



Analysis on the Implementation of Supreme Court Regulation No. 2 of 2015 Concerning on Settlement of Small Claim Court Procedure in Jayapura District Court Class I A (Case Study of Case No. 7/Pdt.G.S/2017/PN Jap)

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Abstract

This research was conducted with the aim to find out the implementation of Supreme Court Regulation No. 2 of 2015 Concerning on the Settlement of Small Claim Court in Jayapura District Court Class I A (Study on Civil Case No. 7/Pdt.G.S/2017/PN Jap) also to know the basis of consideration of the judge in deciding the cases in Jayapura District Court Class I A. This study using normative-juridical method. The result of this study indicated that the Supreme Court Regulation No. 2 of 2015 has been applied correctly, but the practice according to the Article 3 (2)b regarding on land dispute, whereas this case on the inspection phase by the court clerk also on the phase of preliminary examination by the judge has been done in accordance with the Supreme Court Regulations and discretion on the judge as the basis of the implementation of simple, fast, and low-cost principles. The consideration by the judge already corrects related to the application of Article 3 (2)b of the supreme court regulation, but it certainly not fair for the plaintiff, because it is not yet considered about default problem and ability to pay the damages around Rp. 100.000.000,- (one hundred million rupiah) from the defendant to the plaintiff. It is recommended that the plaintiff need to be more careful on file the small claim court which is by analyze the lawsuit also sufficient evidence in form of letter and witnesses, also the judge need to considered all the argument which submitted in the lawsuit, so that the litigants could get the justice within the case decision.

Keywords: *Small Claim Court; Court Decision*

Introduction

On daily basis of human life, where human always living in group because they needed each other. There was no human who could live alone without any help from others. They just used to live and develop in society. Therefore, humans are known as *zoon politicon*.

Living together in a group, they must have the same interest to strengthen their life as a group, but sometimes there were several different perspectives between them. Whereas those differences could cause a conflict.

The conflict that arises is a sign of a crisis in the human relationship and the action that needs to be taken to overcome the conflict between is to fix the relationship. This problem which regulated on the procedural of civil law or formal civil law.

Talking about the procedural of civil law which cannot be separated from the civil law, because civil law is the material while the procedural is the formal law.

In general, civil law is known as the regulation which regulates the relation between person and others or person and legal entity. A person known as the subject of law which consists of one person and legal entity. While legal entity known as the entity which made by a person to engaged in the field of wealth.

On the relation between subject of law which stated above, it is known that the legal relation or an idea which caused by an agreement or also because of the regulation. As an example, an agreement of sale and purchase or credit agreement which is made by a party will raise a rights and obligation between the parties which made the agreement. If one party breaks the agreement, then the other party will be harmed. Therefore, the party which suffered the damage has a right to demand compensation in accordance with the agreement which was made.

Beside that, an act against the law also used as the basis by the parties which suffered from the damaged to demand a compensation, because the violation against the law cause a harm to the victim such as traffic accident, vandalism or violate others right.

The initial settlement is sometimes done by the conflicted parties or on the dispute by negotiation and if it doesn't work then it needed a neutral party through court which will be decided by the judge. The settlement through court which regulated on the procedural of civil law.

Because the pile of civil cases at court, then the supreme court issued a Supreme Court Regulation No. 2 of 2015 Concerning on Settlement of Small Claim Court which amend by Supreme Court Regulation No. 4 of 2019 Concerning on Amendment of Supreme Court Regulation No. 2 of 2015 Concerning on Procedure of Small Claim Court Settlement

In relation with act against the law and breach of promise because of default act, there's a cases which filed on the Jayapura District Court Class 1A with case number 7/Pdt.G.S/2017/PN Jap between Basuki Riyanto as the plaintiff and Anton C. Tauran as the defendant. The lawsuit on 10th April 2018 has been accepted and filed by the secretary of Jayapura District Court Class 1A on 30th April 2018 and the lawsuit was filed by small claim court which by the judge has decided:

1. Declaring the plaintiff's claim unacceptable.
2. Punish the plaintiff to pay the cost on this case in total Rp. 551.000,- (Five Hundred Fifty One Rupiah)

After the decision by judge, the plaintiff filed a note of objection which by the judge decided:

1. Accepting the objection request from the applicant formerly plaintiff;
2. Amplify the Small Claim Court decision of Jayapura District Court Class 1A No. 7/Pdt.G.S/2018/PN Jap on 4 June 2018 to which the objection was filed;
3. Punish the applicant formerly the plaintiff to pay the cost incurred on this case in total Rp. 266.000,- (Two Hundred Sixty Six Rupiah)

The interesting thing for further research by create this research about analysis on the Implementation of Supreme Court Regulation No. 2 of 2015 Concerning on Procedures of Small Claim Court Settlement in Jayapura District Court Class I A (Case Study of Case No. 7/Pdt.G.S/2017/PN Jap)

Research Method

This research is a normative-juridical study. The research on a normative law is library research, which is a research based on a secondary data. The approach method which used is a Statutory and case approach. The statutory approach done by reviewing the relevant regulation such as Civil Code, HIR/RBG, Supreme Court Regulation No. 2 of 2015, which applied on the case No. 7/Pdt.G.S/2018/PN Jap. The data used on this study such as primary data which obtained by studying the Civil Code, HIR/RBG, Supreme Court Regulation No. 2 of 2015 and Court Order. The Secondary data obtained through related literature while tertiary data obtained through legal dictionary.

Contract Arise from an Agreement and Regulation

According to Legal Science, Contract is a legal relation on the field of wealth between two or more parties where one side has a rights and others have obligations. It is explained further that a Contract is relations between certain peoples, between creditors and debtors. A creditor is sometimes known as an active party while debtors are sometimes known as the passive parties. The object of the contract is known as achievement. The form of achievement is 1) given something; 2) do something; and 3) not to do something (art. 1234 civil code)

The terms of agreement stated on Article 1313 of Civil Code which stated, “An agreement is an act pursuant to which one or more individuals commit themselves to one another”. Those definitions weren’t complete and known to be too broad and contain a much weakness.

Article 1320 of Civil Code states that a valid condition of an agreement need four requirements such as: 1) there must be consent of the individuals who are bound thereby; 2) there must be capacity to conclude an agreement; 3) there must be a specific subject; 4) there must be an admissible cause.

Article 1320 of Civil Code is related with Article 1338 of Civil Code which stated that All legally executed agreements shall bind the individuals who have concluded them by law. They cannot be revoked otherwise than by mutual agreement, or pursuant to reasons which are legally declared to be sufficient. They shall be executed in good faith.

On an agreement, if an achievement cannot be achieved then it will be a default. The form of default such as: 1) the debtors cannot achieve clause on agreement; 2) the debtors is late on achieved the clause on agreement; 3) the debtors wasn’t following the agreement. Things that need to be done by the debtors when a default happens such as: 1) to pay the damages; 2) the object which used to be the object on the agreement since the non-fulfillment of obligations are the responsibility of the debtors. 3) if the contract which arise from reciprocal agreement, then the creditors could request a revocation of agreement (termination of agreement)

Unlawful Act

Article 1365 of Civil Code stated, “A party who commits an illegal act which causes damage to another party shall be obliged to compensate”. According to Article 1365 of Civil Code, unlawful act has four elements: 1) there is an action against the law; 2) the loss is due to a fault; 3) there is loss; 4) there must be causality between the action and the loss.

Small Claim Court

The Supreme Court Regulation No. 2 of 2015 Concerning the Settlement of Small Claim Court, on Article 2 stated that small claim court examined and determined by the court in the field of general court. Then Article 3(1) stated that the form of case which can be filed as small claim is a breach of contract and/or unlawful act with the most material claim values Rp. 200.000.000,- . Article 3(2) states that the case which are not in the field of small claim court is a dispute which must be done through a

special court as stated in the regulations or a land dispute. Article 5 of the supreme court regulations stated:

- 1) A small claim court is examined and determined by a judge which appointed by the head of the court;
- 2) The settlement of small claim court:
 - a. Registration
 - b. File check for small claim court
 - c. Appointment of judge and clerks
 - d. Preliminary examination
 - e. Determination of the trial date and summoning the parties
 - f. Trial examination and reconciliation
 - g. Proof stage
 - h. Verdict from judge
- 3) The completion of a small claim court cannot be more than 25 days from the day of the first trial.

Then the supreme court issued an amendment for the small claim court regulation through Supreme Court Regulation No. 4 of 2019 Concerning Amendment of Supreme Court Regulation No. 2 of 2015 Concerning on Procedure of Small Claim Court Settlement. On the Article 1 stated that, 1) The settlement of a small claim court is an inspection procedure on a court against civil lawsuits with the highest value of material claims for Rp. 500.000,- (five hundred thousand rupiah) which settle through a simple court and a simple stage of a proof. 2) an objection is a legal effort against the judge verdict on the simple claim court as stated in this regulation. 3) A judge is a single judge. While article 2 regulated: 1) A simple claim is filed against a breach of contract and/or unlawful act which the highest value of material claims for Rp. 500.000.000,- (five hundred million rupiah). 2) a case which are not in the field of small claim are: a. A case which the settlement shall be done through a special court as stated in the law and regulations; and b. A land disputes.

Analysis on Implementation of Supreme Court Regulation No. 2 of 2015

On the relation between the implementation of Supreme Court Regulation No. 2 of 2015 against the civil case No. 7/Pdt.G.S/2018/PN Jap between Basuki Riyanto as plaintiff and Anton C. Tauran as the defendant on the Jayapura Class IA District Court, then it can be analyzed as follows:

1. This simple claim court is examined and decided by a single judge which was appointed by the head of district court as stated on the Article 5 (1) of the Supreme Court Regulations No. 3 of 2015. The steps which stated on the paragraph (2) of the Article 5 on the supreme court regulations, where the plaintiff need to meet the administrative requirements which are
 - a. Registration. According to the Article 6 (1) whereas the lawsuit has been submitted and accepted also has been registered on the District Court Class IA Jayapura Secretariat on 30th April 2018 on the case No. 7/Pdt.G.S/2018/PN Jap by filing the registration paper as stated on the Article 6 (2) which including the identity of the parties, a brief explanation of the case and the plaintiff demand, also a proof which has been legalized in accordance with the Article 4 of the supreme court regulation.
 - b. A simple court claim files examination. After the plaintiff has complete all the data as stated on the Article 6 of this supreme court regulation, then the clerk of the district court is in charge on checking the completeness of the files for the simple court based on the Article 3 and 4 of this regulation.

As for the lawsuit which filed on this case, is an unlawful act whereas there's land owned by the plaintiff which has been certified and violated or seized by the defendant to build a mortgage house which then demanded compensation for Rp. 100.000.000 (One Hundred Million Rupiah) or the location which is stated on the statement letter which never fulfilled or breached the contract on the payment. This means that the value of the lawsuit is under Rp. 200.000.000,- (Two Hundred Million Rupiah) according to the Article 1(1) of this regulation.

Whereas the clause on paragraph 2 of Article 1 of this regulation states that a land dispute is not in the field of simple court which if we analyzed according to the registration paper which filed by the plaintiff and the letter which are the proof that has been legalized and submitted, at least the clerk has known that the case regarding on land dispute which owned by the plaintiff. Therefore, in this case the clerk needs to report to the head of the district court to notify the case and inform them about the next step for this case.

Therefore, if the head of district court argues that this case is a land dispute, then it could be delivered to the clerk to return the lawsuit to the plaintiff in accordance with Article 2 (7) of this regulation. The other possibility, the head of district court could give a note to the judge which appointed to settle the lawsuit, so that the preliminary examination is examine the lawsuit whether it is a dispute over a right of a land or not as referred to the Article 3 (2)b of this regulation.

c. Preliminary Examination. This stage of examination regulated on Article 11 which stated:

- 1) The judge will examine the content of the simple lawsuit based on the requirement as stated in Article 3 and Article 4 of this regulation.
- 2) The judge will assess whether it is a simple lawsuit or not.
- 3) If on the examination, the judge argues that the lawsuit cannot be settle as simple lawsuits then the judge will issue its decision which state that the lawsuit is not a simple claim, cross out from the case register book and order to return the remaining court costs to the plaintiff.
- 4) Regarding the decision by the judge in paragraph (3) there's no legal action that could be taken afterwards.

The examination of formal requirements on this case has been done by the clerks regarding the completeness of the lawsuit and material examination which was done by the judge regarding the requisite as stated on Article 3 and 4. This could determine whether the case could be continue or not. Following the regulations, this case from the beginning should not be a simple court claim, because it is a land dispute case. The examination of the case in the court is a duty of the judge as law enforce according to the laws and regulations.

Therefore, the judge could take a discretion to not continue the examination of the case, because the judges have their own evaluation as a judge to carry out the principle of simple, fast, and low-cost. But then if the judge argues that the case could be executed as simple claim, then the judge will assign the day of trial as stated on Article 12 of the regulations. This is done to see the evidence in the form of a letter and hear the witness which is filed by the parties.

Basic Analysis of Judges' Legal Considerations

On the legal considerations part, the judge has applied the law as stated on the laws and regulations, whereas the plaintiff cannot be executed as simple claim court as stated on the Article 3 (2) letter b of the Supreme Court Regulations No. 2 of 2015, as stated on the consideration: "according to the evidence which filed by the plaintiff in form of evidence P.1 copy of Freehold Title No. 02612 on behalf of Basuki Riyanto, evidence P.2 copy from a copy of a Minute of Meeting No. 198/BA-91.03/11/2017 concerning on boundaries return, evidence P.3 a copy as according to the original in form of statement letter, evidence P.4 in a form of a copy as according to the original of a subpoena form a legal counsel,

and evidence P.5 in form of a copy as according to the original sheet from the outgoing mail expedition book, also the evidence which filed by the defendant in form of T.1 in form of copy from a copy of a Freehold Title No. 1224 on behalf of PT. Graha Yotefa Indah and T-2 in form of a copy from a copy of a site plan of PT. Graha Yotefa Indah, also a statement from the witness, Martinus Done and Marsudin Sihombing, S.H., M.Si, which on the trial explained that the lawsuit between parties is a lawsuit on a land dispute; Consider, after the judge examining the evidences from plaintiff as stated above, then according to the judge that the lawsuit form the plaintiff cannot be execute as simple court claim as stated on the Supreme Court Regulation No. 2 of 2015, because the lawsuit is about land dispute.

The judge and the panel of judges should also consider claim for compensation as the basis for default which filed by the plaintiff by giving a legal reason which used as the basis for the legal reason which not considered for those part.

Therefore, it must be carried out fairly in its procedure and substance as stated by Rawls that justice as a fairness.

As for the defendant, this decision by the judge must be fair, but for the plaintiff this decision is unfair and there's no legal attempt that could be done apart from filing a new lawsuit to the district court including simple lawsuit because according to the supreme court regulation there's a formal requirement which cannot be fulfilled on filing the simple claim. Therefore, the lawsuit cannot be based on the Supreme Court Regulation No. 2 of 2015.

Conclusion

1. Supreme Court Regulation No. 2 of 2015 has been applied according to the regulations until the judge decision, but the application of Article 3 (2)b related to the land dispute, whereas this case on the stage of examination by the clerk and on the preliminary examination by the judge has been stopped stated on the regulations and the discretion on the judge as the executor of the principle of simple, fast, and low-cost.
2. The legal consideration from the judge are correct regarding the application of Article 3 Paragraph (2) b of the Supreme Court Regulation but of course it is still not fair for the plaintiff because the judge hasn't considered the issue of default from the ability to pay the compensation of Rp. 100.000.000,- (one hundred million rupiah) from the defendant to the plaintiff.

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