputes as the ease of doing business. This small claims mechanism is carried out to enable to reduce the accumulation of cases in court and shorten the litigation process.⁹

The process of resolving small claim cases in several states relating to the settlement of civil cases with small value dispute objects can be resolved through the mechanism of small claim court (SCC). The Small Claim Court is a civil dispute resolution mechanism that has a relatively small claim value in a fast, simple and at low-cost with a decision that has binding legal force.¹⁰ In some countries such as Australia, Singapore and America and Japan, a quick and simple examination is used to examine and decide cases with a small claim value of at most 100 million. Otherwise, in European Union countries since 2009 except Denmark, known as small claim procedure / SCP with a claim value of no more than 2000 Euros.¹¹ To investigate the matter, the present study focuses on the implementation of small claims mechanism in the settlement of business disputes in the local county Court as an effort to support the ease of doing business by conducting research in local county Courts of Denpasar, Bali and Depok, West Java and through analyzing comparison among small claims court implementation mechanisms in Indonesia, the Netherlands and Malaysia.

II. RESEARCH PROBLEMS

Returning briefly to a number of problems attributed on the above description, the problems to investigate in this study are as follows:

1. How to resolve business disputes through small claims court mechanism in the local county court to support the ease of doing business?
2. What is the comparison between the implementation of small claims mechanism in Indonesia and its implementation in the Netherlands and Malaysia?

III. RESEARCH METHOD

In the current project, the research method used is a normative juridical research method caused by legal materials used in this study. This research method examines law as a basis for guiding various fields of life that govern order and justice.¹² The typology of the research used is descriptive, that is describing precisely an individual, symptom, or certain group to determine the frequency of a symptom.¹³ The main data is secondary data and then the data is analyzed qualitatively, and in turns, it looks at the depth of the data. Judging from the form, the present study is a kind of evaluative research because it may contribute to future work in line with this research.¹⁴

⁹Efa Laela Fakhriah, "Mekanisme Small Claim Court Dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat dan Biaya Ringan," *Mimbar Hukum* 25, No. 2 (2013), pg. 258-270.

¹⁰*Ibid.*

¹¹http://www.europe.eu/legislation_summaries downloaded on 24 July 2019.

¹²Sri Mamudji, et.al., *Metode Penelitian dan Penulisan Hukum*, Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005, pg.4

¹³*Ibid.*, pg.4.

¹⁴Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet. 3, Jakarta: Penerbit Universitas Indonesia, 2012, pg.10.

In normative legal research, the data used is secondary data. The type of secondary data used consists of primary legal materials, secondary materials, and tertiary materials.¹⁵ This study uses a data collection tool in the form of document studies to obtain secondary data.¹⁶ Library Research Method is a research conducted to find various appropriate and relevant secondary data, including: legislation, books, journals, research results, internet materials, and other literature. This study uses a comparative approach.¹⁷ Legal comparisons are conducted to examine how different legal systems face certain legal problems.¹⁸ The comparison process is intended to obtain conclusions about the characteristics differences in each legal system and or use of the same component to deal with certain issues.¹⁹

This study also uses a qualitative approach as a method of data analysis. The qualitative approach in data analysis is aimed at analyzing data from the results of document studies and interviews in which the data is then analyzed using related legal theories. Conclusions are drawn deductively, through drawing conclusions that are specific in relation to the subject matter of general matters.²⁰

I. Resolving Business Disputes Through Small Claims Court in the local county court to Support the Ease of Doing Business

A. Resolving Business Disputes in the local county court through Small Claims Court Mechanism

A dispute or conflict is a situation or condition where there is a conflict or discrepancy between the parties who will and are conducting a cooperative relationship.²¹ Business disputes that arise certainly need a solution, thus legal problems that occur are not protracted, and in turns, it can disrupt economic activity. Therefore, a fast and simple business dispute resolution is needed and can provide legal certainty. Based on World Bank research, one of the obstacles in resolving business disputes in Indonesia is as follows: a) inefficient resolution of disputes at the first court; 2) long completion period; 3) high case costs; 4) high attorney fees.²²

Business dispute resolution through the courts is based on the provisions stipulated in the Civil Procedure Code as stipulated in the HIR provisions that apply to Java and Madura Islands, and the RBg that applies to outside Java and Madura, as well as provisions in RV²³ and other laws and regulations. The process of resolving business disputes through

¹⁵Sri Mamudji, et.al., *Op. Cit.*, pg. 31.

¹⁶*Ibid.*

¹⁷Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 3, Jakarta: Prenada Media Grup, 2005, pg 93-136.

¹⁸John C. Reitz, *How To Do Comparative Law*, 46 Am. J Comp. L 617, 1998,pg.619.

¹⁹David J. Gerber, *Globalization and knowledge: Implications for Comparative Law*, 75 Tul. LRev. 949, 2001, pg. 969.

²⁰Surakhmad Winarso, *Metode dan Teknik* in his book, *Pengantar Penelitian Ilmiah Dasar Metode Teknik*, Bandung: Tarsito, 1994, pg. 17.

²¹Rachmadi Usman, *Pilihan Sengketa di Luar Pengadilan*, Bandung : PT Cipta Aditya Bakti, 2003, pg. 10.

²²Agency of Research and Development of Law and Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia, *Op. Cit.*, pg. 5-6.

²³R. Tresna, *Komentar HIR*, Jakarta : Pradnya Paramita, 1989, pg. 15.

the courts that use the Civil Procedure Code still remains too long, complicated, and at high-cost. Even sometimes the cost of resolving disputes is greater than the value of the disputed object.²⁴ The process of resolving cases requires a long time and the convoluted process not only affects justice seekers, but also it has an impact on the increase in court workload due to the accumulation of cases.

According to Yahya Harahap, the length of case settlement is generally caused by a very formal and technical examination process. Besides that, the number of cases that must be handled by the court caused the court to be burdened with cases that were increasingly piled up.²⁵ This fact is a factor in the decline in public trust in court institutions caused by a formalist and technical justice system, which harms justice seekers both in terms of time, costs and services by the court and from the side of the court decisions.

In response to such obvious conditions, it is necessary to have a mechanism for civil events that can resolve a business dispute whose object value is not too large so that it can be resolved simply and quickly. To answer the issue of complaints about the length of time and the high cost of resolving civil disputes in court, the Supreme Court on August 7, 2015 issued Republic of Indonesia Supreme Court Regulation Number 2 of 2015 concerning Procedures for resolving small claims court. The presence of such mechanism is expected to significantly realize the principle of justice that is fast, simple and at low-cost. According to Sudikno Mertokusumo, simple is defined as a clear, easy-to-understand and convoluted thing. Whereas the principle quickly points to the proceedings at the court. While at low-cost refers to an amount of fee that should be borne by justice seekers are not too high and also not burdensome.²⁶

The emergence of dispute resolution procedures through a small claim mechanism originated from the increasingly complicated and dynamic activities in the trade and business sectors. One of the obstacles to business activities is the absence of a mechanism for resolving business disputes in fast, simple and at low-cost.²⁷ Thus, a small claim court is a civil suit with a material claim amounting to a maximum of Rp. 200,000,000 (two hundred million rupiahs) which is settled by simple procedures and evidences.²⁸ Small claims court is examined and decided by the court within the scope of the general jurisdiction of the court (local county), against cases of breach of contract (default) or acts against the law (PMH). Whereas those not included in small claims court according to Article 3 paragraph (2) Perma Number 2 Year 2015 are cases : a) cases where the resolution of the dispute is carried out through a special court as stipulated in the legislation; or b) disputes over land rights.²⁹ Perma Number 2 Year 2015 also limits the parties to file legal remedies (not available appeal and cassation)

The Supreme Court Regulation Number 2 of 2015 concerning Procedures for Resolving Small claims court has emerged as an area for attention motivated by the existence of a World Bank report related to ease of doing business in Indonesia. The ease of Doing Business (EODB) is an annual survey conducted by the World Bank that reflects investment attractiveness in terms of government policy. With another meaning, EODB is an index used to measure a

²⁴Supreme Court, Academic Script Procedure for Resolving small claims court, Jakarta: Mahkamah Agung, 2015, pg. 15-16.

²⁵M Yahya Harahap, *Kedudukan, Kewenangan Dan Acara Peradilan Agama; Undnag-Undang Nomor 7 tahun 1989*, Jakarta: Pustaka kartini, 1997, pg. 20.

²⁶Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Cet. 7., Yogyakarta : Liberty, 2006, pg. 36.

²⁷Ridwan Mansyurand D.Y. Witanto, *Gugatan Sederhana Teori, Praktik dan Permasalahannya*, Jakarta: Pustaka Dunia, 2017, pg. 12-13.

²⁸Agency of Research and Development of Law and Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia, *Penerapan Mekanisme Small Claim Court Dalam Penegakan Hukum di Indonesia*, Jakarta : BPHN Kemenkumham RI, 2017, pg. 38.

²⁹Adi Nur Rohman and Sugeng, "Probability Mekanisme Small Claim Court Dalam Penyelesaian Sengketa Waris Di Pengadilan Agama, *Jurnal Hukum dan Peradilan Vol. 07 Nomor 3*, November 2018, Legal and Judicial Research and Development Center of the Supreme Court of the Republic of Indonesia, 2018, pg. 398.

country as the most comfortable place to invest or do business.³⁰ In 2014 the ease of doing business in Indonesia ranked 120th out of 189 countries.³¹

The procedure for proceedings using small claims court mechanism includes the following stages:

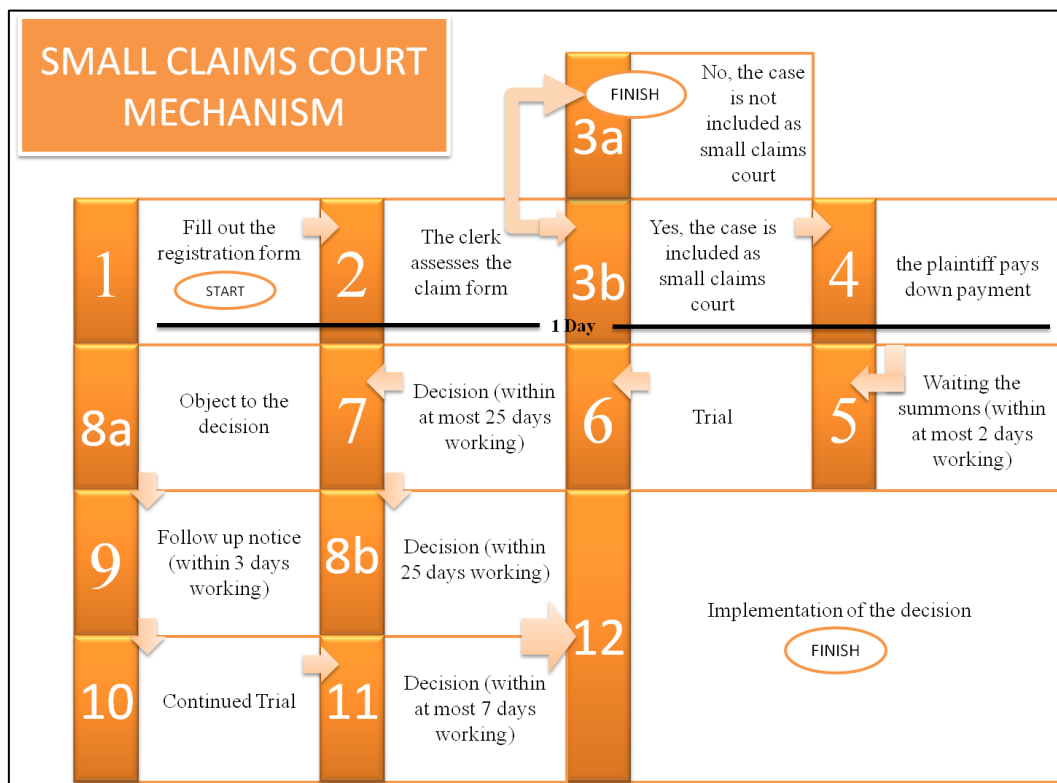
- a) Registration of claim. Claim registration for small claims court in the civil registrar using a special register.
- b) Peace. The peace process is expected to continue to be carried out by encouraging the parties to resolve the dispute peacefully.

c) Calling of parties. The calling process still refers to the provisions in the Civil Procedure Code.

d) The trial process. The trial shall be conducted with a single judge. The trial process is divided into below session stages:

- (1). Session I includes examination of claims and answers. In small claims court, there is no possibility of replication, duplication and exception.
- (2). Session II with the agenda of verification by the parties
- (3). Session III reading the decision. The decision is final and binding.

The procedure flow in small claims court mechanism can be easily understood from the following diagram:



Based on the process flow diagram above, an outline of the small claims court mechanism is as follows:

- 1. After the lawsuit is registered, the claimant waits for a summons from the court. The court officer will record the lawsuit in small claims court register. Afterwards, the file will be submitted to the head of the court.

³⁰Galih Gumelar, “Menakar Mimpi Jokowi masuk 40 Besar Indeks Kemudahan Berusaha,” <http://www.cnnindonesia.com/ekonomi/20170609011802-92-220477/menakar-mimpi-jokowi-masuk-40-besar-indeks-kemudahan-bisnis>downloaded on 25 July 2019.

³¹*Ibid.*, pg. 11.

2. The head of the court appoints a judge who will examine and decide on the case filed. Calls are made by the bailiff to the address listed on the claim form. Notifications related to trial information can also be made via text message (SMS / WhatsApp) or via e-mail that is included in the claim form.

3. The appointed judge will conduct an examination of the case. If the judge believes that the claim is not included in small claims court, then the judge issues a decree stating that the claim is not included in small claims court, and removes it from the case register, and instructs the restitution of the remaining fees after deducting other expenses incurred.

4. If the claim is declared as not a small claim court, then the claimant can file a claim in an ordinary lawsuit.

5. If the judge believes that the claim filed by the plaintiff is a small claim court, then the judge determines the first trial day. Both the claimant and the defendant will be summoned by the court to attend the first hearing.

Based on the results of a study conducted by the Balitbang Kumham, there are several obstacles in the implementation of small claims court mechanism, this includes:³²

a. The claim value of IDR. 200,000,000.00 (two hundred million rupiahs) does not represent all regions in Indonesia. This happens because of differences in economic values in each region that cause differences in the assessment of the limitation of the maximum value of small claims court, in this regard, there are regions that consider its most value as of very little value, and vice versa;

b. There are restrictions on civil disputes that have turned into a special court, thus it is essentially necessary to conduct synchronization and harmonization of business disputes regulated in specific laws and regulations with business disputes resolved through small claims court;

c. The validity of the use of general civil execution rules in small claims court prevents the execution of its lawsuit.

B. Implementation of Small Claims Court in Business Dispute Resolution: a Study in local county courts of Denpasar- Bali and Depok - West Java.

1. The implementation of small claims court mechanism: A study in local county courts of Denpasar - Bali

Based on findings obtained in this line of research with regard to the Denpasar local county court, Bali, small claims court mechanism in practice at the Denpasar local county court was carried out in accordance with the provisions of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Resolving small claims court. Simple registration is performed through a one-stop service (PTSP) by attaching legalized documentary evidence. In the Denpasar local county court, PTSP is carried out electronically in accordance with the provisions of the Supreme Court Regulation Number 3 of 2018 concerning Electronic Case Administration in Courts.

Moreover, in practice at the Denpasar local county court, the Registrar shall examine the registered claim whether it meets administrative requirements as small claims courts as stipulated in Article 3 and Article 4 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Resolving Small Claims Courts. If it meets administrative requirements, the Chairperson of the Denpasar local county court will determine the Judge who will examine and hear the case. In the Denpasar local county court, there is no "special team of judges" for such cases. However, generally the hired Judges are not senior judges. This intended policy seeks to test if an objection is made by parties who are dissatisfied with small claims court decision, the Chairperson of the Denpasar local county court will appoint a senior Judge to examine and decide on the objections submitted. The judge's seniority considerations are determined by rank

³²Sri Gilang Muhammad Sultan Rahma Putra dkk, *Op. Cit.*, pg. 15.

and time period in the Denpasar local county court. After the determination of the Judge, the Registrar's Office shall appoint a Substitute Registrar and file the intended case to the Judge in charge based on the stipulation of the Chairperson.

The hired judge shall try to examine the substance of the case whether the proof of the case is classified as simple proof or not in accordance with the provisions of Article 3 and Article 4 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Resolving Small Claims Courts. If the Judge assesses the proof of the case as a simple proof, the Judge must determine the first trial day. However, if the proof is not classified as simple evidence. In this regard, the judge shall issue a stipulation that the claim filed cannot be resolved through small claims court mechanism. As a result, the dispute resolution mechanism through small claims court cannot be implemented and the remaining down payment costs will be returned. The dispute resolution process through small claims court mechanism in the Denpasar local county Court is generally decided before 25 (twenty five) working days from the first day of the hearing in the presence of a complete Plaintiff and Defendant. The complete presence of the parties is a condition for the trial to be carried out. In several cases, the trial process was only carried out within two weeks due to the peace of the parties to the dispute. In the Denpasar local county court, the judge in charge is generally active in seeking the peace. Nevertheless, in some cases, there are parties who are not satisfied with small claims court. For such obvious matter, the concerned person can file an objection to the Chairperson of the Denpasar local county court within 7 (seven) days after the verdict was read or after the decision was announced.

In small claims court mechanism in the Denpasar Local county court, the most frequently examined and decided was a case of interpretation, concerning bank credit disputes. Such small claims court mechanism was assessed by the Association of Balinese Rural Banks (Perbarindo BALI) to be very effective in resolving the problem of bad credit, especially for Rural Credit Banks. In practice, to achieve peace between banks and debtor customers, the Bank might offer loan repayments as limited as principal debt by eliminating loan interest. On the other hand, cases due to the occurrence of very unlawful acts were resolved through small claims mechanism.

Regarding the settlement of such lawsuit, the implementation of small claims court mechanism in the Denpasar Local county court did not experience a significant obstacle. The litigants tended to respond positively because the settlement was much faster as well as much lower cost. In a number of cases the banking bad credit was proposed because the debtor customer did not want to pay off the debt, yet after small claims court was filed, the debt was immediately repaid. As well, the parties do not experience difficulties in carrying out a simple claim mechanism because in a simple lawsuit, the judge played an active role in seeking peace; explain procedural law; guide proof; and explain legal remedies for decisions. In fact, this small claims court mechanism was considered effective to reduce the burden of cases at the Denpasar Local county court. In the future, it is expected that the case value for such issues can be increased from IDR. 200,000,000 to IDR. 500,000,000.

2. Implementation of Small Claims Courts in the Depok Local county court, West Java

Based on results obtained in this line of research conducted in the Depok Local county court, it could be figured out that small claims court mechanism followed the rules contained in the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Resolving Small Claims Court. Such systematic mechanism was started with the registration of the lawsuit, the calling of the parties, the proceeding began with the sequence of the following steps:

1. Session 1 : Inspection of Claims and Answers;
2. Session 2 : Proof by the Parties; proof of letter and witness;
3. Session 3 : Decision.

Regarding the period of time, the settlement of small claims court was carried out within 25 (twenty five) working days from the first session in accordance with Article 5 paragraph (2) of the Supreme Court Regulation Number 2 of

2015. Such intended period included the process peace if the parties were seeking peace. Similar to the rules in the Supreme Court Regulation, as one of the conditions for submitting small claims was the value of the material claim at most IDR 200,000,000 (two hundred million rupiah).

In its implementation, the small claims court made in the Depok Local county court was most often related to bank customers' credit loan agreements. From 2016 to September 2018 there were at least 49 cases, each in 1 case in 2016, 47 cases in 2017, and 1 case in 2018. Whereas, at the time small claims court of Supreme Court Regulation was issued, in 2015 there has not been small claims court case.

Related to the proof mechanism, the proof process shall be simple. However, Article 18 of the Supreme Court Regulation No. 2 of 2015 states that the verification examination follows the applicable procedural law / Article 164 HIR (Evidence of a letter, witness, suspicion, confession and oath), on the one hand, because this is kind of small claims court, such rule emphasizes the evidence and witnesses, and regarding the proof of the letter, the plaintiff must attach a proof of letter when registering at the Court. For information, the cost of the down payment and case fees incurred to resolve small lawsuit dispute ranges from IDR. 300,000 to IDR. 1,000,000.

The difference between simple proof and ordinary proof lies in the process, which in a simple claim emphasizes the judicial process fast, simple, and low cost. Then, in the registration, proof of the documents must be entered later before the examination begins at the trial, the judge will first assess the file along with proof of the letter to determine whether the claim is worth checking or not, while the usual proof is only after the answer Article 164 HIR, a simple claim also uses Article 164 HIR as the basis of proof (Article 18 of the Supreme Court Regulation Number 2 of 2015) but in practice after the proof of the letter is then added by witnesses is sufficient to decide the dispute submitted with small claims examination.

The obstacles faced in resolving this small claims court is because it does not require a lawyer to accompany, the judge must deal with direct parties who are very lay out in court so that they must always explain to the parties what things must be done by the parties. For example about proof by means of evidence, witnesses that must be submitted, attendance to parties, and attitudes of the parties in court.

Nonetheless, the obstacle faced by the parties in the process of resolving this simple lawsuit was that the parties working in the office were constrained by permission from their superiors, while the traders lost their merchandise because they were closed. The parties are also constrained to look for witnesses, if one of the parties is absent, according to the Supreme Court Regulation, the plaintiff who is not present at the first trial even though he/she has been legally and properly summoned, the claim falls, whereas if the defendant does not attend at the first hearing again, if not present, then the defendant (*verstek*) will be terminated. If the defendant attends but is not present at the next hearing, it is still decided by an ordinary decision (*contradictoire*).

In the event that the parties are not satisfied with the existing decision, the parties may file an objection and will be decided by the appointed panel judge within seven working days of the first hearing, the objection decision is the final legal remedy due to the absence of other legal remedies. Therefore, the resolution of the dispute is sufficiently resolved in the first court, there is no appeal.

With respect to the implementation of the decision or execution, referring to Article 197 HIR, which is carried out by either voluntary or forced (execution), the obstacles faced if the confiscated object such as land, it can still be implemented, because it cannot be moved, but if the object can be moved for example a vehicle, it relatively creates difficulty, this is an obstacle for the bailiff to execute.

Based on the research conducted in the Depok Local county court, the Judge argued that small claims courts mechanism would still be carried out, if the case value is below IDR. 200,000,000, it would still be carried out thus the accumulation of cases at the Supreme Court could be reduced, because small claims lawsuit arrived at the First Court.

II. Comparison of Small Claims Court Mechanisms in Indonesia, the Netherlands and Malaysia

A. Small Claims Procedure in Netherlands

The Netherlands is a country that has a civil law legal system with a judicial system that adheres to the procedure of examinations by judges, not through juries such as the common law system. The judiciary in the Netherlands has a structure of court institutions consisting of three levels, as follows:

1. *Rechtbanken*, which is the first court in Indonesia. At this level there is a specialty of the institution called Kantongerechts or sub-district court, which is a court that is basically parallel to the benchmark but only examines certain matters. As for the case under review at the pocket agency is a matter with a suit value of less than EUR. 25,000, -, matters of employment agreement, as well as matters relating to rent for real estate.
2. *Gerechtshoeven*, which is an advanced court that investigates appeals.³³
3. *Hoge Raad*, which is the third and highest court that examines cassation cases.³⁴

Regarding cases included in small claims, the institution that has the right to examine the case is Kantongerechts. The small claims case itself examined at Kantongerecht is divided into two, namely cases involving other countries in the European Union and for cases based on the Dutch national law. Each procedure is distinguished based on the subject involved in the case and the type of case. Both also have some technical differences. The existence of these different arrangements is a consequence of Dutch membership in the European Union, which has several legal unification related to relations between one country and another.

In the small claims court procedure which refers to the unification of laws in the European Union, namely the Regulation (EC) No. 861/2007 of the European Parliament, the case criteria included in the case that can be examined by the mechanism of small claim court are:³⁵

- a. Civil and business matters that are contrary to community law. The matters that are not included in the investigation can be done with a small claim court mechanism:
 - 1) Case concerning the status and capacity of individuals.
 - 2) Family wealth law cases.
 - 3) Bankruptcy Cases
 - 4) Case concerning social security
 - 5) Arbitration
 - 6) Case employment
 - 7) Movable property rental cases
 - 8) Cases of violation of privacy rights, including vilification.
- b. Cases with a total compensation value of EUR 2000.00 are included, and include interest, and other costs.

³³De rechtspraak, "Organisatie Rechtspraak", <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Paginas/default.aspx>, accessed on 23 July 2019.

³⁴Bowmer Nuiten Legal Advocaten, "Das niederländische Rechtssystem", <https://www.veldlaw.nl/du/nl-rechtssystem>, accessed on 23 July 2019.

³⁵*Ibid.*, pg. 1-2.

c. The case involves at least one legal subject from another country in the European Union other than the Netherlands. The small claim court based on the Dutch national law has such following criteria:³⁶

- 1) Matters of total compensation amount to EUR25,000.00 or indeterminate but estimated value not exceeding EUR25,000.00.
- 2) Matters included in this form include employment, leasing, prominence, hire purchase and sales contracts with consumers, as well as appeals for traffic fines and lighter items.

The mechanism for implementing the small claim court procedure is based on the law in the Netherlands, beginning with a summons at the *taserecht* level or sub-district court. The parties can advance without being represented by a lawyer, yet the court is obliged to provide assistance to justice seekers in implementing this procedure without assistance from lawyers. The case examination at the sub local county court level (for instance, before the local county court) was carried out by a single judge. Examination of evidence refers to the law of proof of Dutch, where in principle the judge has the freedom to assess the evidence presented, it is also regulated equally for case procedures based on unification of EU law, as stipulated in Article 9 Regulation EC No . 861/2007.³⁷

B. Small Claims Procedure di Malaysia

Looking at the Malaysian legal system as a whole, Malaysia is a country that adheres to the common law legal system integrated with the Islamic legal system (sharia law). The structure of justice in Malaysia also adheres to dualism, where there are civil courts and sharia courts. The civil justice body consists of courts with several levels described as follows:³⁸

a) Subordinate courts, which are first-level courts. This first level court is divided into several types of courts, as follows:

1. Session Court, the court having jurisdiction over criminal matters other than those with the threat of death sentence, as well as civil matters other than those of the Magistrates' court and the Chief Court.

2. Magistrates' Court, a court that examines criminal and civil matters of a minor nature. In criminal cases, this court has the sole authority to investigate cases with a minimum sentence of 10 years. In civil cases, this court is only authorized to examine cases with a value of RM25,000, -.

3. *Penghulu* Court, which is a court led by the village head or headman, which is intended to resolve disputes informally over disputes that occur in the villages.

- b) Superior court or High Court, which is an advanced court that checks the court of appeal.

- c) Federal court, which is the final court with the authority to examine cases that are filed on decisions from superior courts.

Since 1987, Malaysia has been introducing small claims procedure as a fast, easy and affordable solution to solving problems.³⁹ Furthermore, in 2012 with the enactment of the Rules of Court 2012 ("ROC 2012"), Malaysia has adopted a modified small claim procedure as set out in Order 93 of the rule. The competent judicial body examining with a small claim procedure is a magistrates' court. The party filing the case with this procedure must be the party itself and cannot

³⁶European Judicial Network, *Small claims – Netherlands*, https://e-justice.europa.eu/content_small_claims-42-nl-en.do?member=1, accessed on 21 August 2018.

³⁷*Ibid.*

³⁸*Ibid.*

³⁹Norma Sari, "Malaysia - Practical Guide To Small Claims Action", *Padjadjaran Journal of Law*, Vol.5 No. 1, (2018): 109-126, pg. 123.

be represented.⁴⁰ However, it is different for the defendant, that the defendant is still allowed to be represented by the competent authority, as in the case of the defendant being a legal entity, so it must be represented by a lawyer.⁴¹

Moreover, cases that can be submitted with the small claim proceedings are civil cases with a maximum claim value of RM5,000. There is no specification of the type of case in a particular civil field, thereby all civil cases can be submitted under this procedure, as long as the value of the claim does not exceed the maximum claim value. If at the time of filing a claim there is a value added from the principal value of the claim due to interest, the court can still examine the case based on the 2012 ROC.

In other words, submitting a claim with small claims proceedings is carried out by filling out certain forms that have been arranged in the ROC 2012, and also in each of the answer processes the separate forms have been provided. The fees charged for filing this claim must not exceed RM100. At the hearing, the judge will examine all the evidence submitted by the parties, including written arguments outlined in the forms that have been made by the parties as a reference in making the decision.

This decision on the case with the small claim procedure is then submitted to the parties either directly or by post. If the party given the obligation based on the judge's decision does not fulfill the obligation, then the party with the rights that must be fulfilled based on the decision can submit a notice to the court. This is crucially conducted so that the court can follow up on the decision after re-examining the results of the decision, either by confiscation or an extension of the time to fulfill obligations or even the court can order a sentence of imprisonment to a party that does not fulfill its obligations.

Based on the description above, basically the implementation of the small claim procedure in Indonesia, the Netherlands and Malaysia is intended to facilitate the process of examining cases that have small values and simple nature of the dispute. The equation contained in the procedure carried out in each country lies in the aspect of the court which is given the authority to try it. Both in Indonesia, the Netherlands, and Malaysia, the court that was given the authority to receive cases with small claims procedures was the first court. Although in each country there are different structures in relation to the existence of a more specific division of the first court. The difference that can be found from the comparison of these countries is the maximum claim value in a case that can be examined with a small claim procedure, which is certainly based on the strategic considerations of each country. In addition there are also differences in the possibility of representation in filing cases. In the Netherlands there is no obligation for the parties to the dispute to be represented, but it is also not possible to submit the case by being represented by a lawyer. Meanwhile in Malaysia, the party who filed a case to be examined with a small claim procedure is not permitted to be represented, except for the defendant in the form of a legal entity.

IV. Conclusion

1. Based on results obtained in this line of research, it can be concluded that resolving business disputes in the Court in order to support ease of doing business is carried out through small claims court mechanism. This is regulated in the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Resolving Small Claims Courts. Small claims court is a special court where disputes are resolved quickly and with a material claim of at most IDR 200,000,000

⁴⁰Conventus Law, "Malaysia - Practical Guide To Small Claims Action", <http://www.conventuslaw.com/report/malaysia-practical-guide-to-small-claims-action/>, accessed on 25 July 2019.

⁴¹*Ibid.*

(two hundred million rupiahs) which is settled by simple procedures and evidences. Small Claims Courts are examined and decided by the court within the scope of the general jurisdiction of the court (local country), against cases of breach of contract (default) or acts against the law (PMH). Whereas those who are not included in small claims courts are: a) cases where the dispute resolution is carried out through a special court as stipulated in the legislation; or b) disputes over land rights. Small Claims court settlement is a new step in the simplification of mechanisms and procedures for resolving business disputes in courts that aim to provide mechanism to resolve civil cases in public courts quickly, simply and at low-cost, with a maximum case settlement period of 25 (two twenty-five) days must be decided and the verdict is final and binding at the first court.

2. In the Netherlands, cases included in small claims are examined by the Kantongerechts agency. The small claims case examined at Kantongerecht is divided into two, cases involving other countries in the European Union and for cases based on the Dutch national law. The small claim court procedure refers to the unification of laws in the European Union, called the Regulation (EC) No. 861/2007 of the European Parliament. The small claim court based on the Dutch national law has the following criteria:⁴²

Whereas in Malaysia since 1987, small claims proceedings have been known as a solution to resolving cases quickly, easily, and affordable. Moreover, in 2012 with the entry into force of the Rules of Court 2012 ("ROC 2012"), Malaysia has implemented a more update small claims procedure as stipulated in Order 93 of the regulation. The judicial body authorized to check with the small claim procedure is the magistrates' court. Cases that can be submitted with the small claim procedure are civil cases with a maximum claim value of RM5,000. There is no specification of the type of case in a particular civil field, so that all civil cases can be submitted under this procedure, as long as the value of the claim does not exceed the maximum claim value.

The implementation of small claims proceedings in Indonesia, the Netherlands and Malaysia is intended to facilitate the process of examining cases that have small values and simple dispute in nature. The similarity among Indonesia, the Netherlands and Malaysia is that mandated courts as the authority to receive cases with small claims procedures are first-level courts. Whereas the difference is the maximum claim value in a case that can be examined with small claims procedure, which is certainly based on the strategic considerations of each country.

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⁴²European Judicial Network, *Small claims – Netherlands*, https://e-justice.europa.eu/content_small_claims-42-nl-en.do?member=1, accessed on 21 August 2018.

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