



# Resolving Economic Syari'ah Cases in Small Claim Courts and Religious Courts

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Indonesia entered into a development phase of its judicial mechanism when PERMA No. 2 of 2015 was promulgated on August 7, 2015. This regulation reformed the Indonesian civil judicial system, redefining its settlement mechanism of claims in small disputes. This regulation is an evidence of the government's resolution to provide quick, simple and affordable court process, and make justice accessible by establishing a small claims court mechanism. Such an adoption of a small claims court in Indonesian judicial proceedings through the Supreme Court Regulation is expected to fill up the vacuum that is felt by investors and corporates for fast dispute settlement. This article attempts to understand this new law, and assess the effectiveness of the establishment of this mechanism. This article also includes a factual description of a court case tried by the small claims court. This regulation also met the need of the rising number of claims burdened upon district courts, much felt by its traders and small businesses which commonly entered into disputes in their business activities.

**Key words:** *Small Claim Court, Syari'ah Case, Padang Religious Court West Sumatera.*

## Background

In Indonesia, the existence of small claims court mechanism for formal case settlement legally began when PERMA No. 2 of 2015 was promulgated on August 7, 2015 (Promulgated in State Gazette, 2015). This regulation improved the Indonesian civil judicial system, redefining the settlement mechanism of claims in small disputes. This regulation is an evidence of the government's resolution to provide quick, simple and affordable court process, and make justice accessible by establishing a small claims court mechanism. Such an adoption of a small claims court in Indonesian judicial proceedings through the Supreme Court Regulation is expected to fill up the vacuum that is felt by investors and corporates for fast dispute settlement. This article attempts to understand this new law, and assess the effectiveness of the establishment of this mechanism. This article also includes a factual description of a court tried by the small claims court.

The Chief Justice of the Supreme Court, Prof. Dr. H.M. Hatta Ali opined that the intention behind the creation of small claims court was to reduce the accumulation of cases in the Supreme Court. This PERMA was based on other judicial systems, similar to what was being implemented in London, England. Externally, though it was in preparations of the 2015 ASEAN free trade era, which was predicted to cause a lot of disputes on commercial/small-scale business matters that would appear before these small claims courts. The Supreme Court thus hoped that this PERMA would offer the best services to the justice seekers.

### **Inclusion of Religious Courts**

Initially, soon after the promulgation, the small claim court mechanism was intended to settle civil cases within the scope of the authority of the general court. But soon it was realized that Religious Courts, whose authority was to examine and try civil cases in the field of shari'ah economics, could also be included in this mechanism. Upon scrutiny, it was realized that small claims court mechanism was within the realm and authority of Religious Courts, as was laid down in the PERMA No. 14 of 2016, concerning procedures for settling Sharia Economic Cases, issued on December 22, 2016 and promulgated on December 29, 2016. Complying with this provision, as well as with PERMA No. 2, concerning procedures for settling a simple lawsuit, and PERMA No. 14 of 2016, concerning procedures for settling sharia economic cases in the Padang Religious Court, small claims court settlement cases commenced, beginning with a case No. 0309/Pdt.G/2017/PA Padang, later discussed in this study.

Economically, the Indonesian Law No. 48 of 2009 concerning Judicial Power, mandates that judicial proceedings should be carried out in a simple, quick and at low cost (stated in Article 2 paragraph(4)). The provision of simple, fast and low-cost proceedings is the most fundamental judicial principle of the effective and efficient administration of judicial services (Sunaryo, 2005). A simple, fast, and low-cost trial is also termed as a necessity in the dynamic laws of Indonesia particularly in settling civil disputes, where the Supreme Court realized the need of it and issued regulation No. 2 of 2015, concerning procedures for settling a simple lawsuit.

'Simple' proceedings are those that are clear, easy to understand, and not convoluted or trapped in formalities that are not important in trial (Aden, 2015). The term of a 'simple lawsuit', which is also commonly called a small claims court suit is a civil case within certain restrictions and characteristics, e.g. the maximum object value of the case is Rp; 200.000.000 (two hundred million rupiah), with a simple verification process that is led by a single judge. In addition, a maximum period of case settlement is set at 25 days, and the decision is final and binding at the first level. Secondly, 'fast' proceedings can guarantee the realization of justice quickly without overriding judicial and sociological considerations, and ensure thoroughness and accuracy, all of which uphold a sense of justice in society. This principle is a strategic effort



established in the judiciary through the availability of mechanisms that support the performance of the judicial apparatus so that it is fast in the examination and decision processes. Finally, 'low-cost' proceedings are those cases of a cost that can be covered by the community. Though every person who files a case in court is charged a case fee, but there must be a guarantee that the case fee is not expensive and does not damage the value of justice itself (Sunaryo, 2005).

The rationale of establishing a mechanism for the settlement of small claims (small claims court) in Indonesia much depends upon two factors: One there is a very low number of civil claims and second is Indonesia's global rating in the field of civil justice. Those two factors have been responsible for making the civil society aspire for expansion of justice mechanism. There was also another factor that required inclusion of small cases in order to reduce the case backlog. This requirement was much voiced by the judiciary and business corporates that had become a partner in the Indonesian governance. .

Moreover, if the civil claims are settled in timely manner due to setting small courts claim, this would increase the level of public confidence in courts. In Indonesia, people usually bring their legal issues to small claim courts for intervention and expect a competent justice. Such claims were however distinct from such civil petitions that did not arise out of a dispute and require only civic compliance to legal mechanisms. These claims were also to be kept distinct from criminal cases of breach of law.

### **Cost and Time in Small Claims Courts**

Indonesia's ranking in the overall EoDB survey was 109th, and its ranking in the enforcement of contracts was much lower, at 170 of 189 countries. According to the World Bank, settlement of civil disputes took 460 days in Jakarta and 510 days in Surabaya from the filing of a claim to the enforcement of judgment. The cost ratio was also 118 percent in Jakarta and 107.3 percent in Surabaya, with the largest component of the cost being of a lawyer. This means that, in these two cities, the cost of processing a civil claim is actually higher than its value, where most of the costs goes to lawyers. The quality index of judicial processes in Jakarta was said to be 6.5 out of 18, while Surabaya was 5.5. The lowest score in the index could be found in the court automation element, since only online publication of decisions has been established in Indonesia, not electronic registration or electronic payment of court fees.

But after the promulgation of Supreme Court issued Regulation (Perma) No. 2/2015, several changes were brought in time and cost of civil justice. A small claim was defined as a case of breach of contract or a tort outside land disputes, with a claim under the value of Rp 200 million (US\$14,500), where standard of proof is simple, and according to the laws should not be resolved through special courts. Small claims were examined and decided by a single judge,



and only at the level of objection the claim will be heard by a panel of judges in the same district court, where the decision was final and cannot be brought to appeal or cassation.

The case settlement period was made short, which required only 58-60 days from the initial filing of the claim to the stage where final decision can be secured. This shortened period was facilitated by the provision where parties must be domiciled in the jurisdiction of the same district court so that summoning can be made simpler, but also by a summarized hearing process, accommodating informal verbal questions and answers.

Judges play an active role in a trial that must be attended directly by the parties, so that the need for legal counsel can be reduced. Not only is it speedier, but those innovations are also expected to provide more affordable civil proceedings. This mechanism was still new. Several district courts were only making preparations to implement it.

Of the few cases that have come in (21 in 2015), some were resolved with only four court sessions, less than 25 days and ending in mediation. In other cases, the plaintiff won the claim that was decided in less than 25 days by a single judge. Dissemination to the public needs to be carried out so that this new mechanism can become widely known and utilized as one of the protectors of economic activities.

Hopefully, the number of claims to district courts will continue to rise, which can signal improved convenience for Indonesians in starting up their businesses including resolving any disputes that may arise from their business activities. To illustrate, this study has chosen a case that is evident of small claim courts mechanism of decision making.

#### **Case Number 0309/Pdt.G/2017/PA Padang on February 23, 2017**

The first case in the Small Claims Court at Padang Religious Court appeared on February 18, 2017, in which the plaintiff, on behalf of Zakaria and through his attorney, filed a simple lawsuit in the sharia economic dispute case. The case was registered at the registrar of the Padang Religious Court with Register Number 0309/Pdt.G/2017/PA Padang on February 23, 2017 against PT Bank Mandiri Syari'ah, having his establishment in the city of Padang, hereafter referred to as the defendant. The reason for the plaintiff's filing a lawsuit was that the defendant was alleged to have committed an unlawful act that had harmed the plaintiff both mentally and materially.

The unlawful acts committed by the defendant against the plaintiff were recorded as follows:

1. That the defendant did not record all the money deposited to the defendant, which amounted to Rp. 34.000.000 (thirty-four million rupiah), received from the plaintiff since the account

was opened; instead they deposited only Rp. 100.000 (one hundred thousand rupiah) through one of their staff employee on September 29, 2015. The matter came to light when the plaintiff submitted an application for financing credit to the defendant (as a loan) of value Rp. 130.000.000 (one hundred and thirty million rupiah) to purchase a residential house of value Rp. 240.000.000 (two hundred and forty million rupiah), out of which the plaintiff had only Rp. 110.000.000 (one hundred ten million rupiah). After filing the loan application, the defendant stated verbally, through his employee, that the loan request for financing the plaintiff had been approved by the defendant, and, therefore, as a next step to purchase the house, the plaintiff deposited the down payment of Rp. 80.000.000 (eighty million rupiah) to the homeowner.

2. Subsequently the Plaintiff, went to the Defendant with all good intentions, and inquired about the implementation of the house finance, which had not been credited to his account. Moreover, the plaintiff's credit card was also not active and the defendant did not seem to provide clear certainty of the realisation of the credit card. Upon repeated inquiries by the plaintiff, an account book was issued to the plaintiff in plaintiff's name showing the balance of a nominal value in it, only Rp. 100.000 (one hundred thousand rupiah). The plaintiff was very surprised as the amount should be Rp. 34.000.000 (thirty-four million rupiah). When the plaintiff inquired about the deficit funds that the plaintiff had deposited, the defendant argued that the plaintiff might have only handed over the funds to the Defendant's employees and that they were not deposited through the teller. The Defendant argued that even if the funds were handed over to the defendant's employees, it was not the defendant's responsibility. So the plaintiff lost as much as Rp. 33.900.000 (thirty-three million nine hundred thousand rupiah).

Meanwhile, due to the delay in the disbursement of the loan from the defendant and the fact that there was no clarity about the funds handed over to the defendant, the plaintiff approached another bank, to seek a loan to purchase the house. This bank was PT. Bank BNI Syari'ah with Murabahah Financing Credit agreement number 152/MRB 809/80001/XII/15 with a total loan of Rp. 160.000.000 (one hundred sixty million rupiah). This was the amount falling short to make the final payment to the house owner after having paid the down payment of Rp. 80.000.000 (eighty million rupiah) to the owner of the house for the house of value Rp. 240.000.000 (two hundred and forty million rupiah).

The plaintiff felt disadvantaged both materially and morally on several grounds. First, the plaintiff was aggrieved for not keeping adequate records of deposits of the money handed over by the plaintiff to the defendant's employees and suffering a loss of as much as Rp. 34 million. In the plaintiff's account, there was now only Rp. 100.000 (one hundred thousand rupiah), so the plaintiff suffered a loss of Rp. 33.900.000 (thirty three million nine hundred thousand rupiah). Second, by not realizing the finance amount that the defendant had promised, the plaintiff had to borrow from BNI Syari'ah Bank. In addition, the plaintiff's loan amount that

he originally had planned to borrow also increased from Rp. 130.000.000 to Rp. 160.000.000. As a result, the plaintiff had to pay substantial interest to BNI Syari'ah. Besides suffering material loss, the plaintiff also suffered a moral loss, humiliation due to the lack of clarity about the credit realisation by the defendant and also uncertainty about the their own deposit.

Based on the losses suffered by the plaintiff as a result of the violation of law committed by the defendant (as mentioned above), the plaintiff requested that the noble judge should examine and adjudicate the case as follows:

1. Accept and grant the plaintiff's claim in full.
2. State that the deposit/transfer/clearing/collection application with Number B8735177 is a valid receipt of money.
3. State that the defendant's plan not to return the plaintiff's money is a proof that the deposit/transfer/clearing/collection application with Number B8735177 is against the law.
4. Order the defendant to return the claimant's money, in the amount of RP. 33.900.000 (thirty three million nine hundred thousand rupiah) to the plaintiff.
5. Order the defendant to pay a moral loss of Rp. 68.000.000 (sixty eight million rupiah).
6. Sentence the defendant to pay forced money (dwangson) in the amount of Rp. 500.000 (five hundred thousand rupiah) per day for negligence in carrying out the decision after having permanent powers.
7. Declare this decision can be carried out first, despite rebuttal (verzet) or appeal (uit Voerbar Bij Voorraad).
8. Punish the defendant to pay the entire cost of this case, according to law.

After the plaintiff's lawsuit was registered in the registrar's office of the Religious Court, the head of the Padang Religious Court appointed a single judge, Dra. Nurlen Afriza, MA, to examine, try, and resolve the syari'ah economic dispute case. Because this case is a syari'ah economic dispute case in the form of a simple lawsuit, then according to PERMA No. 2 of 2015 concerning procedures for settling a simple lawsuit, this case does not go through a mediation process.

On the day of the trial, which was set on March 6, 2017, the plaintiff and the defendant came to face each other (their respective attorneys) at the hearing. The panel of judges tried to make the plaintiff and defendant make peace on this issue by advising them to resolve this case through deliberation and consensus, but these efforts were unsuccessful . Eventually, the plaintiff's lawsuit was read on 18 February, 2017, which in principle, was retained by the plaintiff without any changes.



Upon the claim of the plaintiff, the defendant gave a written response and persecuted the witness evidence, which in essence denied the entire plaintiff's lawsuit. Based on the evidence of the latter and the witness statement from the defendant, the defendant asked in the preliminary examination to declare that the plaintiff's claim shall not be included in the simple suit, as regulated in article 11, paragraph (4), PERMA No. 2 of 2016, and that they can subsequently issue a determination to strike from the register the case at the Padang Religious Court.

Then, the defendant answered the plaintiff's arguments as follows:

1. That the defendant rejects all the arguments of the plaintiff's lawsuit, except those which have been explicitly acknowledged. That it is not true that the defendant committed an act against the law; instead, the plaintiff did not comply with the provisions in depositing money to the defendant, who was supposed to go through the teller and obtain validation of the deposit from the teller.
2. That the depositor made the claim directly to the employee (not the teller but the sales assistant) and the claim was not conducted in front of the teller. This clearly violates the provisions of the Funds Association Guidelines issued by the Policy Procedure Division (PPD) of PT. Bank Mandiri Syariah, which requires customers to make a deposit in front of the teller and have it validated and recorded in the system, according to applicable regulations.
3. That as a form and responsibility to the plaintiff, the defendant had reported the alleged embezzlement of funds by their employee in the Nanggalo Sector Police, which was recorded in the police report Number LP/143/K/III/2016/Sector, dated April 11, 2016. The employee who allegedly embezzled the plaintiff's money was currently absconding and was being pursued by the police for further arrests and detention.
4. That between the plaintiff and the defendant, the Murabaha financing contract never happened; the relationship between the plaintiff and the defendant was limited to the plaintiff having a savings book account with Number 7092116136 at the Siteba KCP on October 6, 2015.

Based on the answers and the arguments presented by the defendant and the testimony of the witnesses, which essentially strengthened the defendant's answer, the defendant asked the noble court to try the *a quo* case according to a ruling that read as follows:

1. Refuse the plaintiff's claim to all.
2. Penalize the plaintiff to pay all costs incurred in *a quo* case and/or other noble opinion, request the fairest decision (*ex aequo at bono*).



Based on the statements of the plaintiff and the defendant, the evidence presented by both parties in the trial, the facts of the trial, and the legal considerations of the applicable laws and regulations of sharia law relating to this case, on Monday the 20th March, 2017, Masehi, coinciding with the 21 Jumadil Akhir, 1438 Hijrah, Judge Dra. Nurlen Afriza, MA, decided to reject the plaintiff's claim and, based on article 192 Rbg, charged the plaintiff to pay a court fee of Rp. 241.000 (two hundred forty-one thousand rupiah). This decision was announced in a public hearing on Thursday 30th March, 2017, Masehi, coinciding with 2 Rajab, 1438 Hijriyah, the single judge, and assisted by Asdiyanto, SH, as a substitute register. The hearing was also attended by plaintiffs and defendants.

### **Conclusion**

Because this case was a simple lawsuit case, it was examined by a single judge, in accordance with the intent of PERMA No. 14 of 2016, concerning procedures for settling Sharia Economic Cases, and PERMA No. 2 of 2015, concerning procedures for settling a simple lawsuit. In this case, it was proven that the plaintiff, on behalf of Zakaria, had been deceived by a former sales assistant, an employee of the defendant, against whom a complaint was registered by the defendant at the Nanggalo sector Police on suspicion of embezzlement of customers' money. The said employee, after having been charged, was absconding since then. According to the statement of Judge Dra Nurlen, MA, the plaintiff had been deceived by an employee who was coerced into obtaining a financing credit from PT. Bank Mandiri Syari'ah and was asked to open a savings account and deposit the remaining down payment of the purchase of a house, in the amount of Rp. 34.000.000 (thirty-four million rupiah), even though in his savings book the balance showed only Rp.100.000 (one hundred thousand rupiah). Before the savings book came out, the employee came to Zakaria's house on October 6, 2016 at 19,00 WIB to sign a written deposit slip of Rp. 100.000 (one hundred thousand rupiah) .

The trial process was in accordance with Standard Operating Procedures (SOP), since the value of the lawsuit was under Rp. 200.000.000 (two hundred million rupiah) and the time for the settlement of the case did not exceed 25 days from the first hearing. This judge's decision has permanent power (*inkrah van giwijsde*) because the plaintiff, in this case the losing party, cannot state any objection to this decision until the completion of the time limit stipulated by the law.



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