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Objections reconceptualization in the small claims court in Indonesia

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Abstract
This study attempts to explain the reconceptualization of objection legal remedies in the Small Claims Court procedure as the sole legal remedy against court decisions in cases of tort and default resolved by a simple lawsuit procedure. This investigation employs a normative legal methodology with a statutory approach, a conceptual approach, and a case study approach. This study's findings indicate that the objection legal remedy in the simple lawsuit procedure has several flaws, including the inability to properly implement the Audi Et Alteram Partem principle because the parties do not have the same opportunity to prove their arguments during the case examination procedure. In addition, it will be difficult for the parties to demonstrate a judex facti error through objection law remedies because there is no additional examination that permits a reexamination of existing evidence or the introduction of new evidence. The existence of additional examinations on objection legal remedies will become a normative construction capable of overcoming numerous weaknesses in establishing objection legal remedies. In order to uphold procedural and substantive justice, the additional examination process must also be based on considerations "for the purpose of achieving the judge's conviction based on the available evidence."

Keywords: reconceptualization, objection legal remedy, simple lawsuit

Introduction

Civil disputes are one of the most prevalent types of conflicts in society. Civil disputes are the result of a disparity in the fulfillment of rights and obligations between the parties to an agreement or legal relationship, which results in actual losses due to non-performance of obligations. There is a backlog of cases in the courts of first instance, courts of appeal, and courts of cassation as a result of the large number of people who choose litigation to resolve their disputes [1]. To combat this, the Supreme Court of the Republic of Indonesia has issued Supreme Court Regulation (PERMA) No. 2 of 2015 regarding Procedures for Settlement of Small Claims, as amended by Supreme Court Regulation No. 4 of 2019 regarding Amendments to Supreme Court Regulation No. 2 of 2015 regarding Procedures for Settlement of Small Claims. These two Regulations shall henceforth be known as Simple Lawsuit Laws. The regulation governing Small Claims is an innovative step toward the realization of the principle of simple, quick, and inexpensive justice, as stated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Powers, which states, "Judgment is carried out simply, quickly, and inexpensively."

According to Syarifuddin, the Supreme Court's establishment of this Small Claim mechanism serves two purposes. The first objective is to implement the principle of swift, simple, and inexpensive justice. Second, to reduce and restrict the flow of cases to the Supreme Court, as the number of cases submitted to the Supreme Court has increased year after year while the number of Supreme Court Justices has declined [2]. With the existence of a simple lawsuit mechanism, it is hoped that civil cases with a relatively simple level of proof can be resolved quickly, simply, and at low cost, so as not to impose a heavy burden on justice-seekers or take a long time for them to obtain certainty regarding the resolution of their cases.

In a Simple Lawsuit case against a decision handed down by the District Court, the losing party or party dissatisfied with the decision has only one legal recourse, which is to file an objection with the District Court's Chairperson. This is governed by Article 21 paragraphs (1) and (2) of Perma Number 2 of 2015, which state: (1) The legal remedy for a simple lawsuit decision is to file an objection pursuant to Article 20; (2) Objections are submitted to the Chief Justice by signing a deed of statement of objection before the clerk, along with the reasons for the objection.

However, the court is not authorized to conduct additional examinations during the objection procedure. This is governed by Article 26 paragraphs (2) and (3) of Perma No. 2 of 2015, which state: (2) Examination of objections is conducted solely on the basis of: a) Decisions and simple lawsuit files; b) Application for objection and memorandum of objection; and c) Counter memorandum of objection; (3) Additional examinations are not conducted when examining concerns. Two weaknesses of that article; first, it eliminates the right of the party filing an objection legal remedy to present witnesses and additional evidence to bolster their arguments. Second, it does not give the Panel of Judges who review objection legal remedy the freedom to obtain facts directly, broadly, and thoroughly in a case. In addition, these provisions make it difficult to prevent and/or rectify errors in the decisions of judges of first instance court.

Article 26 paragraphs (2) and (3) of Perma Number 2 of 2015 not only make it difficult for parties who submit objections legal remedies to defend their rights or obtain justice, but also limit the panel of judges' discretion in disclosing legal facts in order to decide cases fairly. On the basis of these issues, it would be interesting to conduct a more in-depth examination of the reconceptualization of objection legal remedies in simple lawsuit procedures, as a normative basis for legal remedies provided to the parties in settling cases through simple lawsuit procedures.

Research method

This study employs normative-legal research methodology. This study examines the normative construction of statutory provisions governing simple lawsuits and various regulatory procedural weaknesses using a statutory approach. In this study, the case method is also used to explain the application of simple lawsuit procedures to a range of real cases and to analyze various flaws in the application of the law.

Results and Discussion

Small Claims in the Civil Justice System in Indonesia

In Indonesia, the judicial system is based on the principles of simple, swift, and inexpensive trials (contante justitie). This principle is the foundation for the implementation of an effective and efficient justice administration system, so law enforcers must adhere to its spirit when resolving a case. The principle of a swift, quick, and inexpensive trial is a universal value in the justice system, applicable to all legal systems. In order to implement this principle, civil law and common law nations have created an efficient case settlement procedure known as a Small Claims Court [3].

In countries that adhere to the common law legal system, such as Singapore, a small lawsuit procedure is used to resolve cases with a material loss value of not more than 2,000 SGD and there is no need to be represented by an attorney because the parties represent themselves. The method used in the small lawsuit procedure in Singapore consists of mediation and adjudication. Claims that can be resolved through the tribunal are limited to a maximum of 1 year. The resolution is carried out in an informal way, where when the lawsuit is registered the clerk will summon the parties to the tribunal to discuss the appropriate way to resolve the dispute. If the clerk is unable to facilitate the parties in reaching an agreement, the clerk will determine the right date so that the case can be resolved by adjudication by the referee [4].

As for civil law countries like the Netherlands, settlement of small lawsuit is the authority of the subdistrict court. This authority is to decide and examine lawsuits up to 5000 Euros claims with unspecified losses (claims of unspecified value) not exceeding 5000 Euros. Disputes that can be resolved through a small lawsuit mechanism are disputes that occur as a result of defaults in various financial contracts, labor contracts, collective employment contracts, agent agreements, leasing, sale and purchase agreements, sale and lease agreements and leasing agreements. Article 1 point (1) of the Small Claim Perma states, "Small Claim Settlement is a procedure for examining in court a civil lawsuit with a maximum material damage value of Rp. 500,000,000.00 (five hundred million rupiah) that is resolved by simple procedures and evidence." Moreover, Article 3 it states that:

1. Small lawsuits are brought against cases of contract breach and/or tort with a maximum claim amount of Rp. 500,000,000.00. (five hundred million rupiah).
2. Not included in a small claim are:

a. Cases where dispute resolution is administered by a special court as stipulated by laws and regulations;
b. land rights disputes.

On the basis of these provisions, there are two (two) cumulative conditions for declaring that a case has satisfied the element of default and tort, allowing it to use the small claim mechanism in its settlement: 1) the value of the material claim cannot exceed IDR 500,000,000.00; and 2) the proof must be simple. Disputes concerning land and cases where settlements are handled by special courts rights are excluded from the use of small claim methods. In addition, the parties in a minor action are limited to a single Plaintiff and Defendant unless they share the same legal interest. These regulations are meant to preserve the simplicity of the case settlement procedure, because the greater the number of parties engaged, the less probable it is that the dispute may be handled simply [5].

Several elements must be met in order to submit a dispute settlement through the small claims procedure. First, the disagreement involves a tort and default with a maximum claim amount of IDR 500,000,000.00 (five hundred million rupiah). Second, the case does not include a matter that falls within the jurisdiction of a special court, such as bankruptcy, business competition, or taxation, and it is not a land rights dispute. Thirdly, there should be just one plaintiff and one defendant, although others may join if they share the same legal interest. Fourth, it can only be brought against known-residence defendants. Fifth, both the plaintiff and the defendant must be domiciled in the same court's jurisdiction, unless the plaintiff hires a representative with the same domicile as the defendant. Sixth, the plaintiff and the defendant must attend the hearing in person, even if they are accompanied by an attorney. At the time of case registration, the plaintiff must provide a letter of proof that has been authenticated. Eighth, the case must consist of straightforward evidence.

If someone intend to resolve a matter via the small claim procedure, he/she must satisfy all of these prerequisites. These conditions will be examined at the preliminary examination stage, where, if one of the conditions is not met, the clerk may return the lawsuit to the prospective plaintiff, and the examining judge may rule that the case does not qualify as a small lawsuit and must be filed as an ordinary lawsuit. If the court determines during the preliminary examination that the matter is not a small claims case, then the judge's decision can not be filed for legal remedies. It is the forum's prerogative to settle matters through the small claims procedure because it involves conditions that must be completed by both parties. However, completion of this operation must take precedence. The party filing a lawsuit must first be directed to follow the small lawsuit procedure; if the prerequisites are not met, the file is sent to the conventional lawsuit case examination mechanism for resolution. According to Syarifuddin, filing a case through a small claim is optional for the plaintiff, but necessary for the defendant. If the plaintiff brings his case through small claim, the defendant cannot vote on or object to the forum's usage. Therefore, the defendant has no choice but to face the case in that court. In addition, one of the modifications in formal legal provisions pertaining to the notion of small claims concerns legal remedies. In procedural law regulations, the parties typically have recourse to appeal, cassation, and judicial review following the court's decision in the first instance [7].

Reconceptualization of Objection Legal Remedies in Small Claim Procedures

The small claim procedure was created because the legal process was ineffective and inefficient, preventing the judiciary from achieving justice, certainty, and benefit as

desired by the nation's highest law. [6] The concept of law as the highest value in a nation necessitates a judicial system that can provide a resolution for plaintiffs. As a symbol of justice, the court should be able to render rulings that provide justice for all communities, especially those seeking justice (justitiabeln*)* [7]. The only legal remedy available to parties in the small claims' procedure is an objection. There are no legal recourses available once the objection judgment is issued, therefore the objection decision states that the matter has permanent legal force (inkracht van gewijsde). In accordance with Article 30 of Perma Small Claims, "an objection decision is a final decision for which no appeals, cassation, or judicial review are permitted," this is the case.

Formally, objection legal remedies are similar to resistance (verzet) against verstek decisions as stipulated in Article 129 HIR because they are filed at the same court, but verzet are decided by the same judge while objections are examined and decided by different judges [8]. Parties may use objection legal remedies to contest a court decision of first instance that was decided in the presence of the defendant or a decision considered without the defendant's presence. The case is ruled null and void if the plaintiff is missing at the initial trial without a valid excuse. If the defendant is absent from the first trial, a second summons will be issued. If the defendant is absent from the second trial, the judge will resolve the matter. The lawsuit is examined *contradictoir* if the defendant is present at the first trial but absent at the second trial without a sufficient reason; in this situation, the defendant may file an objection.

In 2020, eleven cases were resolved by the Banda Aceh District Court's through Small Claims procedure. Four of the eleven cases filed objections to the court's first instance judgement, as follows:

1. Objection to the Decision of Case Number 7/PDT.G.S/2020/PN Bna, with the reasons: The Judge's decision did not show a fair decision and was in accordance with the legal facts in the trial process. The judge did not have clear legal facts to explain that the objector had neglected to provide security protection for the objector's ATM.
2. Objection to the Decision of Case No. 8/PDT.G.S/2020/PN Bna, with the reasons: the judge who presided over the small claims settlement case did not appear to understand the legal stages of the small claims procedure, as he accepted and granted the intervention claim by issuing a final decision and rejecting the objection claim.
3. Objection to Decision in Case No. 9/PDT.G.S/2020/PN Bna, with Reasons: Decision No. 9/PDT.G.S/2020/PN Bna is legally faulty and erroneous because it failed to evaluate the evidence papers and witness statements provided by the Defendant/Petitioner systematically and concretely.
4. Objection to the Decision in Case No. 10/PDT.G.S/2020/PN Bna, with Reasons: The court was careless in evaluating the statements of witnesses who merited to be utilized as witnesses in the a quo case, since the witness testimony given by the Respondent/Plaintiff was a witness de auditu.

The panel of judges evaluated just the decision and the small lawsuit file, the objection request and the objection memory, as well as the counter objection memorandum when reviewing objection legal remedies. During the review of legal remedies for objections, no additional review was conducted. The objection examination system, which solely focuses on decisions, lawsuit files, objection requests, lawsuit memos, and counterclaim lawsuits, demonstrates the nature and originality of effectively and efficiently handled small claims. The substance of an objection to a small claim, according to Syarifuddin, is comparable to an appeal, but the examination is assigned to the court of first instance.

In the absence of an additional inspection mechanism for objection legal remedies, this creates legal problems in the process of seeking justice, bearing in mind that there is a potential for judge errors in applying the law because the evidence process is not opened apart from what is in the case file. At the stage of examination of cases in objection legal remedies, additional examinations are needed to correct various errors that may occur in the process of examining cases and proving in the judicial process at the first level.Even if the settlement of cases through minor claims intends to settle cases in a simple, effective, and efficient manner and in a shorter amount of time than conventional case settlement procedures, this simple approach must not trump the objective of settling cases, which is to achieve justice. This is due to the fact that the core and aim of parties settling cases in court is to attain truth and justice based on legally prescribed procedures.

Subekti remarked that the distribution of the burden of proof is the most significant aspect of evidentiary law in relation to the evidentiary process. Unfair allocation of the burden of proof is a breach of the law. If there is a cassation appeal, the Supreme Court will rely on this to overturn the decision of the lower court [9]. If it is not able to conduct additional exams during the objection legal procedures, then the defendant's fundamental rights have not been met. In fact, civil procedural law recognizes the principle of *audi et alteram partem*, which requires the court to grant equal rights and opportunities to both parties during the civil examination process. The same chance applies not only to providing information and being heard, but also to providing proof to support the offered arguments.

In determining who bears the burden of proof, judges must behave impartially in accordance with the principle of a fair trial and must not be partial or biased. The judge may not hurt one party's interests and must share them judiciously in accordance with the legal system of proof proportionally and effectively [10]. Therefore, the absence of extra investigations on objection legal remedies weakens the features of truth that judges must realize while deciding a case in which both procedural and substantive truth must be realized [11].

The first shortcoming is that the *audi et alteram partem* principle cannot be implemented in the case examination procedure because both parties are not afforded the same opportunity to substantiate their points. The Former Head of the Banda Aceh District Court stated that "the absence of an additional examination process on the objection legal remedy procedure actually contradicts the principle that the judge must hear both parties to the litigation (*Audi Et Alteram Partem Principle*), which provides the parties with the greatest opportunity to prove their arguments." [12]

Second, the proof that constitutes the judge's authority is limited to the application of the law and excludes the quality of the evidential procedure. Third, the likelihood of a *Judex factie* error in deciding a case will be difficult for the parties to establish through objection law due to the absence of extra examinations that permit a reexamination of the

witnesses and evidence presented by the parties. Rules governing objection legal remedies in the minor claim procedure should adhere to the procedural justice principle. Procedural justice relates to the procedure and fulfillment of the parties' rights in the resolution of disputes. In addition, procedural justice and distributive justice have a strong link, with procedural justice playing a role in the realization of distributive justice. In resolving small claims disputes, Dworkin maintains that the concept of *audi et alteram partem*, as a universal norm, requires courts to provide the parties with equal rights and chances prior to trial to submit their views and present witnesses and evidence to support their reasons [13].

The implementation of the *audi et alteram partem* concept in the resolution of civil proceedings is an application of procedural justice's core values. In the settlement of small claims cases, it is agreed that against legal efforts for objections, the judge reviews only the decision and small claims files, requests for objections and memorandums of objections and counter memorandums of objections. During this assessment, no extra tests were conducted. This is governed by Article 26 paragraphs (2) and (3) of Perma No. 2 of 2015, which state: (2) Examination of objections is conducted solely on the basis of: a) Decisions and files of small claims; b) Application for objection and memorandum of objection; and c) Contra memory of objections; (3) Additional examinations are not performed when examining objections.

This provision is unsatisfactory because it does not let the parties to bolster their arguments by introducing witnesses and evidence via an extra examination method. Given that no extra examination is conducted as part of the objection legal endeavor, the party filing the objection does not have adequate evidentiary space and procedures to challenge the plaintiff's claim and the court's decision at the first level by presenting witnesses and other evidence. The idea of extra examinations in objection legal remedies is essentially the same as evidentiary process at the appeal level, where the judge may order a reexamination of witnesses and evidence given by the parties in order to realize substantive truth.

The ultimate purpose of this reexamination procedure is to achieve impartiality and fairness through court rulings, taking into account the risk of judicial errors in applying the law as well as the quality of the initial evidence process. In addition, during the initial phase of selecting a case settlement in a small litigation, the defendant lacked the opportunity to choose or, in other words, was compelled into the case settlement forum without being given the option to decline. The plaintiff can submit a settlement through a small action without the defendant's agreement; therefore, the defendant's rights, including the assignment of the burden of proof, require greater consideration. Obviously, the existence of additional examinations on objection legal remedies must also be adapted to the characteristics of the small claim's procedure, which are quick, simple, effective, and efficient, so that the concept of additional examinations can be implemented within the prescribed time frame.

Conclusion

Due to the lack of an extra examination process, the objection law remedy in the small claim's procedure has a number of problems. Among these flaws is the fact that the *audi et alteram partem* principle cannot be applied to the case examination procedure because the parties do not have equal opportunity to present their views. In addition, in the evidentiary process, the judge only applies the law without going through a proper proof process, making it difficult for the parties to prove the judge's error through objection legal remedies because there is no additional inspection mechanism available for the parties to reexamine evidence. The further examination process is also based on concerns for the judge's confidence in deciding a case so that both procedural and substantive truth are achieved. It is necessary to amend Perma No. 2 of 2015 regarding Procedures for Settlement of Small Claims, as amended by Perma No. 4 of 2019 regarding amendments to Perma No. 2 of 2015 regarding Procedures for Settlement Trough Small Claims, by introducing an additional inspection mechanism in objection legal remedies. The additional examination mechanism is based on the judge's ex-officio considerations, which include a review of the deficiencies in evidence and the application of the law in the initial examination process, as well as the principles of settling disputes through minor claims.

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