

THE REFORMULATION OF PARTIES DOMICILE REQUIREMENTS IN SMALL CLAIM COURT

Izzatun Tiyas Rohmatin

Jombang Religious Court Judge

izzatun_fafa@yahoo.co.id

M. Nur Syafiuddin

Brawijaya University

syafiuddin76@student.ub.ac.id

Received 23-12-2018; Revised 01-12-2020; Accepted 07-12-2020

<https://doi.org/10.25216/jbp.9.3.2020.527-546>

Abstract

The requirements of domicile (the same domicile of both parties) in small claim court still become an obstacle in a real application. The purpose of this study is: first, to analyze the linkage between small claim court with the principle of simple, fast, and low-cost. Second, to analyze the realization of the principle of simple, fast, and low cost in both parties' setting domicile in small claim court. Third, to find the formulation of regulation criteria of both parties domicile in small claim court. This research is normative law research, which emphasizes the same domicile requirements on a small claim court. The research results showed that: *first*, the settlement of the small claim court is the realization of the simple, fast, and low-cost principle. *Second*, the simple, fast, and low-cost principles are not fully implemented in the arrangement of the parties domicile. *Third*, the reformulation of the setting of the domicile of the parties in small claim court is: the parties are domiciled in the same court jurisdiction; If the Plaintiff is not domiciled in the same jurisdiction with the Defendant, the Plaintiff can be called electronically and/ or Plaintiffs can file a lawsuit and appoint a power of attorney, the power of the incidental or representative located in the jurisdiction of domicile of the Defendant with a letter of assignment from the institution of the Plaintiff.

Keywords: Reformulation, the Domicile of The Parties, Small Claim Court, simple, fast, and low cost.

Introduction

Law Number 48 of 2009 on Judicial Power stipulates that the judiciary, which is interpreted as a process that is executed in the court associated with the task of examine, stipulate and adjudicate the case¹, should be implemented with the principle of simple, fast, and low cost as the provisions of Article 2 paragraph (4) of Law Number 48 of 2009 on Judicial Power. Simple means the examination and settlement of the case conducted efficiently and effectively. Fast is a universal principle concerning the completion time, which is not protracted. While the low cost means the cost of the case can be accessible by the public.²

In reality, that principle in judicial practice can not be realized optimally. Though it was not caused by the non-legal, the cause is not singular, so it becomes complex. Among the causes include:

“First, economic factors, such as the limitations of the court facilities. *Second*, political factors indicated the lack of government efforts to supplement the court's budget and its apparatus. *Third*, a cultural factor is indicated from the strengthening of the prestige culture that encourages parties to put forward the element of "prestige" not to budge and continue the law's efforts. However, it has been stated many times defeated by the court.”³

Meanwhile, business disputes require fast and simple completion, so the court fee's cost is relatively inexpensive with both parties' acceptable results without creating new problems or extending the dispute. At first, the procedural law used to resolve business disputes is using the general civil procedural law. However, in practice, not all business disputes are settled by ordinary proceedings. One reason is the mismatch between the nominal lawsuit with court fee and the settlement of the case that is perceived as simple, fast, and low cost can not be implemented appropriately.

The World Bank, through his research, mentions that one of the inhibiting factors in the settlement of business disputes in Indonesia is "the

¹ Hukumonline, *Perbedaan Peradilan dengan Pengadilan*, <http://m.hukumonline.com/klinik/detail/lt548d38322cdf2/perbedaan-peradilan-dengan-pengadilan>, diakses pada tanggal 12 Maret 2018, pukul 21.00 WIB.

² Muhammad Yasin, *Peradilan yang Sederhana, Cepat, dan Biaya Ringan*, <http://m.hukumonline.com/berita/baca/lt5a7682eb7e074/peradilan-yang-sederhana-cepat-dan-biayaringan>, diakses pada tanggal 12 Maret 2018, pukul 21.00 WIB.

³ Achmad Ali dan Wiwie Heryani, *Menjeleajahi Kajian Empiris Terhadap Hukum*, (Jakarta : Kencana Prenadamedia Group, 2012), h. 45.

settlement of disputes in the court of the first instance which is not efficient, the long time of settlement period, the cost of litigation is high, and as well as attorney's fees."⁴ Hence it is crucial to have a form of dispute resolution procedure (business) known in other countries, which is easy, cheap, and fast, but it should have the binding as a judicial decision. One solution is to give the authority to the court to resolve the matter based on the size of the value of the disputed object, to achieve the settlement of disputes in a fast, simple and cheap, but can still give the force of law.

The circumstances have become the Supreme Court's primary consideration in issuing The Regulation of the Supreme Court No. 2 of 2015 on Small Claim Court Procedures to realize the state of modern democracy and improve the service excellence for the justice seeker. This Supreme Court regulation is published "to speed up the process of case settlement following the principle of is simple, fast, low cost."⁵ Amran Suadi suggested that of the preamble, the Supreme Court Regulation No. 2 of 2015 on Small Claim Court Procedures known the Supreme Court have the desire and determination to embody the principle of simple, fast, and low cost. It will reduce the stigma and the general view that the settlement of the court case is complicated.⁶

Specifically related to the settlement of disputes of an Islamic economy, the Supreme Court has issued Supreme Court Regulation No. 14 of 2016 on Islamic Dispute Settlement Procedures. The Supreme Court regulation No. 2 of 2015 on Small Claim Court Procedures amended by

⁴ The World Bank, IFC, Kementerian Negara Pendayagunaan Aparatur Negara, et all, *Small Enterprise Development Policies in Indonesia: An Overview*, dalam *The Internasional Finance Corporate Indonesia, Doing Business in Indonesia 2012 A Copublication of The World Bank and The Internasional Finance Corporation*, (Washington : IFC-World, 2012), h. 19.

⁵ Hukumonline, *Urgensi Terbitnya Peraturam Mahkamah Agung tentang Small Claim Court*, <http://www.hukumonline.com/berita/baca/lt55d71ac18056b/urgensi-terbitnya-perma-ismall-claim-court-i>., diakses pada tanggal 12 Maret 2018, pukul 21.00 WIB.

⁶ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah, Penemuan dan Kaidah Hukum*, <http://www.hukumonline.com/berita/baca/lt55d71ac18056b/urgensi-terbitnya-perma-ismall-claim-court-i> (Jakarta : Kencana Prenada Media Group, 2018), h. 38.

those Supreme Court Regulation and later amended by Supreme Court Regulation Number 4 of 2019.

One of the small claim court requirements in Supreme Court Regulation is the criteria of the parties domicile. These criteria still can not accommodate the principle of simple, fast, and low cost that until recently, its application still raises some of the issues philosophically, theoretically, juridical, and sociologically. Philosophically, it can not manifest the principle of simple, fast, and low cost in the process of settlement. Second, from the view of a theoretical problem, the contradiction between a small claim in business dispute settlement systems is based on simple, fast, and low cost with the domicile criteria of parties which shall be in the same jurisdiction. *Third*, the juridical norms of the domicile of the parties as a criterion of the small claim, which is not yet fully promoting the principles of simple, quick, and low cost. *Fourth*, the sociological problem is not achieving the principles of expediency for the efforts to settle the dispute case Islamic economics based on simple, fast, and low cost.

Therefore, based on these problems, this research will focus on three legal problems: *first*, the linkage between small claim court and simple, fast, and low cost. *Second*, is the principle of simple, fast and low cost has come into realization on the arrangement of domicile requirements in small claim court? *Third*, what the formulation of the arrangement of parties domicile requirements in small claim court?.

The research method used is normative legal research with a qualitative descriptive approach. The legal materials source used in this study is primary, secondary, and tertiary legal material. The collection of legal materials is done employing literary study and documentation study and processed by way of the systematized, editing, organizing, and actuating. The analysis of legal material was done through qualitative descriptive to produce conclusions by the inductive method and interpret through the method of systematic interpretation, grammatical, and teleological.

The Definition and Criteria of Small Claim

The court is required to have integrity but must be able to provide equitable services to society.⁷ As a system, the judiciary has a particular mechanism towards the completion of judiciary essence. The judicial system is also required to have a clear vision so that implementing the judicial

⁷ Nevey Varida Ariani, *Gugatan Sederhana dalam Sistem Peradilan di Indonesia*, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/502>, DOI: <http://dx.doi.org/10.30641/dejure.2018.V18.381-396>, diakses pada tanggal 1 Desember 2020, pukul 08.00 Wib.

process's role effectively and efficiently.⁸ One of the methods that can be done is the hearing process through a small claim court. Small Claim Court as regulated in Supreme Court Regulation Number 2 of 2015 on Small Claim Court Procedure is a civil dispute settlement procedure with several requirements and particular limitation with the main aim of simplifying the process so that the settlement can be done faster applied specifically for *wanprestasi* and claims for losses due to illegal acts with a maximum amount of Rp 200,000,000 (two hundred million rupiah). The simple mechanism in small claim court has a significant advantage for the middle to the lower class.⁹

The provisions of Article 1 point 1 Supreme Court Regulation No. 4 of 2019 on the Amendment of Supreme Court Regulation No. 2 of 2015 on the procedures for the Settlement of the Lawsuit is Simple, set up that "completion of lawsuit simple are the procedures for examination in a trial on a civil lawsuit with the value of the material at most Rp. 500.000.000,- (five hundred million rupiahs) which are solved by the ordinance and the proof of that is simple".

Based on this requirement, a small claim is a civil claim with a material value up to a maximum of Rp. 500,000,000,00 (five hundred million rupiahs). This criterion is more progressive than the previous requirement in Supreme Court Regulation Number 2 of 2015 on Small Claim Court Settlement Procedures, which allowed the material value up to a maximum of Rp. 200,000,000,00 (two hundred million rupiahs). These requirements' progressivity means the more civil cases have been settled with small claim procedures in court, the more realization of simple, fast, and low-cost principles in case settlements.

Small Claim Court is captured as a fast procedure that is mostly separated yet still in the same jurisdiction of first instance court. Small Claim is an alternative mechanism in general court provided in more accessible and useful civil case resolution to defend justice seekers' legal rights. The disputes that can be submitted through simple lawsuit settlement are civil cases related to the first, due to agreement, unpaid accounts for the sale of goods or services delivered, unpaid loans, rent, and unpaid wages. Second, property damage claims, return of the property, personal injury, and breach of contract.

Small Claim Court criteria as stipulated in Supreme Court Regulation No. 4 of 2019 on the Amendment to Supreme Court Regulation No. 2 of

⁸ M. Hatta Ali, *Peradilan Sederhana, Cepat, dan Biaya Ringan Menuju Keadilan Restoratif*, (Bandung : PT Alumni, 2012), h. 229.

2015 on Small Claim Court Procedures, can be understood in the following table:

**Table 1:
 Small Claim Court Criteria**

No	Aspect	Criteria	
		Supreme Court Regulation 2/2015	Supreme Court Regulation 4/2019
1	Claim Value	Maximum Rp200.000.00,00 (two hundred million rupiahs)	Maximum Rp500.000.00,00 (five hundred million rupiahs)
2	Parties Domicile	The parties shall be domiciled at the same jurisdiction	The parties shall be domiciled at the same jurisdiction or shall appoint an attorney who domiciled at the same jurisdiction as Defendant
3	Total of Parties	Each party may not be more than one unless they have the same legal interest	-
4	Defendant Address	Stated	-
5	The Registration of the case	Claim Application	Addition: Defendant and Plaintiff shall use the case administration electronically as stated in the regulation.
6	Submission of evidence	The evidence submission at the same time with case registration	-
7	The registration of the case, the judge and registrar appointment	Maximum in 2 days	-
8	Examinator Judge	Single Judge	-

9	Preliminary Examination	Shall have a preliminary examination	-
10	Mediation	No Mediation	-
11	The Parties presence	The Parties shall attend every hearing schedule in-person even though he/she has a power of attorney	Plaintiff and Defendant shall attend in person every hearing schedule with or without being assisted by the power of attorney, incidental power of attorney, or an assignment letter from the Plaintiff's institution.
12	The Consequences of Plaintiff Absence	The Claim is declared to fall if the Plaintiff's absence in the first hearing is unclear or without a valid reason.	-
13	Pleading Process	There is only a claim and answer	-
14	The time limit for settlement	25 days after the first hearing	-
15	Decision announcement	Maximum to 2 days after the decision is announced	-
16	Legal action and time limit for completion	- Objection Legal Action - 7 days after the Panels been appointed	The legal action for the absent Defendant from the hearing is verzet. As for the verzet decision, the Plaintiff could raise an appeal for legal objection
17	The time limit for legal action registration	7 days after the decision is announced	-
18	The authority of the court of appeal and cassation	none	-

Source: Supreme Court Regulation Number 4 of 2019 on Amendments to Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claim Court Settlement and Supreme Court Regulation Number 14 of 2016 on Procedures for Sharia Economic Dispute Settlement

Based on several criteria as mention in table number 1, hence the focus analysis in this research is the criteria of parties domicile that should be in one domicile or if the Plaintiff has a different domicile with the Defendant, Plaintiff may appoint the attorney who has the same domicile with the Defendant, as mention in Article 4 paragraph (3a) Supreme Court Regulation number 4 of 2019 on Amendment to Supreme Court Regulation Number 2 of 2015 on Small Claim Court Procedures for that reason the Author argues that this criterion is still problematic, both philosophical, theoretical, juridical and sociological.

Linkage of Simple, Fast, and Low-Cost Principle with Small Claim Cases

The issuance of the two Supreme Court Regulations, Number 4 of 2019 on Amendments to Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claim Court Settlement, and Number 14 of 2016 on Procedures for Sharia Economic Dispute Settlement indicate that the small claim court settlement is not only limited to civil law disputes in the general court jurisdiction but also applies to sharia economic disputes settlement in the religious court jurisdiction according to the *lex posterior derogat (legi) priori* principle.

The background will see the linkage of simple, fast, and low-cost principle with small claim court cases in sharia economic disputes of the two Supreme Court Regulations issuance mentioned, intents to answer the doubt of the world economic community's views, that Indonesia only can resolve business case disputes as simply, quickly, and low-cost when it has a court system to handle the small claim court. Therefore, for welcoming the ASEAN free trade era predicted that there will raise small-scale commercial/business disputes that lead to the court, it needs a case settlement process that emphasizes simple, fast, and low-cost principle. Hatta Ali, the Supreme Court Chief Justice, stated that the Supreme Court Regulation on procedures of a small claim adjusts the purpose to speed up the settlement process on cases base on the simple, fast, and low-cost principle. It is also to answer the justice seeker people so far who have complained about the length of the court litigation process.¹²

The linkage mentioned is in line with the *maslahab* (beneficence) theory perspective, only focus on creating benefit and eliminate/avoid the disadvantage. Therefore, everybody understands that the regulation of small claim system in sharia economic dispute settlement is intended to further promote the manifestation of benefit in settling sharia economic disputes and to avoid the disadvantage caused by the prolonged system in the dispute settlement using complicated regular procedures that do not assure the justice seekers' legal certainty.

The linkage indicators of simple, fast, and low-cost principle with small cases in sharia economic disputes can be seen in the two Supreme Court Regulations issuance, which is intended as a means of reducing the volume of the cases filing in the Supreme Court. The connection can also be seen in the process shown in the small claim filing of sharia economic disputes, which tells that the court has provided complete complaint forms, answers, and testimony (without any claims for provisions, exceptions, reconventions, interventions, replications, duplicates, or conclusions). Thus, the trial process in small claim settlement in sharia economic disputes can provide legal certainty for the justice seekers because of its simplicity without the complication.

The beneficence and legal certainty as intended in the small claim system as stipulated in the two Supreme Court Regulations are based on two of the three legal objectives mentioned by Gustav Radbruch in his theory of legal objectives as quoted by Bernard L. Tanya, the law aims to achieve benefit and certainty. Benefit refers to advancing goodness in human life, in this study context means that the small claim regulation in the sharia economic disputes settlement is very beneficial for people who seek justice. The legal certainty itself refers to the assurance of the law's real function, as a rule, shall be obeyed, and in this context means that the small claim cases settlement system ensures legal certainty for the litigant parties. The certainty guarantee here includes time, procedures, and the decision clarity taken by the judge.

The simple principle in civil procedural law is also seen in the simplicity of settlement flow of small claims in civil disputes, which is a stage needs to carefully manage considering both in terms of phases and timeframe requirement. Broadly speaking, the small claim settlement phases are regulated in the Supreme Court Regulation, both Number 4 of 2019 on Amendments to the Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claim Settlement and Number 14 of 2016 on Procedures for Sharia Economic Dispute Settlement, as shown:

- 1) Registration;
- 2) Completion Examination of small claim;
- 3) Appointment of Judges and Substitute Registrars;
- 4) Preliminary Examination;
- 5) Selection Trial Day and Summons for the parties;
- 6) Examination of Trial and Reconciliation;
- 7) Proof;
- 8) Decision.

The Supreme Court Regulations issuance is to meet the need for implementing judicial practices that are understandable and have relevance to the developing legal situation and conditions. Therefore, the role of the Supreme Court regulations sometimes transforms into legal vacuum fillers, as a complement to the enactment of statutory provisions that have no organic regulations, as a means of legal discovery, and as a source of law for judges in law enforcement practices.

The regulation issuance is also a part of an effort to fill in the legal vacuum that has never been touched by HIR/RBg. In this case, HIR/RBg does not differentiate the civil case settlement procedures based on the claim material values, even though the distinction is very important and responsive to the need for a simpler, faster, and less costly settlement procedure, especially related to a simple civil law.

Based on the description above, we can understand that the linkage of simple, fast, and low-cost principle in small claim cases in sharia economic disputes is a simple settlement system in sharia economic disputes as a form of implementing the principle of simple, fast and low cost in the judicial administration of sharia economic disputes. Likewise, the principle of simple, fast, and low-cost can be realized in sharia economic dispute settlement through a small claim court system.

Realization of Simple, Fast, and Low-Cost Principle in Arrangement of Parties Domicile in Small Claim Cases

Although the Supreme Court Regulation Number 4 of 2019 on Amendments to Supreme Court Regulation Number 2 of 2015 on Procedures of Small Claims Settlement is very useful and important in accelerating cases settlement at the Supreme Court and the judiciary bodies under its jurisdiction, it does not mean that it can be implemented smoothly. Problems arise when the Parties domicile becomes an issue as regulated in Article 4 paragraph (3) and (3a):

- (3) The Plaintiff and Defendant in the small claim shall domicile in the same court jurisdiction
- (3a) If the Plaintiff has different court jurisdiction with the Defendant residence or domicile, then the Plaintiff in filing a Claim shall appoint an attorney, incidental attorney, or representative with the same address by the Defendant's court jurisdiction or domicile bringing an assignment letter from the Plaintiff's institution.

This provision leads to problems in practice. Many justice seekers collide with the domicile thing so that they cannot pursue the advantage of the small claims mechanism. Such provision conflicted in implementing principles of simple, fast, and low-cost in small claim cases in a business dispute. It means that it still contains an injustice, there are no equal rights before the law for the justice seekers who have litigation in business disputes.

The restriction provision for legal domicile potentially leads the parties not to take this small claim platform. According to Bimo Prasetyo's opinion, the necessity to reside in the same area in a small claim case is awkward. A simply domicile issue can be an obstacle to the parties to pursue this mechanism. The restrictions domicile on the parties at the same time can also limit the access for the consumer for taking this small claim mechanism.

Regarding the problem of arranging requirements for the same as Parties' domicile (Plaintiff and Defendant) in a small claim on business disputes – including sharia business disputes –considered not assure the equal rights among justice seekers, The Supreme Court Justice, Syamsul Ma'arif agrees by the topic, as quoted by Nanda Narendra Putra, he said that “the issue of the parties legal domicile will lead an opportunity to invalidate the dispute settlement effort using the small claim”. Therefore, through the Supreme Court Regulation No. 4 of 2019, regulation is added to Article 4 paragraph (3a) that, “If the Plaintiff has different court jurisdiction with the Defendant residence or domicile, then the Plaintiff in filing a Claim shall appoint attorney, incidental attorney, or representative with the same address by the Defendant's court jurisdiction or domicile bringing an assignment letter from the Defendant's institution.”

As to we, the author, have opinions that the Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claim Resolution which is intended to meet the needs of judicial practice implementation in resolving business disputes to realize the simple, fast, and low-cost principle, has not yet been able to realize its main objective of the issuing the Supreme Court Regulation. Although there have been additions regarding the Plaintiff being able to provide power of attorney with the same domicile as the Defendant's domicile, it only means that Plaintiff has to draw additional

costs in granting power to the attorney or incidental attorney with the same domicile as the Defendant.

In terms of justice, the provisions of the parties must be in the same jurisdiction has not yet provided a sense of justice for the people. This domicile issue should be anticipated with a real breakthrough where the administrative problem regarding this small claim is given a privilege and takes precedence over the ordinary lawsuit so that the issue of summoning/subpoena outside the jurisdiction which becomes an obstacle to the small claim process can be anticipated.

In the old days, the summons to the other courts used a written letter via pos that takes time (\pm three (3) weeks for out-of-town). In contrast to this small claim, the summon from the District Court where the small claim is filed to the District Court where the Defendant's domicile can use an e-mail so it doesn't take time. But of course, this must be supported by the court officers (Bailiff) who specifically handle the small claim summon so that the domicile problem can be anticipated, and the small claim can reach the parties even though they have different domiciles.

Based on the description above, we, the authors, argues that the simple, fast, and low-cost principle cannot be realized in the domicile arrangement of the parties in small claim cases as referred to in the Supreme Court Regulation Number 4 of 2019 on Amendments to the Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claim Settlement. The jurisdiction arrangement model adopted in the Supreme Court Regulation has the potential to reduce the purpose of small claim settlement, that is, to expand court access to the wider community and as a settlement mechanism specifically designed for the settlement of minor cases. The jurisdiction limitation to only one domicile is one thing that needs to be reviewed in the future to further encourage the use of a case settlement claim mechanism in Indonesia.

Formulation Form of Domicile Criteria Arrangement for Parties in Small Claim in Sharia Economic Disputes

The formula for domicile arrangement criteria for the parties in small claim refers to the provisions of Article 4 Paragraph (3) and (3a) of the Supreme Court Regulation Number 4 of 2019 on Amendments to the Regulation of the Supreme Court Number 2 of 2015 on Procedures for Small Claims Settlement are:

- (3) The Plaintiff and Defendant in small claim court shall be domiciled in the same jurisdiction.
- (3a) If the Plaintiff shall not be domiciled in the same jurisdiction as the Defendant, electronic summons may be applied for the

Plaintiff or the Plaintiff may file a lawsuit by appointing attorney, incidental attorney or a representative having an address in the jurisdiction or domicile of the Defendant with an assignment letter from the Plaintiff's institution.

The phrase of the parties shall domicile in the same court jurisdiction as referred to in paragraph (3) above is considered problematic because in terms of sociological basis it needs regulation on the small claim settlement which is access to justice. Access to justice defined as:

“Access by people, in particular form poor and disadvantaged group to fair, effective and accountable mechanism for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice system, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions”.⁹

Referring to the aim of simple, fast, and low-cost principles in civil procedural law and also access to justice provided to the public so they can resolve their legal disputes fairly and effectively through the small case mechanism as described above, then, the provisions of the parties' domicile in Article 4 Paragraph (3) and (3a) of the Supreme Court Regulation Number 4 of 2019 on Amendments to the Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claim Settlement need to be re-formulated so that the provision can put forward its simple, fast, and low-cost principle that contains the value of justice and benefit.

The norms as mentioned in this formulation, at least have a 3 argument basis, namely philosophical basis, sociological basis, and juridical basis as follows:

Philosophical Basis

Laws and Regulations are considered to have a philosophical basis (filisofische grondslag), if their formulation or norms are justified when studied philosophically. Thus, we will have reasons in accordance with human ideas and perspective in social life and in line with the ideas of truth, justice, way of life, nation's philosophy of life, and morality.

⁹ Bedner, *A Framework for Strengthening Access o Justice in Indonesia*, World Bank, 2004, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2JFrameworkEnglish.pdf>, diakses pada tanggal 10 Agustus 2018, pukul 02.00 WIB.

As explained in the description above, norms that regulate the domicile of the parties in a small claim court of business disputes - including sharia economy, require that the parties be domiciled in the same jurisdiction, are deemed not to represent justice, because they limit the implementation of small claim court for the parties in the same jurisdiction. This is on the contrary to simple, fast, and low-cost principles for financial institutions that do not have branch offices outside their domicile.

Philosophically, the provisions of Article 4 Paragraph (3) and (3a) of the Regulation of the Supreme Court Number 4 of 2019 on Amendment to Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures, which regulate domicile requirements of the parties in the same jurisdiction ", shall be formulated as follows :

- (3) The Plaintiff and Defendant in small claim court shall be domiciled in the same jurisdiction.
- (3a) If the Plaintiff shall not be domiciled in the same jurisdiction as the Defendant, electronic summons may be applied for the Plaintiff or the Plaintiff may file a lawsuit by appointing attorney, incidental attorney or a representative having an address in the jurisdiction or domicile of the Defendant with an assignment letter from the Plaintiff 's institution.

The philosophical values that take priority in the formulation above are more correspond with the ideas of truth and justice. The formulation means that a small claim court not only limiting the domicile of the parties in the same jurisdiction, but it may be used by general public, while to resolve the obstacles of summons, electronic court system may be applied as regulated in Article 14 Paragraph (1) of the Regulation of the Supreme Court Number 3 of 2018 on Electronic Case Administration in Court. Moreover, the provisions of Article 6A of the Regulation of the Supreme Court Number 4 of 2019 on Amendment to the Regulation the Supreme Court Number 2 of 2015 on Small Claims Court Procedures, explicitly regulate "The Plaintiffs and Defendants may apply case administration in court electronically in accordance with the provisions of laws and regulations ".

A formulation of rules must reflect the principle of fairness in law formulation, as argued by Lon Fuller, who suggests:

"The principle of fairness in law formulation, includes: (a). The laws must be formulated in such a way in order to be understood by general public. Fuller also calls this, the desire for clarity; (b). The rules must be free of contradiction; (c). Relatively constant. Law shall not be continuously changed from day to day, so anyone shall not be oriented their activities to it ; and d). There must be congruence between the official action and declared rule".²⁵

If these principles are linked to the formulation of domicile arrangements of the parties in a small claim court of business disputes - including the sharia economic disputes mentioned above, then the formulation is considered more proper and fair because it contains a clear formulation, does not conflict with other rules (read: Regulation of the Supreme Court Number 3 of 2018 on Electronic Court Administration in Court), there must be constancy and consistency.

Sociological Basis

The sociological basis in the formulation of laws and regulations means that a laws and regulations is considered to have sociological basis if it is congruent with common belief, public legal awareness, values and prevailing laws existed in society. Generally, the basis for the establishment of laws and regulations must be related to existing conditions or facts so that the regulations shall be implemented.

The formulation of domicile arrangements for the parties as referred to in Article 4 Paragraph (3) and (3a) of the Regulation of the Supreme Court Number 4 of 2019 on Amendment to the Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures, is considered very problematic from a sociological perspective, due to the provision is very difficult to be implemented. This is because not all financial institutions or disputing parties are domiciled in the same jurisdiction. This is absolutely contrary to the initial purpose of issuing Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures, in order to implement the principles of simple, fast and low-cost in resolving business disputes in court.

The formulation of domicile arrangements for the parties as stated in the philosophical basis above is considered to be more congruent with common belief, public legal awareness, values and legal development applicable in modern societies where the majority use information technology, thus the goal for small claim court of business disputes shall be implemented in accordance with the principles of simple, fast, and low-cost.

Juridical Basis

Laws and regulations are considered to have a juridical basis (*rechtsgrond*) if they have a legal basis, legality or a basis that are specified in a legal provision of a higher level. Besides that, the juridical basis questions whether the regulations made have been implemented on the basis of its authority.

The provisions of the domicile of the parties in small claim court as referred to in Article 4 Paragraph (3) and (3a) of the Regulation of the Supreme Court Number 4 of 2019 on Amendment to the Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures, shall be reformulated into:

- (3) The Plaintiff and Defendant in small claim court shall be domiciled in the same jurisdiction.
- (3a) If the Plaintiff shall not be domiciled in the same jurisdiction as the Defendant, electronic summons may be applied for the Plaintiff or the Plaintiff may file a lawsuit by appointing attorney, incidental attorney or a representative having an address in the jurisdiction or domicile of the Defendant with an assignment letter from the Plaintiff's institution.

Juridically, the formulation of domicile arrangement of the parties in small claim court is more congruent and does not conflict with other prevailing regulations, such as the Regulation of the Supreme Court Number 3 of 2018 on Electronic Case Administration in Court and the provisions of Article 6A of the Regulation of the Supreme Court Number 4 of 2019 on Amendment to the Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures.

This formulation is also more congruent and accommodates several principles in the formulation of laws and regulations. Among them, the principle of protection is the content of regulation formulation functions to provide protection in order to create public tranquility. The principle of humanity, this formulation is able to reflect the protection and respect for human rights as well as the dignity and worth of every citizen and the people of Indonesia proportionally. The principle of nationality, this formulation reflects the nature and character of pluralistic Indonesian by maintaining the principle of Unitary State of the Republic of Indonesia. The principle of kinship, the formulation of domicile arrangements for the parties as stated above, reflects discussion to reach consensus in every decision-making process. The principle of archipelago, the formulation always focus on the interests of all Indonesia's territories and is part of the national legal system based on Pancasila (The five principles) and the 1945 Constitution of the Republic of Indonesia.

The next principle that takes priority in the formulation of domicile regulation of the parties above, is the principle of unity in diversity, which takes into account the diversity of the population, religion, ethnicity and group, regional specific and cultural condition in the society, nation and state life. The principle of justice, this formulation reflects justice proportionally for every citizen, not limited to citizens who live in the same jurisdiction. The principle of equality before the law and equality in public administration,

the formulation is deemed not to specify elements that are discriminatory based on backgrounds, such as, religion, ethnicity, race, class, gender or social status, including domicile.

The principles of legal order and certainty are also reflected in the formulation above, that can create public order by guaranteeing legal certainty. They also reflect the principles of balance, harmony, and conformity, this formulation is able to demonstrate the reflection of balance, harmony and conformity among the interests of individual, society, nation and state.

Based on the description above, the formulation of domicile criteria of the parties in small claim court of business disputes, as specified in Article 4 Paragraph (3) and (3a) of the Supreme Court Regulation Number 4 of 2019 on Amendment to the Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures, which is better able to guarantee the implementation of simple, fast and low-cost principles, as follows :

- (3) The Plaintiff and Defendant in small claim court shall be domiciled in the same jurisdiction.
- (3a) If the Plaintiff shall not be domiciled in the same jurisdiction as the Defendant, electronic summons may be applied for the Plaintiff or the Plaintiff may file a lawsuit by appointing attorney, incidental attorney or a representative having an address in the jurisdiction or domicile of the Defendant with an assignment letter from the Plaintiff 's institution.

Conclusion

Based on the description above, it can be drawn conclusion as a result of the research, as follows : Firstly, the relevance of simple, fast, and low-cost principles in small claim court cases is a settlement through small claim court procedure as an implementation of simple, fast, and low-cost principles in the administration of justice on business disputes, and vice versa, the principles of simple, fast, and low-cost shall be implemented in the settlement of business disputes through small claim court. Secondly, the principles of simple, fast, and low-cost may not be implemented in the domicile arrangements of the parties in small claim court cases as referred to in the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2015 on Small Claim Court Procedures. The model for establishing jurisdiction adopted in the Regulation of the Supreme Court Number 2 of 2015 has the potential to diminish the existence of small claim court, namely, to extend access for justice to general public and as a settlement mechanism specifically designed for minor cases. The limitation

of jurisdiction to only one domicile is necessary to be reviewed in the future to provide further support to lawsuit settlement mechanism in Indonesia. Thirdly, the formulation of domicile criteria of the parties in small claim court of business disputes, as specified in Article 4 Paragraph (3) and (3a) of the Regulation of the Supreme Court Number 4 of 2019 on Amendment to the Regulation of the Supreme Court Number 2 of 2015 on Small Claim Court Procedures, which is better able to guarantee the implementation of simple, fast and low-cost principles, as follows : paragraph (3) The Plaintiff and Defendant in small claim court shall be domiciled in the same jurisdiction; paragraph (3a) If the Plaintiff shall not be domiciled in the same jurisdiction as the Defendant, electronic summons may be applied for the Plaintiff or the Plaintiff may file a lawsuit by appointing attorney, incidental attorney or a representative having an address in the jurisdiction or domicile of the Defendant with an assignment letter from the Plaintiff's institution.

Bibliography

- Ali, Achmad dan Wiwie Heryani, *Menjelejabhi Kajian Empiris Terhadap Hukum*, Jakarta: Kencana Prenadamedia Group, 2012.
- Ali, M. Hatta, *Peradilan Sederhana, Cepat, dan Biaya Ringan Menuju Keadilan Restoratif*, Bandung: PT Alumni, 2012.
- Ariani, Nevey Varida, *Gugatan Sederhana dalam Sistem Peradilan di Indonesia*, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/502>, DOI: <http://dx.doi.org/10.30641/dejure.2018.V18.381-396>, diakses pada tanggal 1 Desember 2020, pukul 08.00 Wib.
- Bedner, *A Framework for Strengthening Access o Justice in Indonesia*, World Bank 2004, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2JFrameworkEnglish.pdf>, diakses pada tanggal 10 Agustus 2018, pukul 02.00 WIB.
- Fakhriah, Efa Laela, *Mekanisme Penyelesaian Sengketa Bisnis yang Efektif dan Efisien*, Bandung: Keni, 2012.
- Fuller, Lon L., *Morality of Law*, New Haven and London: Yale University Press, 1964.
- Hukumonline, *Perbedaan Peradilan dengan Pengadilan*, <http://m.hukumonline.com/klinik/detail/lt548d38322cdf2/perbedaan-peradilan-dengan-pengadilan>, diakses pada tanggal 12 Maret 2018, pukul 21.00 WIB.

- Hukumonline, *Urgensi Terbitnya Peraturan Mahkamah Agung tentang Small Claim Court*, <http://www.hukumonline.com/berita/baca/lt55d71ac18056b/urgensi-terbitnya-perma-ismal-claim-court-i>., diakses pada tanggal 12 Maret 2018, pukul 21.00 WIB.
- Mansyur, Ridwan dan D.Y. Witanto, *Gugatan Sederhana Teori, Praktik dan Permasalahannya*, Cet. I, Jakarta: Pustaka Dunia, 2017.
- Putra, Nanda Narendra Putra, *Implementasi Perma Gugatan Sederhana Terbantur Masalah Domisili*, dalam hukumonline, <http://www.hukumonline.com/berita/baca/lt576961058a940/implementasi-perma-gugatan-sederhana-terbantur-masalah-domisili>, diakses pada tanggal 20 Agustus 2018, pukul 22.00 WIB.
- Riyanto, Benny dan Hapsari Tunjung Sekartaji, *Pemberdayaan Gugatan Sederhana Perkara Perdata Guna Mewujudkan Penyelenggaraan Peradilan Berdasarkan Asas Sederhana, Cepat dan Biaya Ringan*, <https://ejournal.undip.ac.id/index.php/mmh/article/download/21666/14771>, diakses pada tanggal 1 Desember 2020, pukul 08.20 WIB.
- Suadi, Amran, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum*, Jakarta: Kencana Prenadamedia Group, 2018.
- Tanya, Bernard L., *Politik Hukum Agenda Kepentingan Bersama*, Yogyakarta: Genta Publishing, 2011.
- The World Bank, IFC, Kementerian Negara Pendayagunaan Aparatur Negara, et all, *Small Enterprise Development Policies in Indonesia : An Overvien*, dalam *The Internasional Finance Corporate Indonesia, Doing Business in Indonesia 2012 A Copublication of The World Bank and The International Finance Corporation*, Washington: IFC-World, 2012.
- Yasin, Muhammad, *Peradilan yang Sederhana, Cepat, dan Biaya Ringan*, <http://m.hukumonline.com/berita/baca/lt5a7682eb7e074/peradilan-yang-sederhana-cepat-dan-biayaringan>, diakses pada tanggal 12 Maret 2018, pukul 21.00 WIB.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama sebagaimana diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan Undang-Undang Nomor 50 Tahun 2009.

Peraturan Mahkamah Agung Nomor 2 Tahun 2015 tentang Tata Cara Penyelesaian Gugatan Sederhana.

Peraturan Mahkamah Agung Nomor 14 Tahun 2016 tentang Tata Cara Penyelesaian Sengketa Ekonomi Syariah.

Peraturan Mahkamah Agung Nomor 3 Tahun 2018 tentang Administrasi Perkara di Pengadilan Secara Elektronik.

Peraturan Mahkamah Agung Nomor 4 Tahun 2019 tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 2 Tahun 2015 tentang Tata Cara Penyelesaian Gugatan Sederhana.