

## Ratio Legis of Combining Illegal Acts with Default in Small Claim Court Cases

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**Abstract:** Civil procedural law in Indonesia has not yet specifically regulate the accumulation of lawsuits between Unlawful Acts (PMH) and default, which resulted in prolonged discourse in the realm of jurisprudence. Some legal experts are of the opinion that combining cases of unlawful acts with cases of breach of contract in one case/lawsuit is not permitted, meanwhile others think that such an accumulation is possible. The debates finally ended with the publication of the Supreme Court Regulation (PERMA) on Small Claims Court which provided legal certainty regarding the permissibility of this accumulation. This research is normative law with a substantive analysis approach. The aim is to find out the legal philosophical basis behind the formation of PERMA. The results of the research show that the possibility to cumulate between Unlawful Acts (PMH) and default in the PERMA aims to simplify the process of proceedings through simple, fast and low-cost principles. In this way, foreign investors' confidence in resolving cases in Indonesia can be increased.

**Keywords:** illegal acts (PMH), default, ratio legis, and Small Claim Court

**Abstrak:** Hukum acara perdata di Indonesia belum mengatur secara khusus tentang kumulasi gugatan antara Perbuatan Melawan Hukum (PMH) dan wanprestasi, yang mengakibatkan timbulnya diskursus yang berkepanjangan di ranah yurisprudensi. Sebagian ahli hukum berpendapat bahwa penggabungan perkara perbuatan melawan hukum dengan perkara wanprestasi dalam satu perkara/gugatan tidak dibolehkan; Sementara sebagian yang lain berpendapat bahwa penggabungan itu dimungkinkan. Perdebatan itu akhirnya berakhir dengan terbitnya Peraturan Mahkamah Agung (PERMA) tentang *Small Claim Court* yang memberikan kepastian hukum akan kebolehan kumulasi ini. Penelitian ini bersifat normatif law dengan pendekatan analisis substantive. Tujuannya adalah untuk mengetahui landasan filosofi hukum di balik pembentukan PERMA itu. Hasil penelitian menunjukkan bahwa kebolehan kumulasi antara Perbuatan Melawan Hukum (PMH) dan wanprestasi dalam PERMA ini bertujuan untuk mempermudah proses beracara melalui azas sederhana, cepat dan biaya ringan. Dengan demikian kepercayaan para investor asing terhadap penyelesaian perkara di Indonesia dapat ditingkatkan.

**Kata kunci:** Perbuatan Melawan Hukum (PMH), wanprestasi, *ratio legis*, dan *Small Claim Court*

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## Introduction

To welcome the 2015 ASEAN free trade era, Indonesia became the spotlight of the world economic society. The number of complaints about the length of time in court proceedings is an obstacle to increasing economic competitiveness. That is why the Supreme Court is required to issue regulations that accommodate case settlement practices according to judicial principles, namely simple, fast, and low cost through Supreme Court's Regulation (PERMA) Number 2 of 2015 concerning the procedure for a simple claim (Small Claim Court) which was recently changed by PERMA Number 4 of 2019.

The provisions of Article 3 Paragraph (1) of the PERMA state that "*Simple claims are filed against cases of default and/or illegal acts with a maximum value of Rp. 500,000,000, - (five hundred million rupiah)*". This provision textually negates that a simple claim for breach of promise (default) and an illegal act can not be filed together (cumulation). The phrase "and/or" in the article indicates the choice between filing separately and the cumulative permissibility. The cumulation means combining two objects that contain elements of default (breaking a promise) with an illegal act at the same time in one claim.

The discourse on combining claims (objective cumulation) of illegal acts (PMH) with defaults is a classic issue that is still interesting to discuss. The law itself has not explicitly stipulated this merger. Conceptually, the merging of a claim of illegal acts (PMH) with default is not justified because it has the potential to disrupt the orderliness of the judicial procedural law system. According to Yahya Harahap, between illegal acts (PMH) and default, there are differences in principles and it cannot be justified to mix up in one ongoing claim.<sup>1</sup>

To this issue, the Supreme Court has issued several jurisprudences<sup>2</sup>

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<sup>1</sup> Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Pengadilan* (Jakarta: PT Gramedia, 2007), p. 35.

<sup>2</sup> See PERMA No. 1875 K/Pdt/1984 dated 24 April 1986, PERMA No. 879 K/Pdt/1997 dated 29 January 2001, PERMA No. 2452 K/Pdt/2009 and decision No. 194/Pdt.G/2011/PN.Ska (n.d.). About PERMA see Mantili, R. and Sutanto, S. Kumulasi Gugatan Perbuatan Melawan Hukum dan Gugatan Wanprestasi dalam Kajian Hukum Acara Perdata di Indonesia, *Dialogia Iuridica*, 10.2 (2019): 1-18. Agustina Kusumawardani, Rahmawati, and Eny Sulistyowati. "Analisis Yuridis Putusan Mahkamah Agung No. 2313 K/Pdt/2022

which states that combining a claim of an illegal act with a breach of promise (default) cannot be justified in an orderly manner and must be resolved separately. Besides, the merger creates an obscure element (*obscure libel*). But on the other hand, the Supreme Court also confirmed this practice of merging.<sup>3</sup> This can be seen from one of the jurisprudences which, in its consideration, states that even though the claim contains defaults and illegal acts, it is explicitly described separately so that the claim in the form of cumulation can be accepted.<sup>4</sup>

The emergence of these disparities can not be generalized to all cases but may be based on sociological considerations and the principle of legal usefulness. Based on the principle of benefit, Zainal Asikin<sup>5</sup> stated that there are two benefits of combining the claim (objective cumulation), namely, first, to create a simple, fast, and low-cost trial so that through

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Terkait Perbuatan Melanggar Hukum dalam Perjanjian Pengikatan Jual Beli (PPJB)." *NOVUM: JURNAL HUKUM* (2023): 177-191. Hanam, S.R., Pertanggungjawaban Notaris Atas Pembuatan Akta Berita Acara Rapat Umum Pemegang Saham (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 3078 K/PDT/2016). *Indonesian Notary*, 4.2 (2022): 10. Steven Semuel Gugu. "Perspektif Penyelesaian Sengketa Wanprestasi dalam Kontrak Bisnis Berdasarkan PERMA (Peraturan Mahkamah Agung) Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana." *LEX ADMINISTRATUM*, 5. 8 (2017): 15-24.

<sup>3</sup> See "Supreme Court's Regulation (PERMA) No. 2686 K/Pdt/1985 Dated 29 January 1987, Supreme Court's Decision No. 2157 K/Pdt/2012 and Supreme Court's Decision No. 886 K/Pdt/2007" (n.d.). About PERMA No. 2686 K/Pdt/1985 see Anngga Alfian. "Combined Wanprestasi Lawsuit and Against the Law Review of the Justice System in Indonesia." *JIL: Journal of Indonesian Law*, 3.1 (2022): 23-37. Markus Suryoutomo. "Characteristics Wanprestasi and Onrechtmatige Daad and the Consequences of the Law." *UNTAG Law Review*, 4. 1 (2020): 81-89. Zakki Adlihyati. "Disparity on Cummulation Cases of Tort and Breach of Contract." *Jurnal Inovasi Penelitian*, 3.1 (2022): 4563-4574. About PERMA No. 2157 K/Pdt/2012 see Sadewa, Kidung, and Heri Hartanto. "Formulasi Kumulasi Gugatan yang Dibenarkan Tata Tertib Acara Indonesia (Studi Putusan MA Nomor. 2157 K/Pdt/2012 dan Putusan MA Nomor. 571 PK/Pdt/2008)." *VERSTEK*, 5.3 (2017): 229-236. Fahira Ainun Nisa. "Analisis Putusan Pengadilan Negeri No. 13/Pdt. G-ecourt/2020/Pn. Bdg Tentang Penolakan Penggabungan Gugatan Wanprestasi dan Perbuatan Melawan Hukum Dihubungkan dengan Putusan MA No. 886 K/Pdt/2007 dan BW." PhD diss., UIN Sunan Gunung Djati Bandung, 2023. Rakasiwi, Arga Fredy, and S. H. Nuswardhani. "Proses Penyelesaian Perkara Perbuatan Melawan Hukum Atas Pelaksanaan Pembangunan Gedung Antara PT. Mumpuni dan Pemborong yang Diambil Alih Secara Sepihak (Studi Kasus di Pengadilan Negeri Sukoharjo)." PhD diss., Universitas Muhammadiyah Surakarta, 2018.

<sup>4</sup> IHW/ASH, "Hakim Tolak Penggabungan Gugatan PMH dan Wanprestasi," hukumonline.com, n.d., <https://www.hukumonline.com/berita/a/hakim-tolak-penggabungan-gugatan-pmh-dan-wanprestasi-hol22849/>.

<sup>5</sup> Zainal Asikin, *Hukum Acara Perdata di Indonesia* (Mataram: PT Prenada Media Group, 2015), p. 33.

the cumulative claim, two or more claims can be resolved at once; If two or more claims are filed separately, then the principle of simple, fast, and low cost will not be achieved. The second reason is that an objective cumulation claim can avoid two conflicting decisions (contradiction) in the same case.

Furthermore, Yasardin thinks that the merger of an illegal acts (PMH) claim with defaults can be done as long as it meets the requirements including, first, there is a close relationship between the two acts; second, the two cases are in the same object and resolved by the same procedural law, third, between prescription and act against law is the authority of the same court, the fourth is to simplify the process and avoid two different/contradictory decisions and the fifth in *posita* (the reasons for the claim) are elaborated separately.<sup>6</sup>

Quoting from the statement of Ridwan Khairandy, one of the problems in contract law, more broadly, in the engagement law, is related to the overlapping understanding between default and illegal acts. This problem does not only occur in the academic domain (academic discourse) but also in law enforcement practices, particularly in judicial practice.<sup>7</sup> Besides, these problems can also occur not only in the civil law system but also in the common law system. Even though there are differences in the regulatory system between illegal acts and defaults in the common law and civil law systems, these two legal systems often experience problems of overlapping understanding and when examined these problems occur because there is a similar concept between acts of illegal acts and default.<sup>8</sup>

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<sup>6</sup> Yasardin, "PMH dan Wanprestasi dalam Ekonomi Syariah, Ikatan Hakim Indonesia, *Majalah Varia Peradilan*, 31.362 (2016). Compare Nur Afni Octavia. "Kedudukan Fatwa DSN MUI Sebagai Dasar Hukum dalam Menyelesaikan Sengketa Ekonomi Syari'ah di Pengadilan Agama." Phd Diss., IAIN Metro, 2017. Dhermawan, AA Oka. "Kewenangan Pengadilan Agama dalam Penyelesaian Sengketa Perbankan Syariah." *Jurnal Media Hukum*, 16. 1 (2009): 191-212. Putra Halomoan Hsb. "Manajemen Penyelesaian Sengketa Ekonomi Syari'ah." *Tadbir: Jurnal Manajemen Dakwah FDIK IAIN Padangsidimpuan*, 2.2 (2020): 269-302. Azizah Nadya Rizky. "Penyelesaian Sengketa Alternatif Jalan Tol (Studi Kasus Sengketa Bank Syari'ah Peserta Sindikasi dengan PT. Citra Marga Lintas Jabar)." Phd Diss., UIN. Prof. KH Saifuddin Zuhri Purwokerto, 2022.

<sup>7</sup> Ridwan Khairandy, "The Problem of Overlapping Understanding of Tort and Breach of Contract in Indonesian Legal System'. Keynote Speech di International Seminar: Tort Law in Various Legal Systems: Indonesia, Hungary, and USA, Kerjasama Antara Fakultas Hukum," n.d.

<sup>8</sup> Peter de Cruz, *Comparative Law in a Changing World* (London: Cavendish, 1999), p. 171.

The common law system (particularly modern English law) since the mid-nineteenth century has placed the field of tort and contract in two distinct categories. The difference in the concept of contracts and illegal actions is something fundamental in modern law.<sup>9</sup> The rights of the plaintiff in the illegal acts or the obligations that the defendant violated arise from legal provisions (general), while in default, the rights or obligations come from the contract or agreement of the parties. In a contract, the obligations are usually only owned by the parties who made the contract, whereas in an illegal act, the obligations are made by the community in general. Whereas in the civil law system, contracts and illegal acts are placed in one generic, namely the obligation. In other words, there is a unified arrangement between the contract and the illegal act in the engagement family. In the Civil Code itself,<sup>10</sup> the unification of contractual arrangements and unlawful acts in one generic engagement creates difficulties in providing boundaries between default and illegal acts that result in overlapping understandings.

Quoted from the statement of Agus Sardjono, the discussion about illegal acts often intersects with the concept of default. This is because both concepts provide the same penalty in the form of compensation. The broad concept of unlawful acts often eliminates its boundaries with default, as if a default is also an act against the law. Even though between the two there are very clear differences.<sup>11</sup> In the practical realm, many

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<sup>9</sup> A. Lakshminath dan M. Sridhar Ramaswamy IyerS, *The Law of Tort* (New Delhi: Butterworths, 2003), p. 10.

<sup>10</sup> Article 1233 of the Civil Code determines that every agreement arises either because of an agreement or because of law (*alle verbintenissen ontstaan of uit alle overeenkomst, of uit alle de wet*). Then, Article 1352 of the Civil Code differentiates between agreements that arise from law and obligations from law only (*uit de wet alleen*) and agreements that arise from law due to human actions. These two things are regulated together in one generic, namely the obligations covered by Book III of the Civil Code.

<sup>11</sup> Agus Sardjono, "Batas-Batas Antara Perbuatan Melawan Hukum dan Wanprestasi dalam Kontrak Komersial," *Jurnal Hukum Binis*, 29.2 (2010): 20. Compare Luisa Srihandayani. "Perspektif Yuridis dan Praktis Pembedaan Wanprestasi dan Perbuatan Melawan Hukum." *Jurnal Kawruh Abiyasa*, 1.2 (2021): 166-181. Katrinasari, Bella, and Hernawan Hadi. "Tinjauan Hukum Terhadap Wanprestasi Royalti Rahasia Dagang dalam Perjanjian Waralaba." *Jurnal Privat Law*, 5.1 (2017): 85-94. Marvita Langi. "Akibat Hukum Terjadinya Wanprestasi dalam Perjanjian Jual Beli." *Lex Privatum*, 4.3 (2016): 99-106. Usman, Nurainy, Mery Tjoanda, and Saartje Sarah Alfons. "Akibat Hukum dari Pemutusan Kontrak Secara Sepihak." *Batulis Civil Law Review*, 2.1 (2021): 93-101.

legal cases are grayed out, in the sense that what should be resolved in the realm of contract law, is brought to court through illegal acts (not default). This certainly makes the boundaries between the concept of unlawful action and default unclear.<sup>12</sup>

Apart from the pros and cons of the cumulation between claims of illegal acts (PMH) and defaults in civil law, the PERMA Small Claim Court explicitly provides the possibility to submit a cumulation between illegal acts (PMH) and default in cases involving business disputes below the five hundred million and completed in no more than 25 days. This certainly provides an alternative and convenience for the public to file a small claim in court using a cumulation or separately.

Based on the above background, the writer is interested in examining several problems as follows: first, how are the discourses on combining claims of illegal acts (PMH) with defaults in Civil Law? Second, how is PERMA's anatomy regarding Small Claim Court? Third, what is the ratio legis in combining claims of illegal acts (PMH) with defaults in the PERMA Small Claim Court?

## **Research Methods**

This research is a normative legal study with a substantive analysis approach. The aim is to find out the philosophical basis behind the formation of PERMA. Data were collected through a literature study by carrying out an inventory and analyzing literature and legal materials related to the problems studied. The analytical method used in this research is the method of interpretation and legal analysis.

## **Results and Discussion**

### **Discourse on Merging Claims of Illegal Acts (PMH) with Defaults in the Civil Procedural Law System**

The scope of loss in an illegal act has a different dimension from default. A person can be said to be in default if he violates an agreement that has been agreed upon with another party, while someone can be

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<sup>12</sup> Sardjono, p. 20.

said to be breaking the law if his actions are against the rights of others, or contrary to his legal obligations, or contrary to decency, while the equality of the two is that they can be filed for compensation.

Some experts comment that illegal acts and default have similarities with certain limitations. Asser Ruten argues that there is no essential difference between breaking the law and default. According to his view, default is not only a violation of the rights of others but also a disturbance of material rights. Yahya Harahap also argues that the debtor's actions in carrying out his obligations that are not timely or appropriate are a violation of the creditor's rights. Every violation of the rights of others is considered an illegal act. It is also said, default is species, while *genus* is illegal acts.<sup>13</sup>

When it was further observed, there is an essential difference between the nature of the act illegal acts, and default. Pitlo emphasized that both from its historical and systematic terms of law, defaults cannot be classified in the definition of illegal acts. M.A. Moegni Djodirdjo as quoted by Rai Mantili and Sutanto, gives an opinion that it is very important to consider whether someone will file a claim for compensation because of default or because he conducts illegal acts.

According to Moegni, there will be differences in the burden of proof, calculation of losses, and forms of compensation between claims of default and illegal acts. In claiming illegal acts, the plaintiff must prove all elements of illegal acts in addition to being able to prove the existence of an error committed by the debtor. In a suit for default, it is sufficient for the plaintiff to show that there is a default or that the agreement has been violated. In claiming illegal acts, the plaintiff can demand restitution in *integrum*. However, the claim cannot be filed if the claim is based on default.<sup>14</sup> The following table compares between the claim of illegal acts and default:

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<sup>13</sup> “PKBH Fakultas Hukum UAD | Mengedepankan Kejujuran, Kebenaran dan Keadilan,” June 18, 2022, <http://pkbh.uad.ac.id/>.

<sup>14</sup> Rai Mantili and Sutanto Sutanto, “Kumulasi Gugatan Perbuatan Melawan Hukum dan Gugatan Wanprestasi dalam Kajian Hukum Acara Perdata di Indonesia,” *Dialogia Iuridica*, 10.2 (April 30, 2019): 1–18.

No	Illegal Acts (PMH)		Default
1.	Must prove all PMH elements in addition to the mistakes made by the debtor	><	Sufficiently prove the existence of agreements which infringed
2.	An illegal act is an act against the applicable legal regulations	><	Someone breaking a promise that has been agreed
3.	It does not take admonition (warning)	><	Admonition required
4.	Demands restore normal form ( <i>restitution in integrum</i> )	><	Can not be demanded to return to its original condition
5.	Claims for compensation are immaterial	><	Immaterial compensation cannot be demanded

Examination of civil cases in practice cannot be separated from the process of filing a claim; whereas in civil disputes, types of claims can be found, such as claims for divorce, inheritance, defaults to illegal acts. As time goes by, the practice of filing a claim is known as the cumulation of claim (*samenvoeging*). Star Busman as quoted by Soepomo explained that if a person has more than one demand (*aanspraak*), which is aimed at the same goal, then by submitting one of these demands, the common goal has been achieved.

*Samenvoeging* or claim cumulation is divided into subjective cumulation and objective cumulation. A claim cumulation can be said to be subjective if in one claim there are several defendants, while objective cumulation is done when the plaintiff submits several things or the object of the claim to the defendant in one claim. In the procedure for examining civil cases the *Landraad* Court before, *Raad Justisi* Jakarta in his decision dated June 20, 1939, said that between several combined claims there must be an inner connection (*innerlijke samenhang*) or *connexiteit*.<sup>15</sup> If some of the accumulated claims have a *conn exitance*, then the cumulation will facilitate the case examination process and avoid the possibility of decisions that contradict one another, so that the *samenvoeging* is indeed a *processual doelmatig*.

<sup>15</sup> Lilik Mulyadi, *Hukum Acara Perdata Menurut Teori dan Praktek Peradilan Indonesia* (Jakarta: Djambatan, 2016), p. 57.

Positive law does not regulate the merger of a claim, neither HIR nor Rbg, *uit de wet ten gevolge van'srnschen toed* nor does Rv explicitly regulate the merger of claims nor prohibit it. Article 103 Rv prohibits combining claims or claims cumulation (*samenvoeging van ordering*), only limited to combining claims for the right to control (*bezit*) with claims for property rights. According to Sudikno Mertokusumo, three objective cumulations are not allowed, namely, first, there are differences in procedural law between special and ordinary procedural law such as a divorce claim and a claim to fulfill the agreement. Second, there is a difference in competence in examining one of the claims submitted together in one claim. Third, there are demands regarding *bezit* that cannot be filed together with the demands regarding *eigendom* in one claim.

Thus, in contrast to HIR which does not regulate it, Rv allows combining claims and implements it for a long time.<sup>16</sup> However, there are two contradictory decisions between Decision Number 2157 K/Pdt/2012, where the Supreme Court granted the cumulation of a claim between acts against the law and default, and Decision Number 571 PK/Pdt/2008 wherein the Supreme Court stated the cumulation of claims between acts against the law. Thus, law and default are declared unacceptable (*niet ontvankelijke verklaard*).

Judges in examining civil cases should be passive when they examine cases whose scope or main area of dispute is determined by the party in the case itself. The judge in examining a case is bound to the event that is in dispute and the parties are obliged to prove it. This is what is meant by the *Verhandlungsmaxime* principle.<sup>17</sup> The existence of this principle logically provides an opportunity for the parties to carry out the cumulation of the claim, because the judge cannot limit the material of the claim from the plaintiff.

According to the research conducted by Kidung Sadewa and Heri Hartanto, the conditions for allowing the cumulation of a claim in an orderly legal proceeding are the existence of a close relationship, the

<sup>16</sup> Soepomo. *Hukum Acara Perdata Pengadilan Negeri* (Jakarta: Pradya Paramita, 1993), p. 20.

<sup>17</sup> *Verhandlungsmaxime* is a principle in civil law that judges are passive and limited to examining what the Plaintiff requests in their lawsuit letter.

existence of a legal relationship between the parties and the existence of compatibility between *posita* and *petitum* of the claim. This last point was the consideration of the cassation panel of judges in case number 571 PK / Pdt / 2008 which states that the cumulation proposed was unacceptable because there is no compatibility between *posita* and *petition* claim.

In the claim *posita*, it is argued that the actions of the petitioner for reconsideration (convention defendant I) and respondent reconsideration II (convention defendant II) who did not implement the oil and gas management cooperation agreement were argued as default while the act of establishing a subsidiary was argued as an illegal act. However, in the *petitum* of the case, the defendant for reconsideration I (convention plaintiff) only asked the panel of judges to declare the applicant for reconsideration (defendant I at the conference), and the respondent for reconsideration II (convention defendant II) committed an unlawful act so that the claim *obscure libel* and the claim declared no acceptable (*niet ontvankelijke verklaard*).

From the two discourses above, it can be judged that the cumulation formulation of the claim, in particular the combination of acts against the law and defaults, is justified according to Indonesian procedural rules, namely, there is a close relationship, there is a legal relationship and there is compatibility between *posita* and *petitum* in the claim. If one of the elements is not fulfilled, the cumulation is not justified because it has the potential to interfere with the examination of the course of the case.

## **PERMA's Anatomy of the Small Claim Court**

Unlike several developed countries in Europe and America that have implemented a simple claim process for decades, the Simple Claim is a new legal concept in Indonesia. The simple litigation process is known overseas as the “*Small Claim Court*”. In the Black Law Dictionary, *Small Claim Court* is defined as *a court debt - also termed small-debts court; conciliation court*,<sup>18</sup> which is defined as an informal court (outside of the judicial mechanism in general) with a quick examination to make

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<sup>18</sup> Bryan.A. Gardner, *Black Law Dictionary* (West Publishing, 2004), p. 56.

decisions on claims for compensation or debts with small claims value (that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, or claims to collect small accounts).<sup>19</sup>

I. P. M. Ranuhandoko defines the "Small Claim Court" as a civil court that handles small affairs, in the United States cases of less than \$ 100, - (one hundred dollars).<sup>20</sup> The minimum value in the limitation of civil action that can be checked by a simple claim procedure by each country is given a different minimum threshold.

Simple Claim is a positive legal product issued to speed up the process of solving cases according to the principles of simple, fast, and low-cost justice. Apart from that, the Supreme Court is trying to provide solutions to the accumulated settlement of civil cases within the Supreme Court. It is jointly known under Law Number 48 of 2009 concerning Judicial Power, that the Supreme Court is the last judicial institution to examine both civil and criminal cases in Indonesia, thereby predicting a large number of civil cases from all regions of the Republic of Indonesia that are stacked in the Supreme Court.

The simple claim was originally regulated by the Supreme Court's regulation (PERMA) Number 2 of 2015 concerning Procedures for Settlement of Simple Claims which were composed of 9 Chapters and 33 Articles. However, in 2019 it was revised by PERMA Number 4 of 2019. Among the content that distinguishes the two are: first, regarding the nominal dispute that was originally 200 million to 500 million. Second, the extension of the filing of the claim when the plaintiff is outside the jurisdiction of the defendant's domicile. Third, it can be filed for collateral. Fourth, it can use electronic case administration (e-court).<sup>21</sup>

According to Article 1 of the Supreme Court's Regulation (PERMA) Number 2 of 2015 which was amended to PERMA Number 1 of 2019, the Simple Claim Process is resolved by the following mechanism:

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<sup>19</sup> Paul in Efa Laila Fakhirah, *Mekanisme Peradilan Sederhana, Cepat dan Biaya Ringan* (Mimbar Hukum, 2013), p. 264.

<sup>20</sup> I. P. M. Ranuhandoko, *Terminologi Hukum - Inggris Indonesia* (Jakarta: Sinar Grafika, 2013), p. 501.

<sup>21</sup> Aida Mardatillah, "Sejumlah Perubahan dalam PERMA Gugatan Sederhana," [hukumonline.com](http://hukumonline.com), n.d. Accessed from on Sunday, Desember 6, 2020.

## 1. Led by a single judge

Article 1 paragraph 3 states that the judge is a single judge. Furthermore, Article 5 paragraph 1 states that a simple claim is examined and decided by a judge appointed by the head of the court. From the two articles, it can be concluded that the simple claim settlement process in the trial is led by a single judge.

As stated by M. Yahya Harahap, the Chairman of the Court, after receiving the case file, immediately determines the panel that will examine and decide it at all levels of the court, examine and decide the case by at least 3 (three) judges.<sup>22</sup> It is clear in the legal studies that the trial of a judiciary is universally led by judges in the form of an odd number of panels. This anticipates that if there is not one opinion in the deliberation decision-making by the judges, the voting effort must be taken in an odd number.

Unlike the case with the Supreme Court's Regulation (PERMA) Number 2 of 2015 which was changed to PERMA Number 1 of 2019, the simple claim process is led by a single judge as described in Article 1 Paragraph 3 and Article 5 Paragraph 1. This exception is possible following the authority given by a higher law. Article 11 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power states that the Court examines, adjudicates, and decides cases with the composition of at least 3 (three) judges unless the law stipulates otherwise.<sup>23</sup>

## 2. The process of filing a claim and answers are submitted in blank forms

In a simple claim filing, the Plaintiff does not need to make a claim but simply fills in the form provided by the Court.<sup>24</sup> This is different from a civil claim in general, where the Plaintiff is obliged to make a claim as the description of the subject matter referred to in article 118 HIR/142 Rbg.

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<sup>22</sup> "Yahya Harahap in Steven Samuel Gugu 'Perspektif Penyelesaian Sengketa Wanprestasi dalam Kontrak Bisnis Berdasarkan PERMA Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana', *Lex Administratum*, 5.8 (2017): 19.

<sup>23</sup> See "Law Number 48 of 2009 Concerning Judicial Power" (n.d.).

<sup>24</sup> "Article 6 Paragraph 2 and 3 of Supreme Court Regulation (PERMA) Number 2 of 2015 Which Was Hanged into PERMA Number 1 of 2019 Concerning the Simple Claims Proces." (n.d.).

### 3. The settlement time of a simple claim is 25 days

One of the characteristics of the simple nature that appears from the process/procedure of simple claim settlement is from the point of time of settlement. Civil cases generally take a long time to resolve. As stipulated in the Supreme Court Circular Number 2 of 2014 concerning Case Settlement at the First Level Courts and the Appeal Level in 4 (four) Judicial Environments which states “*Case settlement at the First Level Court is no longer than 5 (five) months and case settlement at the Court of Level Appeal not later than 3 (three) months*”.<sup>25</sup> Article 5 paragraph 3 of the Supreme Court’s Regulation (PERMA) Number 2 of 2015 which was amended to PERMA Number 1 of 2019 concerning the Simple Claim Process states “*Settlement of a simple claim is no later than 25 (twenty-five) days from the first trial day*”.

### 4. Provisions, exceptions, reconventions, interventions, replications, duplications, and conclusions are not permitted

In principle, trial examinations must listen to both parties equally. Listening to both parties in a balanced and proportionate manner is the duty of the judge in upholding the principle of *audi at alteram partem*. Regarding this, Yahya Harahap stated that technically the case examination at court proceeded through an answer-and-answer process, this rule was not contained in the HIR and RBg but was stipulated in article 142 Rv which emphasized that the parties can submit response letters and duplicates.

Examination of such cases certainly takes quite a long time because both parties are given time to respond to each other's arguments within the trial agenda. Supreme Court’s Regulation (PERMA) Number 2 of 2015, which was amended to PERMA Number 1 of 2019 concerning the Simple Claims Process, shortens the time for examining simple litigation cases by eliminating the duplication process and even eliminating the process for claims for provisions, reconventions, and conclusions. This

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<sup>25</sup> Yahya Harahap in Steven Samuel Gugu “Perspektif Penyelesaian Sengketa Wanprestasi dalam Kontrak Bisnis Berdasarkan PERMA Nomor 2 Tahun 2015 tentang Tata Cara Penyelesaian Gugatan Sederhana”, *Lex Administratum*, 5. 8 (2017): 19.

saves a lot of time in a simple claim hearing process. In full article 17 PERMA Number 2 of 2015, which was amended to PERMA Number 1 of 2019, states “*In a simple claim examination process, demands provisions, exceptions, reconventions, interventions, replications, duplications, and conclusions cannot be submitted*”.<sup>26</sup>

Thus the obligation of the judge in the simple claim settlement process applies the principle of *audi at alteram partem* in a limited form, which is limited by time so that the parties are given equal and sufficient opportunities if the said opportunity is not used by the parties, the judge does not wait and does not give a second chance to that parties.

#### **5. There are no known legal attempts for appeal, cassation, and PK**

Shorten the simple claim settlement process to limit that civil cases are resolved simply, then in the Supreme Court’s Regulation (PERMA) Number 2 of 2015, which was amended to PERMA Number 1 of 2019, there are no known attempts for appeal, cassation, and reconsideration, which are known only objection attempt. Article 21 of the Supreme Court’s Regulation (PERMA) Number 2 of 2015, which was amended to PERMA Number 1 of 2019, states “*Legal remedy against the simple claim decision as referred to in article 20 is by filing an objection*”. Article 30 of the Supreme Court’s Regulation (PERMA) Number 2 of 2015 which was amended to PERMA Number 1 of 2019 states “*The objection decision is a final decision for which there is no legal remedy for appeal, cassation or review*”.

#### **Ratio Legis for Merger Illegal Acts (PMH) Claims with Default in Small Claim Court Cases**

One of the issues that concern the government regarding the ease of doing business is the contract settlement process which is considered to be too long and convoluted, even though in reality contract disputes are not always of high value, so it becomes inefficient for contracts with small

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<sup>26</sup> See “Supreme Court Regulation (PERMA) Number 2 of 2015 Concerning Procedures for Settlement of Simple Claims” (n.d.).

value must choose settlement through litigation. The long and arduous process of resolving cases will indirectly hinder global economic growth because economic principles always consider the processing time and costs required. A faster and simpler dispute resolution procedure is needed to support business activities for middle and small business circles.<sup>27</sup>

The emergence of dispute resolution procedures through a simple lawsuit mechanism originated from the increasingly complex and dynamic activities in the trade and business sector, both large, medium, and small scale. One of the things that hinder business activities is the absence of a contract settlement mechanism that is fast, simple, and inexpensive so that small business actors find it difficult to attract fulfillment (payment) from their debtors quickly, easily, and cheaply.

Courts as dispute resolution institutions are, in fact, mostly avoided by business actors who experience problems with bad credit and delinquency in payments because submitting disputes to court takes a long time, is convoluted, and expensive. If the value of the dispute is small but it has to take up to many years, then the victory will not be worth the sacrifice of time, cost, and energy that must be spent to undergo the process. Besides the long time will affect the value of money that will be obtained after a long time in the process of the case.

For civil cases involving many parties, the object value of the case is large and the proving process is complicated, of course, it is understandable if it requires a long settlement time; But if the case is of small value and the proving process is simple, it must also take the same time and stages as the case with the value of the big claim, then it will inevitably become an imbalance between the value fought for and the time, cost and energy that must be spent. In the end, this condition creates reluctance for society to choose the court route in resolving the dispute because it is considered that it does not provide advantages in terms of time and cost.

One of the considerations contained in PERMA Number 2 of 2015 which was changed to PERMA Number 1 of 2019 concerning Small

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<sup>27</sup> Ridwan Mansyur dan D. Y. Witanto, *Gugatan Sederhana, Teori, Praktik dan Permasalahannya* (Jakarta: Pustaka Dunia, 2017), p. 8.

Claim Court, is Presidential Regulation Number 2 of 2015 concerning the 2015-2019 medium-term development plan. Book 1 of the National Development Agenda, which in its attachment states that one of the policy directions and strategies in the field of law is:

*"Implementing easy and fast civil law system reform is an effort to increase the competitiveness of the national economy. In the context of realizing this competitiveness, the development of national law needs to be directed to support the realization of sustainable economic growth, regulate problems related to the economy, especially business, and industry, and create investment certainty, especially law enforcement and protection. Therefore, a systematic strategy is needed to revise laws and regulations in the field of civil law in general and specifically related to contract law, IPR protection, the formation of quick dispute resolution (small claim court) and increased utilization of mediation institutions."*

The birth of PERMA Number 2 in 2015 which was changed to PERMA Number 1 in 2019 concerning the procedures for settling simple claims was motivated by the existence of a World Bank report related to the ease of doing business in Indonesia. In 2014, the ease of doing business in Indonesia was ranked 120 of 189 countries.<sup>28</sup> The ranking achievement is related to the ineffectiveness of the contract settlement process in Indonesia which includes several assessment indicators, including time, cost, and procedure.

Based on the results of a World Bank survey, the contract settlement process in Indonesia takes an average of 498 days with an average cost requirement of 139.4% of total claims and 40 steps must be taken.<sup>29</sup> In addition, public complaints regarding the lengthy process of solving cases in court continue to be an unsolved problem because they collide with the stages in civil procedural law.

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<sup>28</sup> Sonyendah Retnaningsih and Rouli Velentina, "Small Claims Court Mechanism in Business Dispute Resolution as an Attempt to Apply Fast-Track Basis in the District Courts and Its Comparison with Some Countries," *Indonesian Journal of International Law*, 16.4 (July 30, 2019), <https://doi.org/10.17304/ijil.vol16.4.765>.

<sup>29</sup> Doing Business 2014, *Understanding Regulation for Small and Medium Size Enterprises* (A World Bank Group Corporate Flagship, 2013), p. 88.

The general principle in the process of settlement of cases in court as regulated in Article 2 Paragraph 4 of Law Number 48 of 2009 concerning Judicial Power requires that the administration of justice be carried out simply, quickly, and at low cost, but in practice it cannot always be done as required by the principles in the law. Moreover, the law is related to civil cases which will impose costs on the litigants except for the poor who are exempted from court fees based on the provisions of the applicable laws.

The most important substance from the birth of PERMA Number 2 of 2015 which was changed to PERMA Number 1 of 2019 concerning the Small Claim Court is the trimming of proceedings so that the examination and settlement process can be carried out more quickly and simply. This is intended so that justice seekers do not have to wait too long to obtain legal certainty from the dispute because the settlement process is sufficiently tried and ends in the court of first instance. On the other hand, the Supreme Court also benefits from this limitation because, with the reduction of legal measures with the prohibition of appeal, cassation, and PK, it will reduce the number of cases submitted to the Supreme Court so that the workload and accumulation of cases in the Supreme Court is expected to be significantly reduced.<sup>30</sup>

The main objective of the issuance of the PERMA regarding the small claim court is to facilitate the court proceedings and be part of the government's strategy for improving the investment climate in Indonesia. One of the components that is made easier is the possibility of cumulation (merging) between a claim of illegal acts (PMH) and a claim of default in a simple claim. The merger (cumulation) contained in Article 3 Paragraph 1 of this PERMA Small Claim Court adheres to the basic principles of procedural law, namely, simple, fast, and low cost. With this combination, the complexity of cases and the level of completion can be simplified.

The principle of simple, fast, and low-cost justice is a principle that is expressly regulated in law; It obliges judges to examine cases in the hope of fulfilling a sense of justice (justifiable) in obtaining a decision. Efforts to realize this principle are the obligations of courts (including

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<sup>30</sup> Doing Business 2014, pp. 13-14.

judges) as stated in Article 58 Paragraph (2) of Law Number 7 of 1989 stating that courts assist justice seekers and strive to overcome all obstacles to achieve a simple, fast and low cost; Although sometimes the problem of claim cumulation creates contradictions in the level of implications.

Retno Wulan, as quoted by Moh. Ali, mentions that this accumulation (cumulation) is allowed with several conditions: First, the combined claim obeys the same procedural law. If the claim obeys the different procedural law, then it can not be combined; For example, the case of cancellation of a mark can not be combined with a case of illegal acts because the case of cancellation of a mark is subject to the procedural law regulated in the trademark law which not recognizes appeal efforts, while cases of illegal acts are obey to ordinary procedural law which recognizes appeal efforts.

Second, the combined claims are subject to different absolute competencies. The claims that are accumulated must be the absolute authority of the corporation. Thus, several claims that are the absolute authority of the different corporations can not be combined; Third, may not file a claim for claims if the owner of the disputed object is different. If there are several lands with different owners, they cannot jointly file a claim against one defendant. Merging of such claims is not allowed either subjectively or objectively; Fourth, the parties in the case are the same subject. The combination of claims is allowed within certain limits, namely if the plaintiff or plaintiffs and the defendant or defendants are the same party.<sup>31</sup>

Simple, fast, and low-cost principles of justice are expected to answer the needs of economically weak justice seekers. "The principle of justice, which is simple, fast, and low cost, implies that the judiciary must open space for access to justice, especially for those who are economically weak and socially and politically vulnerable.<sup>32</sup> For this reason, the court has

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<sup>31</sup> Moh Ali, "Menakar Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Pengajuan Gugatan Kumulasi (*Samenvoeging Van Vordering*) di Pengadilan Agama," *ADHAPER: Jurnal Hukum Acara Perdata*, 3.2 (March 10, 2018): 261–75.

<sup>32</sup> Artidjo Alkostar, "Independence and Accountability". The paper was presented at strengthening the understanding of Human Rights for judges throughout Indonesia which was organized by the UII Judicial Commission-PUSHAM and the Norwegian Center for Human Rights. 20-31 May 2012, p. 1.

to assist justice seekers in getting fair treatment. Thus, the ratio legis of the cumulative permissibility between illegal acts (PMH) claims and defaults in small claim court cases is part of a strategy to increase Indonesia's economic competitiveness and foster investor confidence at the global level. This merger's purpose is to accelerate the settlement of cases at the first level and to provide legal certainty for entrepreneurs.

### **Implementation of Small Claims Court Resolution in Default Disputes in the Religious Courts**

An example in the case number 1/Pdt.G.S/2019/PA.Cbn, where, after carrying out the agreement, the defendant turned out to be in default and was supposed to pay a debt of Rp. 114,947,928,- with installments of Rp. 3,192,998,- for 36 (thirty-six) months. At the next installment, however, on the 5th (fifth) month, the defendant defaulted (broke his promise). As a result of the breach of contract, the plaintiff suffered losses.

In this case, the plaintiff was only able to make 4 (four) payment installments, with the total amount of money paid amount Rp. 6,952,473,- so that the defendant was proven not to have done what had been agreed upon, and not to have carried out what was agreed, and was late or had passed the due date. Viewed from decision number 1/Pdt.G.S/2019/PA.Cbn, it is proven that the settlement of the case, if viewed from time during the examination takes place, follows the provisions of Article 5 paragraph (3) PERMA Number 2 of 2015 concerning Simple Claims Court. As the judicial process, from the first trial to the reading of the verdict, took 24 working days, namely the case was registered on 27 September 2019 until the decision was issued on 11 November 2019. the resolution of this case, thus, can be categorized as a simple claim court, Cibinong Religious Court in its Decision Number 1/Pdt.G.S/2019/PA.Cbn regarding a case of default through a simple lawsuit between PT. Bank BRI Syariah, Tbk. with Rayi Budiman Aziz bin Raden Budiman Aziz, has proceeded according to the meaning of the article, namely: *“Settlement of simple claims is no later than 25 (twenty-five) days from the day of the first trial.”*

By resolving simple claim court in less than 30 days, the principle of simple, fast, and low-cost justice is fulfilled, and it is hoped that it will

be able to answer the needs of economically weak justice seekers. *"The principle of simple, fast and low-cost justice, and providing legal certainty for business actors, thus increasing Indonesia's economic competitiveness and growing investor confidence at the global level."*

## Conclusion

The issuance of PERMA Number 2 of 2015 which was changed to PERMA Number 1 of 2019 concerning Small Claim Court was motivated by Indonesia's low position at the world level in the context of ease of doing business. This is influenced by the long duration of time to settle cases at the litigation level and many local business actors and foreign investors are reluctant to invest in Indonesia. Due to such conditions, the government implemented a strategy through Presidential Decree No.2 of 2015 concerning the 2015-2019 medium-term development plans, one of which is the establishment of a small claim court.

Among the content that distinguishes between ordinary and simple procedural law settlement are: the nominal object of the case is 500 million; the case examination is carried out by a single judge; the settlement time is only 25 days; there is no mediation, duplicates, exceptions, provisions, intervention, recommendations and conclusions; the accommodation of guarantee seizure; the expansion of the filing of the claim when the plaintiff is outside the jurisdiction of the defendant's domicile, possible use of electronic case administration (e-court); and legal remedies in the form of objections examined by the first level panel of judges.

The cumulation (merger) of illegal acts (PMH) claims with defaults in Article 3 paragraph 1 of this PERMA Small Claim Court is to realize judicial principles, namely simple, fast, and low cost in the framework of case resolution at the litigation level. This permissibility must be based on several qualifications, namely the existence of a close relationship between the two acts (innerlejk samanhange), the existence of a legal relationship between the parties, being in the same object, resolved by the same procedural law, being in the jurisdiction of the same court, to simplify the process and avoiding conflicting decisions and in the posita of a claim, the claim illegal acts (PMH) and defaults are described separately.

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