



Enforcement of Simple Claim Process as a Role Model of Credit Agreement Conflict Resolution in Bank Perkreditan Rakyat (BPR)

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Abstract

This study is aimed to know varied factors influencing simple claim has not become role model of credit conflict resolution in BPR. Research method is normative juridic. Data collection technique is documentary/ literature study and books or other related documents with the case under study. Results of the research shown that several factors are influencing the simple claim not to be role model of credit conflict resolution in BPR because the non-existence of regulation on simple claim to be the only legal effort in the resolution of credit conflict in UMKM. In addition, people feels that simple claim is poorly socialized and minimal information available related with the infrequent State Court verdict on simple claim case for reference, and support from the law enforcement which are frequently made to be simple claim to be non simple claim. Therefore, it is necessary for more efforts to introduce the resolution of simple claim in the resolution of credit conflict by seminars and also legal requirements stipulated as legal host in the resolution of credit conflict, which are not inflicting either party. The preliminary step for simple claim *organizational image* role model of credit conflict is that Supreme Court must immediately make PERMA to enforce PERMA No. 2 Year of 2015 on Simple Claim in credit conflict, with any legal consequence for the violator. BPR shall enclose clause of conflict resolution using simple claim in each credit agreement.

Keywords: Simple Claim; Model Role; Credit Agreement

Introduction

Simple claim to simplify the legal process of civil law is one of the solution on the length of civil law process. Besides on the primary problem on justice access, simple claim is also related with application ease.

There are several factors influencing on simple claim has not become role model in credit conflict resolution in public justice institution, specifically in civil law. Simple claim has not become role modelis related with the implementation of regulation, the implementation related with the function of the regulation, so that it will be the answer of how the legal enforcement is applied. Thus, it will be a relevance in describing the influencing factors on legal enforcement.

Methodology

Type of research used is normative legal research. Research approach is statute approach, which is the approach using legislation and regulation (Peter Mahmud., 2005: 93) and conceptual approach (Jhonny Ibrahim., 2006: 300). The statute approach is conducted by reviewing all law and regulation related with legal issues, that is varied factors resulting in simple claim has not become role model of credit conflict resolution in BPR. Statute approach is used organizational image *lex specialis derogate legi generali* principle. The nature of this research is descriptive to provide detail, systematic and holistic description and data on varied aspects related with the research.

The data of Primary Law is Civil Law, the Indonesian Supreme Court Regulation No. 2 Year of 2015 on the Procedures of Banking Claim Resolution and Law. Secondary law data is varied books and literatures related with credit conflict resolution in BPR through simple claim process enforcement organizational image role model in credit conflict resolution in BPR. Data collection is conducted with literature study. Data analysis on primary and secondary data is conducted after investigation, classification, processing and evaluation so that there observed the validation. Interference is conducted in qualitative method which is by redescribing in systematic and deductive sentence to provide clear description organizational image the answer of problem and eventually stated descriptively.

Discussion

Several factors are influencing the simple claim has not become role model in the resolution of credit conflict in public justice institution, specifically in civil law. Simple claim has not become role model is related with regulation implementation, the implementation in relation with how the regulation is functioned, so that it will be the answer on how the regulation is enforced. Thus, it will be relevancy to describe the influencing factors on legal enforcement.

The implementation of simple and fast civil law system reformation is the efforts to improve national economy competitiveness. In efforts to achieve the competitiveness, national legal development needs to be directed to support the construction of sustainable economical growth; regulating aspects related with economy, specifically in business and industrial sector and also creating investment certainty, specifically the law enforcement and protection. Therefore, there needed systematic strategy on the legal regulation revision in civil law aspect in general and specifically related with contract law, the establishment of fast conflict resolution (simple claim) and improvement of mediation institution utilization.

For those with less capacity in the implementation of simple, fast and affordable justice principle according to the Supreme Court Regulation No. 2 Year of 2015 on procedures of simple claim or referred as PERMA. As a Supreme Court policy, it is aimed to provide legal protection for public who are weak before law. According to the objective, the efforts or steps to maintain public rights who in need of legal protection. This new policy has been implemented by justice institutions in European countries. According to the Supreme Court, this PERMA *Gugatan Sederhana* is adopted from small claim court justice system applied in London, England (Taufiq Adiyanto., 2015).

Simple, fast and affordable justice process system is a new breakthrough in Indonesian justice system. It is in accordance with the definition of human rights focusing on the basic rights for human and on public in community, state and country life. Through the legal regulation where it has obligation to protect the public which one of those related with justice process with human rights protection principle.

Some factors to be simple claim has not become role model in the resolution of credit conflict in BPR are:

1. Law Maker Institutional Factors

a. Civil Law System in Indonesia is Until Presently Applying the Stipulation of Colonial Governmental Law, that is Herziene Indonesish Reglement (HIR)

HIR requirements in the Acts 200 of HIR related with the requirement of the Act 6 the Law No. 20 Year of 1947 means that the state court is in fact assume the authority to resolve civil cases for simple claims, that is the cases with small amount of money. The implementation of simple claim requiring the first level of state court on the civil case resolution maximum to be resolve in 6 months shall be able to be met, as the effort to simplify the investigation process.

b. The Implementation of Indonesian Supreme Court Regulation No. 2 Year of 2015 on Procedures of Simple Claim Resolution

The Indonesian Supreme Court Regulation No. 2 Year of 2015 is regulating on the Procedures of Simple Claim Resolution. This simple claim is one of the effort for debtor to avoid illegal asset seizure as the credit colateral by the bank. Fast, easy and affordable process in the implementation of simple claim related with the incapable debtor can be made organizational image effort to protect the debtor rights.

This PERMA can be an alternative for public and consumer, in resolving the consumer conflict. But, BPR must also be prepared to meet all legal principle so that this breakthrough can be implemented. Besides BPR preparedness, many related parties in the execution of regulation must also come with uniform perception, starts from police department, prosecutor, court, supreme court untik other supporting parties to avoid this regulation to be implemented in differentiated way.

c. Regulation Enforcer Institution Factor

Jurisdiction determination model adopted in PERMA No. 2 year of 2015 has potential to lessen the simple claim resolution, which is by expanding the court access to public and as the resolution mechanism specifically designed to resolve small cases. This jurisdiction limiatetion is only on one domicile to be reviewed in the future to push better case resolution court process application in Indonesia.

d. Public/ Stakeholder Factor

Public as stakeholder in this research is the parties under conflict using litigation tools to resolve the conflict, including for advocates. In this case, it is actually this group who want the simple claim can be established in public court level. Based on the research, there revealed that besides the legal knowledge factor and technic practical factors of court system, this system can also be implemented if public has understand the litigation process. Therefore, public must understand the requirements to be met to enter in case resolution process in court, including fund availability.

2. *Simple Claim to Be Obligation*

Other problem according to the author which must immediately figured out on the solution is the use of simple claim which has not been a necessity but still to be an option for public. It makes the implementation of simple claim has not been optimal because public who search for justice is not obliged to use simple claim. Some cases in court showed that several group of people are more preferred to use general claim if compared with simple claim although with condition and requirements which are had met to use this simple claim. It results in public is “more comfortable” to use general claim than simple claim. If it is continually ignored with no new breakthrough to push public in using simple claim mechanism according to the prevailing conditions, then the objective of simple claim implementation will not be achieved. Therefore, it necessitates for good governance of the government, in this case is the House of Representative as legislator and BPR as the creditor and public as the executing creditor of the law.

a. Role Institution

BPR is enclosed the effort of resolution if there is bad credit by applying simple claim. This requirement is not easy to be applied by BPR, in reminding that BPR has many “profitable” ways if compared with the simple claim for bad credit.

The government realizes the necessity of effective and efficient conflict resolution support so that it can smoothen the national economy. The Presidential Regulation No. 2 year of 2015 on the National Middle-Termed Development Plan of 2015-2019 mentioned the formation of small claims court as the target in implementing civil law reformation.

Simple, fast and affordable court is an absolute necessity for legal dynamics and development in Indonesia, specifically in civil law conflict. Simple in legal context means the investigation and resolution of case is conducted in effective and efficient way.

It is the domicile aspect which can be anticipated in a real breakthrough where administration problem on simple claim is provided its privilege and prioritized than general claim so that the inter-cities invitation problem can be anticipated.

b. Public

Several factors in simple claim has not become role model of credit conflict resolution in BPR are:

1) Minimum Socialization

Low publication on simple claim results in good things in simple claim has not been reached by public in general, specifically by the debtors in UMKM credit. The continual and directed publication is necessary for all parties, specifically those related with the procedures in simple claim. The low socialization related with procedures of simple claim had made the information of process for those who committed in problem in the court has insufficient understanding, which eventually it inhibit the PERMA objective. The advantage of simple claim in fast principle in bad credit resolution in BPR has low understanding in public.

Minimum information on PERMA No. 2 year of 2015 requirements about the procedures of simple claim resolution results in the litigant who want to use simple claim has insufficient understanding

on the requirements of simple claim. By sufficient information in all media, it is expected that the requirements in PERMA No. 2 year of 2017 on the Procedures of Simple Claim in which stating that the litigant must register the litigation to the court registrar of civil law. Besides, in the resolution of simple claim, the verdict is final and binding, there is no legal efforts which can be applied on the verdict of simple claim, but the party who assume the verdict can apply exception to the State Court where the case is investigated.

2) *Minimum Education*

Seminar is directed to harmonize the understanding and comprehension of all BPR working unit related with bad credit resolution through simple claim mechanism to optimize credit recovery. To adjust the comprehensive understanding for public, it requires the support to the High and State Courts as the executor of PERMA No. 2/2015 and also the Office of State Property and Auction Service and BPN for the execution on the court verdict can be smoothly implemented.

3) *The Verdict of State Court Which Rarely Determining the Simple Claim Decision in the Resolution of Credit Conflict in BPR*

Besides the minimum information on simple claim, other factor results in the simple claim has not become role model in credit conflict resolution in BPR is the lw state court verdict deciding such case. For example, in South Jakarta State Court, until the end of 2015, there was only one simple claim case. While in the State Court of Tangerang, until 2016, there were 10 simple claim cases.

4) *"Non Simplified" Simple Claim*

The simplification type on legal effort in simple claim, on the process, length of application to the application of exception is ment for the civil law process become simpler, non simplified is meant with verstex verdict known during this times.

The determination of application length on legal effort (including in the determination of when a verdict has legal power) is specific in simple claim. Where in simple claim is only based after the passed the length of exception application term, while in verstex verdict there knownseveral types of time determination on legal effort in form of verzet which still in application.

The complexity of problem can be arise is when in fact the exception investigation of judge verdict of simple claim (including verstex verdict) is only based on verdict and documents of simple claim, the exception application and memory and also countermemory and no availability of additional investigation (the Acts 26 verse (2) and verse (3) of PERMA Simple Claim). If on the verstex verdict, the investigation process of legal effort is in form of exception only such abovementioned and there is no possibility of additional investigation, then there is the defendant basic rights which are out of accomodation of legal process in form of the exception investigation.

3. *Legal Protection in the Implementation of Simple Claim*

The legal protection must be adaptive and flexible, and alsı predictive and anticipative. Adaptive and flexible mean that it alwas in line with condition and situational development. Predictive and anticipative means that the law must be able to reveal the possibilities to provide protection if there is

inflicting actions on either party. In line with legal protection theory mentioned in protection principle according to the Act No. 6 vese (1) the Law of the Regulation Formulation and Law Protection theory.

Supreme Court is authorized to make legal source publicly prevails, in such case is civil law. Supreme court can regulate further on things necessarily available for the smooth implementation of justice if ther is insufficient aspects not regulation in the law on Supreme Court as the complementary of justice insufficiency. The supreme Court can make its own regulation if insufficiencies are observed to cover the case out of regulation. Therefore, the simple claim is the part of civil law although the implementation is in the form of Indonesian Supreme Court Regulation. The existence of simple claim is the demand of economical sector development for effective, efficient, easy and fast case resolution.

To protect human rights on justice process to lower public level, simple is meant not to complicated and “affordable” is “the costs assumed by public.” For poor justice seeker it made a possiblity to apply the case freely, as the implementation of human rights protection in justice for poor people, in reminding that the application practice is proposed according to the prevailing condition and requirements for inevitably accepted. But in other aspect, the low costs have its on excess. It is because the low costs made the concerned party to propose legal effort although it known to be rejected or unacceptable.

Based on the fast investigation principle, it is necessary to be prioritize for a case not to be complicated. But conversely, it is expected to avoid “large hole” on the justice process and investigation. The problem is on cassation level (Supreme Court level). Besides the specific cases, there is no limitation requirements on length of investigation. Nevertheless, if compared with the amounts to be resolved in each first or appeal level courts, the judge in Supreme Court are considered productive.

To guarantee the ease and simple process, the resolution of simple claim is made under 25 working days for first level investigation, from the judge stipulation and 7 working days in exception level from the determination of the Judge. Besides, the investigation process of simple claim can not apply on provision, exception, reconversion, intervention, replication, duplication or conclusion prosecutions such the case in general civil law resolution. It is meant to maintain the simplicity of litigation and accelerate the case resolution process. By no exception, replication, duplication or conclusion, it is not meant to close all opportunity for the parties to submit the defense, but it provides opportunity to the parties to submit all materials in verbal and directly in front of the judge.

Some notes on PERMA is the limitation related with the jurisdiction on the prevailing of simple claim resolution procedures with potential to lessen case amount included in this mechanism. For example in litigation object limitation, limitation on litigation included in simple claim resolution procedure is only the litigation to apply material prosecution. Therefore, the litigation with immaterial nature, although under 200 millions, it can not be classified into simple claim resolution mechanism. This limitation is considered improper because immaterial litigation is not assume more on proving process to judge. It is because the size of immaterial litigation is only based on proportionality priciple, where immaterial litigation is measured from the fair threshold of the litigation, not on the proving problem, so that it is not reducing the simplicity with immaterial litigation.

Conclusion

Some factors result in simple claim has not become role mode of credit conflict resolution in BPR is because of the non existence of requirement stating that simple claim is the only legal effort to be implemented in credit conflict resolution of UMKM. In addition, public feels that simple claim is less in socialization and insufficient information in relation with the rare state court verdict in simple claim

cases, so that it can not be a reference, and support from the law enforcer which frequently made the simple to be non simple litigation.

Implication

Simple claim has not become role model, specifically in credit conflict resolution is the resolution of bad credit such occurred before the PERMA No. 2 year of 2015 where in bad credit resolution, the creditor committed varied actions according to credit agreement under signatures, and more important, the bad credit resolution is put more advantage on the creditor. It is necessary for more effort to disseminate more information on simple claim resolution in credit resolution by seminars and also legal requirements stated organizational image the legal host in bad credit resolution, which not inflicting either party.

Suggestion

The first step for the simple claim to be role model of bad credit resolution is that the Supreme Court must immediately apply PERMA to support PERMA No. 2/2015 on the Simple Claim in which regulating on the necessity of simple claim application in bad credit resolution, with all legal consequences for the violating parties. BPR shall enclose the clause of conflict resolution using simple claim in every credit agreement.

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