

## Small Claims Court Based on An Agreement to Support Ease of Doing Business In Indonesia

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### Abstract

The limit of material claim in the small claims court regulated in PERMA Number 4 of 2019 can be seen as a limitation towards the choice of forums for resolving disputes. Therefore, this research initiates a legal breakthrough that allows the limit of material claim to be deviated by agreement or contract. After analyzing the relevant legal sources, it can be concluded that the formation of a small claims court based on an agreement is in accordance with the principles of quick, simple, and affordable trial. In line with the utilitarian approach and economic analysis of law, it is expected that the expansion of the range of small claims court procedures will bring benefits to the community, especially increasing the ease of doing business in Indonesia. This idea does not violate the basic principles of a small claims court because it only changes the terms of a dispute that can be resolved by a small claims procedures, while the mechanism for examining the case still refers to the existing regulations. The formulation of the norm can be read: "The maximum value of the lawsuit is IDR 500,000,000.00 (five hundred million rupiah), unless otherwise agreed with a written agreement that expressly states that the dispute resolution chosen is a small claims court forum of which the material claims exceed the maximum limit regulated in PERMA Number 4 of 2019."

### A. Introduction

The *Ease of Doing Business* (EODB) has become one of the main strategy of the Indonesian Government to develop the country. Therefore, the Indonesian Government seeks to increase the EODB Index. The EODB Index was issued by the *World Bank*. Based on data from *World Bank*, Indonesia ranked 73 out of 100 in the EODB Index.<sup>1</sup> The Deputy for Investment Climate Development at the Investment Coordinating Board believes that this position needs to be improved, especi-

ally when compared to other countries in Southeast Asia.<sup>2</sup> Improving the EODB index is considered important because the index can be a reference for investors in making investment decisions in certain countries, including Indonesia.<sup>3</sup>

The ease of doing business rank is determined based on the following

1 World Bank, "Ease of Doing Business Index (1=most business-friendly regulations)," [https://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=ID&name\\_desc=true](https://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=ID&name_desc=true), (diakses 22 Maret 2021).

2 Nidia Zuraya, "Kejar Peringkat 50 EoDB, Ini yang Perlu Dilakukan Indonesia," <https://republika.co.id/berita/q2xpwp383/kejar-peringkat-50-eodb-ini-yang-perlu-dilakukan-indonesia>, (diakses 22 Maret 2021).

3 Nidia Zuraya, "Ekonom: Indonesia Perlu Lebih Gencar Tarik Investasi Asing," <https://www.republika.co.id/berita/qq24v3383/ekonom-indonesia-perlu-lebih-gencar-tarik-investasi-asing>, (diakses 28 Maret 2021).

indicators:<sup>4</sup>

1. Permits needed to start a business;
2. Constructing building permits for business purpose (dealing with construction permit);
3. Land registration for protection and legal certainty for shareholders;
4. Amount of taxes and payments in accordance with applicable tax regulations (paying taxes);
5. The legal rights of the borrower and lessor with respect to the guaranteed transaction including the depth of credit information (getting credit);
6. The time and cost required to resolve trade disputes and the quality of the legal process (enforcing contract);
7. Time, costs, and procedures for obtaining good electricity supply, electricity network connections, along with electricity consumption costs (getting electricity);
8. Ease of exporting goods from companies that have a comparative advantage and importing spare parts (trading across border);
9. Ease of recovery in cases of commercial bankruptcy and the strength of the bankruptcy legal framework (resolving insolvency);
10. Protection for minority shareholders (protecting minority).

This research will highlight one of EODB indicators: the contract law enforcement. One effort to facilitate contract law enforcement is to form a small claims court. Small claims courts in Indonesia were pioneered by Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Small Claims Courts (hereinafter referred to as PERMA Number 2 of 2015) and are currently amended by Supreme Court Regulation Number 4 of 2019 concerning Amendments to Supreme Court Regulations Number 2 of 2015 concerning Procedures for Settlement of Small Claims Courts (hereinafter referred to as PERMA Number 4 of 2019).

4 Badan Koordinasi Penanaman Modal, "Kemudahan Berbisnis", <https://www.investindonesia.go.id/id/mengapa-berinvestasi/kemudahan-berbisnis>, (diakses 28 March 2021).

The small claims court procedure has proven to be widely used by the community. One of the example is Sarolangun District Court Decision Number 12/Pdt.G.S/2020/PN Srl. In this case M. Kholis (Plaintiff) sued Syamsir Musa and Siti Rahmah (Defendants) regarding default to fulfill the obligations to deliver Liquefied Petroleum Gas (LPG). The judge granted partial of the lawsuit with consideration that it is proven that the Defendants failed to deliver whole amount of LPG ordered by the Plaintiff, but the Defendants proven to do their best to deliver part of the order, and therefore the Plaintiff could still run their business.

Not all lawsuits can be resolved through a small claims court mechanism.<sup>5</sup> The special requirement that stands out is the maximum amount of parties in the case and limit on the value of the material claims. Based on Article 4 (1) PERMA Number 4 of 2019, parties in small claims court procedure are limited to one Plaintiff and one Defendant, unless few plaintiffs or defendants have the same interest. Whereas the maximum value of the material claims is included in the definition of a small claims court settlement in Article 1 point 1 PERMA Number 4 of 2019, which states "Small claims court settlement is a procedure for examining a civil lawsuit in court with a material claim value of a maximum of IDR 500,000,000.00 (five hundred million rupiah) which is solved with a simple procedure and proof." Failure to fulfil with these criterion will result in removal of the case from the case register, as occurred in Pati District Court Decision Number 6/Pdt.G.S/2018/PN.Pti. In this case, PD BPR Bank Daerah Pati (Plaintiff) sued Yuli Endriyani, Martono and Nur Hikmatun (Defendants), but the judge declared that the lawsuit cannot be examined using small claims court procedure because the defendatns have difference interest, namely Yuli Endriyani as the debtor, whereas Martono and Nur Hikmatun as the Cooperative's manager.

5 Faizal Kurniawan et.al. "The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia" *Lex Scientia Law Review* 6, no. 1 (June 2022): 124.

Although the judiciary in Indonesia is familiar with a small claims court procedure, the EODB indicator related to contract law enforcement is considered poor, in the Doing Business 2019 report by *World Bank*, Indonesia's rank regarding contract law enforcement has decreased by one rank, from 145<sup>th</sup> to 146<sup>th</sup>.<sup>6</sup> Based on research conducted by *World Bank*, inhibiting factors in resolving business disputes in Indonesia, namely:

1. Inefficient dispute resolution at the first degree court;
2. The length of the settlement period;
3. High court fees;
4. High attorney/lawyer fees.<sup>7</sup>

So it can be concluded that the initial purpose of the presence of a small claims court, namely to provide effectiveness and efficiency of judicial implementation, has not been achieved and therefore needs to be improved.

One of the arrangements in the small claims court provisions that needs to be reviewed is the requirement for the maximum value of the material claims to take the small claims court procedure. This condition limits the parties' choice of forum for resolving disputes. Choice of forum clause in an agreement provides an opportunity for the parties to become rational maximizers, namely humans who act rationally based on their knowledge and understanding of transactions to minimize losses.<sup>8</sup> In other words, choice of forum provide options for the parties to agree on a dispute resolution forum which they think is more effective and efficient in accordance with the applicable laws and regulations.<sup>9</sup>

The above-mentioned statement can

6 Prima Wirayani, "Ease of Doing Business RI Turun, Ini Penjelasan Bank Dunia," <https://www.cnbcindonesia.com/news/20181031201049-4-40020/ease-of-doing-business-ri-turun-ini-penjelasan-bank-dunia>, (diakses 26 April 2021).

7 Septi Wulan Sari, "Penyelesaian Sengketa Melalui Small Claim Court," *Ahkam* 4, no. 2 (November 2016): 340.

8 D. Sidik Suraputra, "Kedudukan Hukum Ekonomi dalam Struktur Ilmu Hukum," *Jurnal Hukum dan Pembangunan* 35, no. 1 (Januari 2005): 81.

9 Faizal Kurniawan et.al. "Analysis On The Termination Of Foreign Public-Private Partnership By The Government" *IJUM Law Journal* 30, Special Issue no. 1 (April 2022): 185.

be illustrated by comparing the regulations regarding peer to peer lending and small claims court. Peer to peer lending is regulated in the Financial Services Authority Regulation Number 10/POJK.05/2012 regarding Joint Funding Services based on Information Technology. Article 26(3) of the regulation stipulates that the maximum amount of funding given to each borrower is IDR 2,000,000,000.00 (two billion rupiah). If we compare the maximum value of funding in peer to peer lending and the maximum value of material claim in small claims court procedure, there is a huge gap between IDR 2,000,000,000.00 (two billion rupiah) and IDR 500,000,000.00 (five hundred million rupiah). In other words, when default occurs, borrowers who earned funding below IDR 500,000,000.00 (five hundred million rupiah) can be sued through small claims court, meanwhile borrowers who earned funding exceed IDR 500,000,000.00 (five hundred million rupiah) cannot be sued through small claims court, even though both cases might have the same evidence, namely failure to fulfill the repayment schedule as agreed in the loan agreement.

Therefore, to provide an opportunity for an effective and efficient settlement of the case, the parties should not be limited by the terms of the maximum value of the material claims, instead, should be allowed to make an agreement that deviates from this provision.<sup>10</sup> When viewed historically, the maximum value of the material claims has changed over time. PERMA Number 4 of 2019 has changed the maximum value of the material claims from IDR 200,000,000.00 (two hundred million rupiah) to IDR 500,000,000.00 (five hundred million rupiah). The shift shows that there is no absolute number that can be used as the maximum value of the material claims.

Based on this explanation, this study seeks to initiate a small claims court based on an agreement to maximize the principles of fast, simple, affordable trial and create efficiency in settlement of civil cases. So that the

10 Bagus Oktavian Abrianto et.al. "Citizen Lawsuit as a Legal Effort on Government Eco-Unfriendly Action" *Review of International Geographical Education Online* 11, no. 4 (July 2021): 214.

formulation of the legal issues in this study are:

1. What is the nature of the formation of a small claims court based on an agreement?
2. What is the mechanism for a small claims court based on an agreement?

To ensure the originality of this article, several similar articles and the novelty of this article will be described:

1. An article entitled "Small Claims Court Settlement as a Simple, Fast, and Affordable Implementation of Judicial Principles to realize Access to Justice" was written by Shifa Adinatira Harviyani in *Verstek Journal*. The subject of the journal is the manifestation of the principle of simple, fast, and affordable trial in a small claims court. The novelty of this article is to initiate the formation of a small claims court based on an agreement.
2. An article entitled "Small Claims Courts in the Indonesian Judicial System" was written by Nevey Varida Ariani in *De Jure Legal Research Journal*. The main discussion of the journal is the need for improvements to PERMA Number 2 of 2015, including the maximum value of the material claims. The novelty of this article is to initiate improvements to PERMA Number 4 of 2019.

## B. The Nature of Forming a Small Claims Court Based on an Agreement

Based on the preamble of PERMA Number 2 of 2015, a small claims court was made to manifest the principle of a fast, simple, and affordable trial. The embodiment of the principle of speedy justice in a small claims court mechanism is the examination period which is relatively faster than the examination period in ordinary lawsuits.<sup>11</sup>

The meaning of affordable trial can be found in the Elucidation of Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as

Law Number 48 of 2009), namely "court fees that can be reached by the public." The implication of this requirement is that the case is examined by a single judge. Because it is examined by a single judge, the judge has full control over the trial, which will have an impact on reducing the density of case settlement.<sup>12</sup> With a shorter examination process, the cost of the case will also be lighter.

Furthermore, the meaning of simple trial that underlies the small claims court mechanism can be seen in the Elucidation of Article 2 paragraph (4) of Law Number 48 of 2009, namely: "what is meant by simple is that the examination and settlement of cases are carried out in an efficient and effective manner." Based on the Large Indonesian Dictionary (KBBI), the word effective means "can bring results/success; there is an effect."<sup>13</sup> Meanwhile, the word efficient is interpreted as "appropriate to (produce) something (by not wasting time, energy, cost)."<sup>14</sup> Moreover, the principle of this simple trial cannot be separated from the principle of fast and affordable trial because fast and affordable justice uphold judicial efficiency.

Efforts to optimize the realization of the principles of fast, simple, and affordable trial continue to be carried out by improving several norms in PERMA Number 2 of 2015 through PERMA Number 4 of 2019. One of the improvements that best reflects efforts to optimize small claims courts is regarding changes to the maximum value of the material claims in a small claims court, namely from IDR 200,000,000.00 (two hundred million rupiah) to IDR 500,000,000.00 (five hundred million rupiah). Although the regulation provides some leniency, it still limits the choice of forum to resolve disputes. Therefore, this study intends to initiate a provision related to small claims court, namely: **the formation of a small claims court based on**

11 Winly A. Wangol, "Asas Peradilan Sederhana Cepat dan Biaya Ringan dalam Penyelesaian Perkara Pidana Menurut KUHP," *Lex Privatum* 4, no. 7 (Agustus 2016) :43.

12 Benny Riyanto dan Hapsari Tunjung Sekartaji, "Pemberdayaan Gugatan Sederhana Perkara Perdata Guna Mewujudkan Penyelenggaraan Peradilan Berdasarkan Asas Sederhana, Cepat, dan Biaya Ringan," *Masalah-Masalah Hukum* 48, no. 1 (Januari 2019): 104.

13 Ehta Setiawan, "Kamus Besar Bahasa Indonesia," <https://kbbi.web.id/efektif>, (diakses 01 Mei 2021).

14 *Ibid.*



**an agreement.** The agreement in question is to settle the dispute using a small claims court procedure even though the value of the material claims is more than IDR 500,000,000.00 (five hundred million Rupiah). The nature of a small claims court based on an agreement can be viewed from the side of ontology, epistemology, and axiology.

### 1. Ontology

Ontology comes from the Greek “ontos” which means “that which exists” and “logos” which means “knowledge”. Thus, ontology is a philosophical study that talks about what is exist.<sup>15</sup> This study seeks to answer the question: what?.<sup>16</sup>

The idea of forming a small claims court originated from the community’s need for a fast and affordable judicial system, especially for cases with small lawsuits. The civil procedure law left by the Dutch, namely HIR, does not distinguish the value of a material claims in a dispute so that whether the value of the material claims is small or large, the legal subject who suffered loss must make the same effort to obtain compensation.<sup>17</sup> This is, indeed, a disproportionate, for example, between a breach of contract lawsuit with a material claims amounting to IDR 20,000,000.00 (twenty million rupiah) and IDR 700,000,000.00 (seven hundred million rupiah). The aggrieved party must take the same procedural law, while as is well known, the examination of ordinary lawsuits takes quite a long time, at the first degree itself, the case examination process can takes time up to 5 months,<sup>18</sup> not to mention the expenses that could be equal to or even more than the

value of the material claims.

To fulfill the community’s needs, the Supreme Court decided to accommodate a small claims court through its legal product, namely the Supreme Court Regulation (PERMA). Formulation of PERMA begins by forming a working group as outlined in the Decree of the Chief Justice of the Supreme Court Number 267/KMA/ SK/X/2013 dated October 7<sup>th</sup>, 2013, concerning the Working Group for the Preparation of the PERMA Draft concerning Procedures for Settlement of Small Claims Courts. After conducting various studies and comparative studies, PERMA Number 2 of 2015 was finally formed.<sup>19</sup>

Regarding the maximum value of the material claims, initially, it was proposed to be between IDR 50,000,000.00 (fifty million rupiah) to IDR 100,000,000.00 (one hundred million rupiah). This figure was determined based on 2x the income per capita of the Indonesian citizen at that time. However, it was finally decided that the maximum limit for the material claims value was IDR 200,000,000.00 (two hundred million rupiah) because it was considered more able to accommodate cases in big cities. Then after four years, the maximum limit for the material claims, which is IDR 200,000,000.00 (two hundred million rupiah), is considered too low because there is almost no claims value below IDR 200,000,000.00 (two hundred million rupiah) in big cities. Therefore, in PERMA Number 4 of 2019, the maximum value of the material claims was changed to IDR 500,000,000.00 (five hundred million rupiah).<sup>20</sup>

From the description above, it can be understood that the existence of a small claims court procedure aims to accommodate a fast, simple, and affordable trial. This statement is supported by the fact that the maximum value of the material claims was changed in order to reach more cases in the community. Even though the use of a small claims court procedure is not mandatory but

15 Mahrus Ali, “Fondasi Ilmu Hukum Berketuhanan: Analisis Filosofis terhadap Ontologi, Epistemologi, dan Aksiologi”, *Pandecta* 11, no. 2 (Desember 2016): 129.

16 Dewi Rokhmah, “Ilmu dalam Tinjauan Filsafat: Ontologi, Epistemologi dan Aksiologi”, *Cendekia: Jurnal Studi Keislaman* 7, no. 2 (Desember 2021): 176.

17 Shifa AdinatiraHarviyani, “Penyelesaian Gugatan Sederhana sebagai Pelaksanaan Asas Peradilan Sederhana, Cepat, dan Biaya Ringan untuk Mewujudkan Access to Justice”, *Jurnal Verstek* 9, no. 3 (September 2021): 655.

18 Anita Alfriana dan An AnChandrawulan, “Menakar Penyelesaian Gugatan Sederhana di Indonesia”, *Jurnal Bina Mulia Hukum* 4, no. 1 (September 2019): 55.

19 Syarifuddi, *Small Claim Court dalam Sistem Peradilan Perdata di Indonesia: Konsep Norma dan Penerapannya Berdasarkan Perma 2/2015 dan Perma 4/2019* (Jakarta: Imaji Cipta Karya,2020), 10-12.

20 *Ibid*, 76

is a *choice of forum* for the parties, however, the use of a small claims court procedure should be preferred.<sup>21</sup> Therefore, the *choice of forum* to resolve disputes through a small claim court should be open to all parties, especially those who want to resolve the dispute quickly. This can be realized with the ability to use a small claims court procedure even though the material claims value exceeds IDR 500,000,000.00 (five hundred million rupiah), as long as the parties agree on it.

So it can be concluded that from the ontological side, the formation of a small claims court based on an agreement is a *choice of forum* for parties who want to resolve their dispute quickly, regardless of the value of the material claims to be filed.

## 2. Epistemology

Epistemology comes from the word "episteme" which means "knowledge" and "logos" which means "study" or "thought". So that epistemology is the study of how to gain knowledge or trying to answer question: how?<sup>22</sup>

As has been explained, the procedural law left by the Netherlands has drawbacks, especially in terms of costs and the length of time to examine the case.<sup>23</sup> Of course, this hinders the distribution of justice for the community. Therefore, a small claims court procedure was established to provide **access** and **options**; on one hand, the low cost allows **access** to justice available to all people, without exception;<sup>24</sup> on the other hand, it provides **options** (choice of forum) for legal subjects who want to resolve their cases quickly.<sup>25</sup> If it is associated with the formation of a small claims court based on an agreement, then the access and options offered by

a small claims court system will have a wider coverage area. Therefore, it is hoped that the small claims court procedure will be accompanied by expanding the range of justice for the community.

Forming a small claims court through an agreement does not violate the main principles of small claims court procedures. Although the parties may deviate the maximum value of the material claims as regulated in PERMA Number 4 of 2019, the provision can be considered as an entry point for a lawsuit, meanwhile the mechanism for examining the case still refers to the existing regulations. Suppose the parties have agreed to use a small claims court procedure with a claim value of IDR 1,000,000,000.00 (one billion rupiah), then before an examination of the case is carried out, the judge is obliged to conduct a preliminary examination (see Article 11 PERMA Number 4 of 2019). One of the important things to examine is whether the proof is simple or complicated, if the proof is simple, then the case examination can be continued using a small claims court procedure, but if it turns out that the proof is complicated, the judge will issue a ruling stating that the lawsuit does not meet the criterion for small claims court. So here, the choice of forum for the parties to settle cases through a small claims court is still limited by the principles of a small claim court as stated in PERMA Number 2 of 2015 and PERMA Number 4 of 2019.

To test whether the formation of a small claim court based on an agreement can be justified by law, the coherence theory can be used, i.e. something is considered true if it is in accordance (coherent) with the existing knowledge.<sup>26</sup> There is also an opinion which states that according to the coherence theory, something is considered true if it has a logical sequence.<sup>27</sup> If it is associated with the ratio legis of the formation of a small claims court based on an agreement, then this opens an opportunity for legal subjects who want, or even need, to resolve their dispute quickly,<sup>26</sup> Dewi Sukma Kristianti, "Kajian Model Penalaran Hukum yang Dilakukan Hakim Atas Denda Ta'zir pada Akad Pembiayaan Murabahah", *Pandecta* 16, no. 2 (Desember 2021): 306.

21 Ema Rahmawati, "Implementasi Gugatan Sederhana dalam Litigasi di Pasar Modal sebagai Upaya Pelindungan Konsumen (Investor) Pasar Modal Indonesia, *Adhaper* 4, no. 1 (Januari 2018): 129.

22 Syarifuddi, *Op. Cit.*, 12.

23 Alexander Domanskis, "Small Claims Courts: An Overview and Recommendation", *Journal of Law Reform* 9, (Spring 1976): 591.

24 Eric H. Steele, "The Historical Context of Small Claims Court", *American Bar Foundation Research Journal* 6, no. 2 (1981): 299.

25 Syarifuddi, *Op. Cit.*, 45.

26 Dewi Sukma Kristianti, "Kajian Model Penalaran Hukum yang Dilakukan Hakim Atas Denda Ta'zir pada Akad Pembiayaan Murabahah", *Pandecta* 16, no. 2 (Desember 2021): 306.

27 Syarifuddi, *Op. Cit.*, 15.

regardless of the value of the material claim. Then considering the short time for examining cases in small claims courts, which is a maximum of 25 days (excluding legal remedies), the costs incurred will also be minimized. Up to this point, we can conclude that the idea of forming a small claims court based on an agreement is in accordance with the principles of a fast, simple and affordable trial.

So from an epistemological perspective, the formation of a small claims court based on an agreement is a mechanism to resolve disputes in a quick, simple and affordable manner.

### 3. Axiology

Axiology comes from the word "axion" which means "value" and "logos" which means "knowledge". So that axiology is examining the value of a knowledge; does it have a reason; is it good/bad. Axiology seeks to answer the question: why.<sup>28</sup>

The value of the small claims court based on an agreement can be studied with the view of utilitarianism and *economic analysis of law*. Utilitarianism comes from the Latin "utilis" which means "useful". Based on this approach, something is considered good if it is useful or beneficial to many people.<sup>29</sup> If it is associated with the formation of a small claim court based on an agreement, it will open wider access for justice seekers to resolve their disputes quickly, no longer limited to disputes with certain material claims values.

Furthermore, the economic analysis of law approach, which actually comes from a utilitarian view, analyzes legal problems by applying economic principles.<sup>30</sup> This approach seeks to answer two basic questions, namely: 1) the impact of the rule of law on the behavior of legal subjects and 2) whether this impact is socially desirable.<sup>31</sup>

As described above, one of the indicators of ease of doing business is the time and cost required to resolve trade disputes and the quality of the legal process (enforcing contract), in which Indonesia ranks 145<sup>th</sup>. This proves that law and economics have a close relationship, in this case the quality of trade-related dispute resolution is one of the things considered by business actors to run their business in Indonesia.<sup>32</sup> So by implementing the formation of a small claims court based on an agreement, it is expected to accelerate the settlement of trade disputes, especially regarding contract enforcement, and is expected to create a business friendly economic environment.

So from an axiological perspective, forming a small claim court based on an agreement will positively impact the economy, especially in accelerating the settlement of trade disputes and improving the quality of the legal process.

From the description above, it can be concluded that the essence of forming a small claims court based on an agreement is a choice of forum for legal subjects. The *choice of forum* is still limited by the principles of a small claim court as regulated in PERMA Number 4 of 2019, especially regarding simple evidence. With more access to resolve disputes through a small claims court procedure, it is hoped that in the short term, trade disputes can be resolved quickly, while in the long term, it is expected to increase the ease of doing business in Indonesia.

### C. Small Claims Court Mechanism based on an Agreement

The mechanism of a small claims court is different from a ordinary lawsuit. The difference lies in the stages of completion, duration of the examination, type of dispute, number of parties, domicile of the parties, presence of the parties, number of judges who decide cases, the role of judges, legal remedies, and the maximum value of the material claims. Here is a table of the differences between the two:

28 *Ibid*, 16.

29 Isti Sulistyorini dan Siti Zulaekhhah, *Op.Cit.*, 73.

30 Gary Minda, "The Lawyer-Economist at Chicago: Richard A. Posner and the Economic Analysis of Law", *Ohio State Law Journal* 30 (January 1978):440.

31 Louis Kaplow and Steven Shavell, "Economic Analysis of Law" (NBER Working Paper Series, National Bureau of Economic Research, 1999),1

32 Ade Irawan Taufik, "Evaluasi Regulasi dalam Menciptakan Kemudahan Berusaha bagi UMKM" *Rechtsvinding*6, no. 3 (Desember 2017) : 375.

**Table 1.** The Difference Between a Small claim court and a Ordinary Lawsuit

Indicator	Small Claims Court	Ordinary Lawsuit
Duration of Examination	25 days from the day of the first trial (Article 5 paragraph (3) PERMA Number 4 of 2019)	5 months (Supreme Court Circular Number 2 of 2014 concerning Settlement of Cases at the First Level and Appeal Level in 4 (Four) Courts)
Type of Dispute	Civil cases of default or unlawful acts whose absolute authority is within the scope of the general court, except: The settlement of the dispute is carried out through a special court following the laws and regulations; Land rights disputes. (Article 2 of PERMA Number 4 of 2019 in conjunction with Article 3 paragraph (2) of PERMA Number 4 of 2019)	Civil cases
Number of Judges	Sole Judge (Article 1 point 3 PERMA Number 4 of 2019)	At least three judges (Article 11 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power)
Maximum Material Claim Value	IDR 500,000,000.00 (Article 3 paragraph (1) PERMA Number 4 of 2019)	There is no minimum and maximum limit for the material claim value
Number of Parties	Only one plaintiff and one defendant, unless they have the same legal interest (Article 4 paragraph (1) PERMA Number 4 of 2019)	There is at least one plaintiff and one defendant
Domicile of the Parties	The domicile of the parties must be in the same legal area (Article 4 paragraph (3) and paragraph (3a) PERMA Number 4 of 2019)	Does not have to be in the same legal area (Article 118 HIR)
Attendance of the Parties	Cannot be represented by an attorney, meaning that you must attend alone or be accompanied by a proxy (Article 4 paragraph (4) PERMA Number 4 of 2019)	Can be represented by a legal representative based on a special power of attorney (Article 123 paragraph (1) HIR)
Stages	There is a preliminary examination (Article 5 paragraph (2) letter e PERMA Number 4 of 2019)	Without preliminary examination
The role of the Judge	Active (Article 14 PERMA Number 4 of 2019)	Passive <sup>1</sup>
Legal Remedies	Only an objection can be filed, no appeal, cassation or judicial review is available (Article 21 paragraph (1) in conjunction with Article 30 of PERMA Number 4 of 2019)	An appeal, cassation, or judicial review can be filed (Article 23, 24, 26 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power)

1 Tata Wijayanta, dkk., "Penetapan Prinsip Hakim Pasif dan Aktif serta Relevansinya terhadap Konsep Kebenaran Formal," *Mimbar Hukum* 22, no. 3 (Oktober 2010): 576.



The table above shows that the small claims court procedure has a faster, simpler, and more affordable mechanism. Still in the context of realizing these principles, this study upholds a small claim court mechanism based on an agreement, meaning that the maximum value of the material claims is not an absolute requirement but can be deviated if the parties agree to do so. However, the existing provisions in PERMA Number 4 of 2019 is not omitted. Thus, this breakthrough certainly expands the dispute resolution forum to manifest the principle of fast, simple, and affordable trial without sacrificing accuracy and thoroughness in seeking truth and justice.<sup>33</sup>

Elimination of the maximum value of the material claims will not sacrifice accuracy and thoroughness in seeking truth and justice. The benchmark for conducting examinations and considering decisions accurately and carefully is based on the law (due to law).<sup>34</sup> Thus, in examining, considering, and deciding, judges must still do so within the legal corridor.

The formation of small claims court based on an agreement do not violate legal principles and are still in accordance with the spirit of a small claims court that puts forward the principles of fast, simple, and affordable trial. So, there needs to be a legal breakthrough in the regulation regarding the small claims court. This legal breakthrough is accepted in progressive legal theory, which views the law as not a final scheme but continues to change, move, and change with the times.<sup>35</sup> Thus, the formation of small claims courts based on an agreement can be carried out in the eyes of the law as long as it is stated in the amendment to PERMA Number 4 of 2019.

33 Nia Sari Sihotang, "Penerapan Asas Sederhana, Cepat, dan Biaya Ringan di Pengadilan Negeri Pekanbaru Berdasarkan Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman" *JOM Fakultas Hukum* 3, no.2 (Oktober 2016): 2.

34 Sayed Akhyar, "Efektivitas Pelaksanaan Asas Peradilan Sederhana, Cepat, dan Biaya Ringan Berkaitan dengan Yurisdiksi Pengadilan Sigli," *Syah Kuala Law Journal* 3, no. 3 (2019): 382.

35 Muh. Ridha Hakim, "Implementasi Rechtvinding yang Berkarakteristik Hukum Progresif," *Jurnal Hukum dan Peradilan* 5, no. 2 (Juli 2016): 229.

The agreement made by the parties to settle through a small claims court regardless of the material claims value must be stated explicitly in written form. Such written agreement has been applied to the selection of dispute resolution in arbitration. Section 5 paragraph (2) b of the 1979 Arbitration Act in England defines a written agreement as an agreement that is indeed made in writing or can be proven in writing.<sup>36</sup> This meaning is in line with Article 4 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which states, "In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, then the sending of telex, telegram, facsimile, e-mail or other means other communications, shall be accompanied by a note of receipt by the parties." In other words, writing does not only mean on paper but can also be in the form of an electronic document as long as it is accompanied by a note of acceptance by the parties.

However, this does not mean that a small claims court can later be equated with arbitration because there are still differences between the two. The main difference between a small claim court and arbitration is the freedom to appoint an arbitrator in arbitration.<sup>37</sup> Apart from these differences, the will of the parties to resolve the dispute through a small claims court can be made in writing to facilitate the proof of the will of the parties. Then, like the arbitration clause in the agreement, the formation of small claims court based on an agreement is in accordance with several principles, namely:<sup>38</sup>

1. Free consent, which means reasonable freedom of contract. In other words, the parties have the freedom to choose a dispute resolution forum, which in this case is a small claims court regardless the material claims value of the lawsuit;

36 Frans Hendra Winarta, "Prinsip Proses dan Praktik Arbitrase di Indonesia yang Perlu diselaraskan dengan Kaidah Internasional," *Selidik2*, no.1 (Juni 2015): 21.

37 *Ibid*, 13.

38 Supeno, Muhtar Dahri, dan Hafid Zakariya, "Kedudukan Asas Hukum dalam Penyelesaian Sengketa melalui Arbitrase berdasarkan Undang-Undang Nomor 30 Tahun 1999," *Wajah Hukum* 3, no. 1 (April 2019) :57-58.

2. *Partij autonomy* which is not much different from free consent, i.e. the disputing parties are given the freedom to determine the dispute resolution forum.
3. *Pacta sunt servanda* which means the agreement binds the parties who make it like a law.<sup>39</sup>
4. Good faith which means that every agreement must be made in good faith, and good faith itself is considered always exists in the agreement, unless proven otherwise.

In addition, the validity of the agreement to use small claims procedures cannot be separated from the validity of the agreement based on 1320 BW, namely agreement, competence, certain objects, and causes permitted by law.<sup>40</sup>

The existence of the small claims courts based on an agreement will help justice seekers to resolve their disputes in a fast, simple and affordable manner. Examples of cases that can be resolved through a small claims court mechanism are:<sup>41</sup>

1. Accounts payable under the agreement, for example unpaid loans, unpaid rent, unpaid wages, unpaid sales of goods/services;
2. Claims against property damage, property returns, and injuries caused by other people.

Furthermore, the following is an illustrative example of the different implications between the status quo condition and a small claims courts based on an agreement upheld in this study: Company A is running a loan business, and some of the debtors have defaulted by not paying the loan. Debtor A has a collectible debt of IDR 200,000,000.00 (two hundred million rupiah), while debtor B

has a collectible debt of IDR 550,000,000.00 (five hundred and fifty million rupiah). Using a small claims court mechanism, the maximum condition for the claim value is IDR 500,000,000.00 (five hundred million rupiah), then Company A can only file a small claims court against debtor A, even though debtor B has the same type of civil case as debtor A, only the loan value is different. A different application of two similar cases as illustrated above should not exist to uphold procedural justice. Procedural justice is obtained when the rights of the parties in each stage of the trial are protected,<sup>42</sup> namely the right to get a quick, simple, and affordable settlement in the trial process in court.<sup>43</sup> Thus, a small claims court mechanism that neglect the maximum value of the material claims can be a solution to resolve default cases in terms of efficient collection.

Thus, the small claims court mechanism based on an agreement does not change the flow of a small claim court based on PERMA 4 of 2019 but provides changes to the terms of a small claims court that will be examined in the preliminary examination. The changes to the terms in question will be as follows:

1. Civil cases of default or unlawful acts whose absolute authority is within the scope of the general court, except those where the dispute resolution is carried out through a special court as stipulated in the laws and regulations or disputes over land rights;
2. Only one plaintiff and one defendant, unless they have the same legal interest;
3. The domicile of the parties must be in the same legal area;
4. The maximum value of the lawsuit is IDR 500,000,000.00 (five hundred million rupiah), unless otherwise agreed with a written agreement that expressly states that the dispute resolution chosen is a small claims court forum of which the

39 Reny Hidayati, "Eksistensi Klausul Arbitrase dalam Penentuan Penyelesaian Sengketa Syariah," *Mazahib: Jurnal Pemikiran Hukum Islam* 14, no. 2 (Desember 2015): 170.

40 Muskibah dan Lili Naili Hidayah "Penyelesaian Sengketa Konstruksi melalui Arbitrase Berdasarkan Peraturan Perundang-Undangan", *Pandecta* 16, no. 1 (Juni 2021): 18.

41 Efa Laela Fakhriah, "Mekanisme Small Claims Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan," *Mimbar Hukum* 25, no. 2 (Juni 2013): 265.

42 M. Syamsudin, "Keadilan Prosedural dan Substantif dalam Putusan Sengketa Tanah Magersari," *Jurnal Yudisial* 7, no.1 (April 2014): 28.

43 SyprianusAristeus, "Eksekusi Ideal Perkara Perdata Berdasarkan Asas Keadilan Korelasinya dalam Upaya Mewujudkan Peradilan Sederhana, Cepat, dan Biaya Ringan," *Jurnal Penelitian Hukum De Jure* 20, no. 3 (September 2020): 387-389.

material claims exceed the maximum limit regulated in PERMA Number 4 of 2019.

The fulfillment of the above conditions, including the agreement to deviate from the maximum material claims value, will be examined at a preliminary examination by a single judge before the judge decides that the case will be carried out with a small claims court mechanism. This preliminary examination is intended to ensure that the conditions for a small claims court are met and that the case has simple evidence.<sup>44</sup> Few key points that will be examined in the preliminary examination process include:<sup>45</sup>

1. The object of the lawsuit and the litigants;
2. Careful research on the simplicity of the evidence for the lawsuit filed, by examining:
  - a. The legal relationship that occurs between the parties;
  - b. The complexity of the legal relationship;
  - c. The scope of legal consequences is only limited to the parties or other parties;
  - d. Checking the documents that have been attached.

After the judge decides that the lawsuit can be settled through a small claims court mechanism, then the case can be proceed to the next stages according to PERMA Number 4 of 2019. Thus, the stages of resolving the small claim court are as follows:<sup>46</sup>

1. Registration
2. Checking the completeness of the small claim court file;
3. The issuance of the judge's determination and the appointment of a substitute clerk

44 Sri Wahyuningsih, Lukman Ilham, dan Irsyad Dahri, "Penerapan Sistem Gugatan Sederhana (Small Claim Court) dalam Penyelesaian Perkara Wanprestasi di Pengadilan Negeri Makassar," *Jurnal Tomalebbi* 5, no. 1 (Maret 2018): 95.

45 Muhamad Noor, "Penyelesaian Gugatan Sederhana di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015," *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 11, no.1 (Juni 2020): 59-60.

46 Tri Jata Ayu Pramesti, "Seluk Beluk Gugatan Sederhana," <https://www.hukumonline.com/klinik/detail/ulasan/lt56a9cc2d21ea9/seluk-beluk-gugatan-sederhana/>, (diakses 30 April 2021).

- assigned to settle the lawsuit;
4. Preliminary inspection process;
5. The issuance of the determination of the day of the trial and the summons of the parties;
6. Trial examination and reconciliation;
7. Evidence from the parties; and
8. Judgement.

From the description above, it can be concluded that the formation of a small claims court based on an agreement can be accepted based on progressive legal theory but must be stated in written form. The small claim court mechanism based on an agreement only changes the terms of the case that can be examined using a small claims court procedure, while the procedures of the case examination still refers to the existing regulations.

#### D. Conclusions

From the explanations above, we can conclude that forming a small claims court based on an agreement is a *choice of forum* in dispute resolution. By opening access to resolve disputes using a small claims court procedure, it is hoped that it will accelerate the trade dispute resolution process and improve the ease of doing business in Indonesia. This idea does not violate the principles of a small sclaim court because it is in accordance with the principles of fast, simple, and affordable trial. In addition, this idea only changes the conditions for cases that can be resolved with a small claims court procedure, while the case examination procedures still refers to existing regulations. Based on the progressive legal theory, the formation of a small claims court based on an agreement can be accepted as long as it is stated in the amendment to PERMA Number 4 of 2019, with the formula: "The maximum value of the lawsuit is IDR 500,000,000.00 (five hundred million rupiah), unless otherwise agreed with a written agreement that expressly states that the dispute resolution chosen is a small claims court forum of which the material claims exceed the maximum limit regulated in PERMA Number 4 of 2019)

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