OPEN ACCESS

Scholars International Journal of Law, Crime and Justice

Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

Legal Reconstruction of Peaceful Settlement Regulation on Simple Lawsuit Based on Justice Values

Muhammad Ngazis[1*], Putri Nugraheni Septyaningrum[2], Gunarto[1], Sri Endah Wahyuningsih[1]

[1]Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia
[2]Doctorate Student of Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

DOI: 10.36348/sijlcj.2023.v06i09.006 | **Received:** 15.08.2023 | **Accepted:** 24.09.2023 | **Published:** 28.09.2023

***Corresponding author:** Muhammad Ngazis
Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Abstract

The regulation of the mechanism for settling minor or simple lawsuits is done through conciliation efforts in Article 14 letter (b) PERMA Number 2 of 2015 has regulated that Judges must play an active role in seeking to settle cases peacefully but do not regulate the form of conciliation efforts and there is an overlapping role of the Judge as examiner of cases and as a mediator who has not achieved justice for the parties. The aim of the research is to analyze the weaknesses of conciliation efforts in resolving simple tort cases in Indonesia currently and to reconstruct peace efforts in resolving simple tort cases based on fairness values using a constructivist paradigm with empirical research and a socio-legal approach. Analysis of research data in a qualitative descriptive manner where the location of the research was the Batang District Court and the Pasuruan District Court. The results of the research show that the Weaknesses in conciliation efforts in resolving simple lawsuits are that the form of conciliation is not regulated and the overlapping role of the Judge as examiner of cases and as a facilitator/mediator. Therefore a legal Reconstruction is needed in Article 14 letter (b) PERMA Number 2 of 2015 where Judges are no longer required to play an active role but Judges seek peace through negotiations and oblige the parties to negotiate during the first trial and report the results to the examining Judge of the case to realize justice for the parties.

Keywords: Legal Reconstruction, Lawsuit Settlement, Simple Lawsuit, Justice Value.

INTRODUCTION

Arrangements for the mechanism for settlement of cases through Simple Lawsuit as stipulated in the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 2 of 2015 in conjunction with Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 4 of 2019 concerning Procedures for Settlement of Simple Lawsuit in Article 14 paragraph (1) letter (b) has been regulates "*Judges must play an active role in seeking a peaceful settlement of cases including advising the parties to make peace outside the trial*". However, there are no further arrangements regarding the form of peacekeeping efforts and the role of the case examining judge who seeks to reconcile the parties in a simple lawsuit case, because Article 15 paragraph (2) PERMA Number 2 of 2015 stipulates "*Conciliation efforts in this PERMA exclude the provisions regulated in the provisions of the Supreme Court regarding mediation procedures*". However, in practice, the examining judge for simple lawsuits also acts as a facilitator and draws up a peace agreement through the Deed of Peace. In the event that the parties cannot reach an amicable agreement, the judge will also hear the main case. It is different in ordinary tort cases that distinguish between the panel of judges examining the case and the judge appointed as a mediator. So that there will be questions regarding the position and role of the judge in a simple lawsuit case, if the lawsuit proceeds to the main examination. Can the judge provide a sense of justice for the parties? While it is clear in the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts, the provisions for implementing mediation have been regulated, including exceptions to mediation obligations including disputes whose examination in court is determined by a grace period for completion, including disputes in Commercial Courts, disputes in Relationship Disputes Industrial, objection to the decision of the Business Competition Supervisory Commission, objection to the decision of the Consumer Dispute Settlement Agency, request for annulment of the arbitration award, objection to the decision of the

Information Commission, disputes over political party disputes, disputes in simple tort cases and other disputes that have a grace period for settlement (Toebagus, 2022). The Supreme Court in the context of bureaucratic reform is oriented towards the vision of realizing a great judiciary, one of its supporting components is mediation as an instrument to increase access to justice for the people while at the same time realizing simple, fast and low-cost justice. Generally, mediation is part of civil procedural law which must be carried out prior to examining the principal claim in civil cases, including cases of resistance (*verzet*) to *verstek* decisions and third party resistance to decisions that have permanent legal force (*derden verzet*) (Wahyu, 2019).

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU AAPS), hereinafter referred to as the AAPS Law, regulates choices in dispute resolution by deliberation from the disputing parties as stated in Article 1 point 10 of the AAPS Law which states "*Alternative Dispute Resolution is a process settlement of disputes carried out outside the court based on the agreement of the parties to the dispute with the exclusion of litigation dispute resolution in court. Dispute resolution can be done by means of consultation, negotiation, mediation, conciliation or expert assessment*." Based on Article 1 it is concluded that Alternative Dispute Resolution is a way of resolving disputes carried out outside the court, based on the agreement of the disputing parties by excluding litigation dispute resolution through the court which is pursued by various means of consultation, negotiation, mediation or expert judgment. A dispute or difference of opinion that cannot be resolved by agreement cannot be resolved through alternative dispute resolution, but settlement is carried out through the courts. Based on Article 6 paragraph (2) of the APS Law, Negotiation is a form of dispute resolution outside the court that does not involve a third party and is only resolved by parties to the dispute or differences of opinion (Pratama, 2023). The scope of disputes that can be resolved through alternative dispute resolution (APS) based on Law Number 30 of 1999 are civil and trade disputes that can be resolved through peace based on an agreement from the parties which are resolved directly by the disputing parties or assisted by third parties. If a civil dispute or commercial law cannot be resolved through peace, then it cannot be resolved through APS but resolved through litigation in court.

One way to resolve civil disputes can be resolved outside of court through Alternative Dispute Resolution (ADR). The term Alternative Dispute Resolution (ADR) is not known in Continental European legal systems but originates from the Anglo Saxon legal system. Dispute resolution through Alternative Dispute Resolution was first known in the United States. The emergence of ADR in the United States was caused by the dissatisfaction of the people of the United States with the court system in force in their country, because at that time the settlement through the courts took a long time, was expensive and it was doubtful that the settlement would be able to satisfy the parties. ADR was developed by legal practitioners and academic circles as a dispute resolution process that provides a greater sense of justice.

Based on this problem, the author then formulate several problem discussed in this article, namely:

1. What are the weaknesses in the regulation regarding Peaceful Settlement Regulation on Simple Lawsuit in Indonesia currently?
2. How is the Legal Reconstruction of Peaceful Settlement Regulation on Simple Lawsuit Based on the Value of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses in the Regulation Regarding Peaceful Settlement Regulation on Simple Lawsuit in Indonesia Currently

Setting the mechanism for settlement of cases through Simple Lawsuit as in the Supreme Court Regulation of the Republic of Indonesia (PERMA) Number 2 of 2015 in conjunction with the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 4 of 2019 concerning Procedures for Settlement of Simple Lawsuit in Article 14 letter (b) stipulates " *The judge is obliged to play an active role in seeking a peaceful settlement of cases including advising the parties to make peace outside the trial*". From that article, there is no further regulation regarding the form of peace efforts and the role of the case examining judge who is obliged to seek peace for the parties in a simple lawsuit case. Then in Article 15 paragraph (2) PERMA Number 2 of 2015 stipulates "*Efforts to reconcile in this PERMA exclude the provisions stipulated in the Supreme Court provisions regarding mediation procedures*" which means that efforts to reconcile in a simple lawsuit cannot be interpreted as mediation efforts. However, the Judge in a simple lawsuit case can make a Peace Deed upon reaching a peace agreement. However, in the event that the parties cannot reach an amicable agreement, the Judge will also continue to examine the main case. It is different in ordinary tort cases that distinguish between the panel of judges examining the case and the judge acting as a mediator. So how is justice for the parties regarding the peace efforts carried out in the trial and the role of the Judge in simple lawsuit cases, if peace is not achieved and proceed to the main case examination?

This research study recommends that the relevant parties, in this case the Supreme Court, immediately conduct a review of the regulations related to conciliation efforts in simple tort cases. The steps taken were a review of peace efforts in PERMA Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuit Cases which stipulates that the peace efforts referred to are outside the provisions of PERMA Number 1 of 2016 concerning Mediation Procedures in Court.

The Supreme Court in the context of bureaucratic reform is oriented towards the vision of realizing a great judiciary, One of its supporting components is the peace effort as an instrument to increase access to justice for the people while at the same time realizing simple, fast, and low-cost justice. Settlement procedures are part of civil procedural law which must be carried out prior to examining the principal claim in civil cases, including cases of resistance (verzet) to verstek decisions and third party resistance to decisions that have permanent legal force (derden verzet). Settlement of Simple Claim cases has a grace period of 25 (twenty-five) working days since the first trial was held so that the examining Judge has the role of seeking peace without following the provisions stipulated in PERMA Number 1 of 2016 concerning Mediation Procedures in Court and no one regulates consequences if the parties do not support the peace efforts carried out by the case examining judge.

The regulatory aspect is not yet clear about the role of the case examining judge regarding the conciliation effort in question and there is no further regulation regarding the role of the single case examiner judge so justice has not been achieved for the parties in making peace efforts in resolving simple lawsuit cases.

Based on Supreme Court Regulation Number 2 of 2015 in conjunction with Supreme Court Regulation Number 4 of 2019 concerning Procedures for Settlement of Simple Lawsuit Cases, it stipulates that the time for completion of simple lawsuit cases is 25 (twenty-five) working days from the first trial, while from the data obtained the lawsuit cases simple cases in the Batang District Court, the average settlement period is under 25 (twenty-five) working days with a percentage of 100% (one hundred) percent, which means that all simple lawsuit cases can be resolved in less than 25 (twenty-five) working days. Based on these data, it can be concluded that the judge examining small claims cases has carried out his duties effectively, including his role as a mediator in peace efforts between the disputing parties in small claims cases (Sugeng, 2020).

Based on data from the Legal Registrar of the Batang District Court in 2021, the resolution of Simple Lawsuit cases through peace which was confirmed in the Deed of Peace was 3 (three) cases and those who reached peace then had the cases withdrawn were 36 (thirty six) cases out of a total of 143 (one hundred and four). twenty three) simple lawsuit cases registered at the Batang District Court. Meanwhile, in 2022, as many as 5 (five) cases were confirmed in the Deed of Peace and then 27 (twenty seven) cases were successfully reconciled and withdrawn out of a total of 82 (eighty two) small claims cases. Based on the results of an interview with one of the Judges at the Batang District Court regarding the factors that cause an amicable agreement to be difficult to reach, among others, the Plaintiff in a small claims case is a banking institution where the customer/Defendant has bad credit, making it difficult to reconcile because the Plaintiff already has standard agreement regarding the amount of financing, interest and penalties for late installments. In addition, the parties are not serious - really make peace is also a factor in not reaching a peace agreement.

Supreme Court Regulation Number 2 of 2015 in conjunction with Supreme Court Regulation Number 4 of 2019 concerning Simple Lawsuit stipulates that the time for settling small claims cases is 25 (twenty five) working days from the first trial, while from data obtained for Simple Lawsuit cases at the Pasuruan District Court the average timeframe for completion is over 25 (twenty five) working days with a percentage of

70% (seventy) percent. If this percentage is compared with the number of peace agreements successfully reached by the parties and confirmed in the Peace Deed, then the percentage of peace that has been achieved reaches 50 (fifty)% or half of the cases submitted can be carried out peace efforts to produce a peace agreement.

Based on data from the Legal Registrar of the Pasuruan District Court in 2021, the resolution of Simple Lawsuit cases through peace which was confirmed in the Deed of Peace was 5 (five) cases and those who reached peace then had the cases withdrawn in 5 (five) cases out of a total of 15 (fifteen) cases. simple lawsuit registered at the Pasuruan District Court. Meanwhile, in 2022, 11 (eleven) cases will be confirmed in the Deed of Peace out of a total of 21 (twenty one) small claims cases.

Based on the results of interviews with Judges at the Batang District Court and Pasuruan District Court, as well as Advocates who have litigated small claims cases, the factors that cause justice-based peace efforts to be difficult to achieve in settling small claims include: First, the form of peace efforts is not regulated. referred to in Article 14 paragraph (1) letter (b) PERMA Number 2 of 2015 which causes a single Judge to have a dual role as a case examiner and who seeks peace whose neutrality is questioned when an agreement cannot be reached between the parties and continues with the main examination of the case by the Judge who the same. Bearing in mind that the peace efforts made by the parties are closed and confidential in nature. Second, settlements made by the parties are often not reported to the judge, only resulting in the plaintiff withdrawing the case resulting in a waste of money (Samsiati, 2022). It is clear that this kind of practice is detrimental to the parties because the results of the agreement do not yet have any coercive power so there is the potential for another default to occur. It is different if the reconciliation effort is reported to the Judge, then it can be strengthened in the Peace Deed which has the same legal force as the decision in kracht.

2. Legal Reconstruction of Peaceful Settlement Regulation on Simple Lawsuit Based on the Value of Justice

Setting the mechanism for settlement of cases through Simple Lawsuit as in the Supreme Court Regulation of the Republic of Indonesia (PERMA) Number 2 of 2015 in conjunction with the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 4 of 2019 concerning Procedures for Settlement of Simple Lawsuit in Article 14 letter (b) stipulates " *The judge is obliged to play an active role in seeking a peaceful settlement of cases including advising the parties to make peace outside the trial*". From that article, there is no further regulation regarding the form of peace efforts and the role of the case examining judge who is obliged to seek peace for the parties in a simple lawsuit case. Then in Article 15 paragraph (2) PERMA Number 2 of 2015 stipulates "Efforts to reconcile in this PERMA exclude the provisions stipulated in the Supreme Court provisions regarding mediation procedures" which means that efforts to reconcile in a simple lawsuit cannot be interpreted as mediation efforts. However, the Judge in a simple lawsuit case can make a Peace Deed upon reaching a peace agreement. However, in the event that the parties cannot reach an amicable agreement, the Judge will also continue to examine the main case. It is different in ordinary tort cases that distinguish between the panel of judges examining the case and the judge acting as a mediator. So how is justice for the parties regarding the peace efforts carried out in the trial and the role of the Judge in simple lawsuit cases, if peace is not achieved and proceed to the main case examination? So the form of conciliation that is appropriate to be implemented in the PERMA concerning Procedures for Settlement of Simple Lawsuit is a negotiation that must be carried out by the parties at the time of the first trial and must submit the results to the Judge examining the case. Settlement of cases through negotiations is a win-win solution that is mutually beneficial to the disputing parties, confidentiality is guaranteed because closed dispute resolution is only attended by the disputing parties (Widodo, 2019).

This research study recommends that the relevant parties, in this case the Supreme Court, immediately conduct a review of the regulations related to conciliation efforts in simple tort cases. The steps taken were a review of peace efforts in the PERMA concerning Procedures for Settlement of Simple Lawsuit Cases which stipulates that the peace efforts referred to are outside the provisions of PERMA Number 1 of 2016 concerning Mediation Procedures in Court. Provisions regarding mediation procedures in court are regulated in Supreme Court Regulation Number 1 of 2016, which in the PERMA stipulates criteria including fees for services and obligations of the mediator, mediation period, rights and obligations of the parties, legal consequences of the parties not having good faith, agreements peace and so on.

Changes to a provision or regulation, in this case, reconstruction, are very necessary for the formality and legality of a single Judge in a small claims case to be able to apply the rules, namely in the provisions of Article 14 paragraph (1) letter (b) PERMA Number 2 of 2015 which regulates "*Judges must play an active role in seeking settlement cases in a peaceful manner including advising the parties to make peace outside the trial*". It is necessary to regulate the forms of peace efforts intended to be implemented in this PERMA which requires the parties to negotiate at the first hearing before the examination of the main case because the settlement period for small claims cases has been set at 25 (twenty-five) working days. Reconstruction was carried out on Article 14 paragraph (1) letter (b) of PERMA Number 2 of 2015 so that it was changed to "*The judge seeks to resolve the case through negotiations carried out by the*

parties, including advising the parties to make peace outside the trial." Furthermore, Article 14 paragraph (1) letter (b) was added to read "*The parties are obliged to negotiate at the first hearing attended by the parties and the results of the negotiations are submitted to the Judge in writing*."

CONCLUSION

1. The provisions of Article 14 paragraph (1) letter (b) PERMA Number 2 of 2015 do not stipulate the form of the conciliation effort in question and the role of the examining judge in a simple lawsuit. In practice, the judge acts as an examiner of cases and also as a mediator/facilitator/mediator in settling simple tort cases. This is further weakened by The Supreme Court issues that rule both internally and externally such as the Supreme Court Regulation (PERMA) but does not study further regarding these rules. The court of first instance acts as an examiner of simple lawsuit cases with a single judge who has a dual role, namely as an examiner of cases and as an active role in seeking peace for the parties, where peace efforts should be carried out by the parties in a closed and secret manner. So that if no agreement is reached, then the Judge will also examine the principal case. On the other hand, the court did not socialize with the public regarding simple lawsuit procedures and peace efforts that could be reached by the parties.
2. The Legal Reconstruction presented by the author is in the provisions of Article 14 paragraph (1) letter (b) PERMA Number 2 of 2015 which previously stipulates that "*Judges must play an active role in trying to resolve cases peacefully, including advising the parties to make peace outside the trial*". as the form of the conciliation effort ideally requires the parties to negotiate during the first trial prior to examining the main case due to the 25 (twenty-five) working day settlement period for simple lawsuit cases. therefore the article must be changed in to "*Judges seek to resolve cases through negotiations carried out by the parties including suggesting the parties to make peace outside the trial*". Furthermore, Article 14 paragraph (1) letter (b) is added with sub to become "*The parties are obliged to negotiate at the first session attended by the parties and the results of the negotiations are submitted to the Judge in writing*".

REFERENCES

- Batang District Court. (2022). *Comparison of Settlement of Simple Lawsuit Cases through Peace in 2021 and 2022 at the Batang District Court*.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Pasuruan District Court. (2022). *Comparison of Settlement of Simple Lawsuit Cases through Peace in 2021 and 2022 at the Pasuruan District Court.*
- Pratama, Ridwan. (2023). Comparison Study Between Simple Lawsuits in Small Claim Court and Usual Claims. *Indonesia Private Law Review*, *4*, 77-90. 10.25041/iplr.v4i2.2981.
- Samsiati, Samsiati. (2022). Reconstruction of Niet Ontvankelijke Verklaard Verdict in the Law of Civil Procedure as a Manifestation of Fast, Simple, Low Cost and Complete Principle of Justice. *Yuridika*, *37*, 759-778. 10.20473/ydk.v37i3.41047.
- Sugeng, B., & Ch, Zahry. (2020). The Problematics of Simple Lawsuit Implementation to Reduce Civil Cases in Supreme Court. *AL-HUKAMA'*, *10*, 171-194. 10.15642/alhukama.2020.10.1.171-194.
- Toebagus, G. W. P. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, *5*(10), 508-514, DOI:10.36348/sjhss.2020.v05i10.001.
- Toebagus, G. W. P. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, *4*(1). DOI: https://doi.org/10.37631/widyapranata.v4i1.583.
- Wahyu, W., & Toebagus, G. (2019). Poverty, Evictions and Development: Efforts to Build Social Welfare Through the Concept of Welfare State in Indonesia. *3rd International Conference on Globalization of Law and Local Wisdom* (Icglow 2019), Dx.Doi.Org/10.2991/Icglow-19.2019.65.
- Wahyu, W., Sapto, B. & Toebagus, G. W. P. (2018). The Role of Law Politics on Creating Good Governance and Clean Governance for A Free-Corruption Indonesia in 2030. *The Social Sciences*, *13*, 1307-1311.