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Small Claim Court Litigation Procedures And Mediation In State Court

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ABSTRACT

This research was conducted with the aim of finding out how civil disputes are resolved in the District Court, either through Simple Lawsuits in Court or through Mediation in Court. By using normative juridical research methods, it is concluded: (1) The stages of simple lawsuit settlement in the District Court include registration, examination of the completeness of a simple lawsuit, determination of judges and appointment of substitute clerks, preliminary examination, determination of hearing days and summoning of parties, trial and peace hearings, evidence and decisions To resolve disputes in a simple and practical manner and avoid complicated settlements and in-depth examinations, Law Number 8 Year 1999 requires that amicable settlement, which is a legal remedy first attempted by the parties to the dispute, before the parties choose voluntarily to resolve disputes through the Judicial Body or other forum. (1) The Mediation Procedure in Article 13 on Submission of Case Resume and Duration of Mediation Procedure, states: (1) Within a maximum of 5 (five) working days after the parties have appointed an agreed mediator, each party may submit the case resume to each other and to the mediator. (2) Within a maximum of 5 (five) working days after the parties fail to select a mediator, each party may submit the case resume to the appointed mediator judge. (3) The mediation procedure shall last for a maximum of 40 (forty) working days from the time the mediator is selected by the parties or appointed by the chairman of the panel of judges as referred to in article 11 paragraphs (5) and (6). (4) Based on the agreement of the parties, the mediation period may be extended by a maximum of 14 (fourteen) working days from the expiry of the 40 (forty) day period as referred to in paragraph 3: (5) The period of the mediation procedure shall not include the period of case examination. (6) If necessary and based on the agreement of the parties, mediation may be conducted remotely using communication devices. Settlement of civil disputes in principle has two aspects, namely settlement through litigation and non-litigation, in the District Court itself where litigation settlement can be pursued also prioritizing the principles of fast, cheap, and simple.

Keywords: *Small Claims Court, Mediation, District Court.*

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A. INTRODUCTION

law includes formal civil law or also called civil procedural law and material civil law. Formal civil law or civil procedural law is a legal provision that regulates how to ensure the enforcement of material civil law. Material civil law is the provisions that regulate and determine the civil rights, obligations and interests of a person (including legal entities). Apart from this broadly, the definition of civil law includes general civil law as regulated in the Civil Code and special civil law (commercial law) as regulated in the Commercial Code along with other statutory regulations or is narrowly limited to general civil law as regulated in the Civil Code. This civil law is part of private law so it can also be called civil law.

Conflict or dispute are terms that are often found or heard in everyday life. Conflicts or disputes can occur due to trivial things, for example conflicts between neighbors over land boundaries, disputes over violations of agreements or contracts. However, everyone definitely does not want conflict or dispute to occur in their life. A conflict, namely a situation where two or more parties are faced with differences in interests, will not develop into a dispute if the party who feels disadvantaged only harbors feelings of dissatisfaction or concern. A conflict changes or develops into a dispute when the party who feels disadvantaged has expressed his or her feelings of disagreement or concern, either directly to the party considered to be the cause of the loss or to another party. With the advantages and disadvantages that God has given to humans, bringing humans into various conflicts or disputes, disputes can occur with other humans, the natural environment and even with himself.

In its nature, God also provides advantages so that humans can resolve conflicts or disputes. Humans always try to find ways to resolve conflicts in order to always achieve a good and balanced position in order to survive. If there is a human being who does not want to try to find a way to resolve a dispute, then that human being has an insane mind and soul because he wants the dispute to exist. Dispute resolution can be done through two procedures. The oldest procedure is through the Litigation procedure, namely through the courts.

The development of dispute resolution procedures through cooperation or cooperation outside of court. This procedure for resolving disputes outside of court is called Alternative Dispute Resolution. It must be admitted that reconciling the parties involved in a court case is not an easy job, especially if personal sentiments are more prominent than the actual issue. There are many factors that can hinder success in moving towards peace, one of which is the lack of availability of legal institutions that can help the parties in choosing the right method for resolving their disputes.

Civil Procedure Law, both HIR and RBg, still contains colonial nuances, so it does not really contribute to a satisfactory dispute resolution system. Article 130 HIR/154 Rbg as The basic concept of a peaceful institution in court for civil cases is in fact unable to become a driving force for peaceful dispute resolution.

B. PROBLEM

The low level of success of peace institutions in court is also largely due to the weak participation of the parties in the peace procedures offered. Apart from that, the unavailability of adequate procedures for peace procedures has an impact on the low level of initiative of judges in seeking peace for the parties involved in the case. Based on these facts, this study will discuss the following problems:

1) What are the litigation procedures for *Small Claim Court* (Simple Claims) and Mediation in District Court ?

2) What are the dynamics that occur in the *Small Claim Court* litigation procedures (Simple Lawsuits) and Mediation in District Court ?

C. RESEARCH METHODS.

This study uses a library research method with *a* normative research approach by examining laws and regulations relating to the dynamics that occur in *Small Claim Court* litigation procedures (Simple Lawsuits) and Mediation in District Courts . Using secondary data in the form of literature and official documents about investment law such as books related to this research, scientific works related to this research and information quoted from the internet. The data analysis method used is qualitative analysis, which describes various regulations and theories regarding justice, legal certainty and legal benefits.

D. DISCUSSION

1. *Small Claim Court* Litigation Procedures (Simple Lawsuits) and Mediation in District Court.

a. *Small Claim Court* Litigation Procedure (Simple Lawsuit)

law is formal civil law which regulates the procedures for enforcing material civil law if certain violations occur. There is no uniformity of opinion regarding the limits of experts or doctrine in defining civil procedural law itself. Dispute resolution between one of the injured parties is a civil case, so it is resolved through the District Court. The District Court is the court of first instance to examine, decide and resolve criminal cases and civil cases (non-Muslim). The Pati

District Court is a judicial body under the Supreme Court to examine and try criminal and civil cases.

In principle, civil law is private law *which* protects individual interests (*bijzondere belangen*). Civil cases are cases regarding disputes between one individual (legal subject) and another individual (legal subject) regarding rights and obligations/orders and prohibitions in the civil field, for example breaches of contract, unlawful acts, and so on. Settlement of civil cases can be resolved through non-litigation methods (resolved outside the court by deliberation) if they cannot be successfully resolved through litigation by filing a civil lawsuit in the district court that adjudicates the civil dispute.

Civil lawsuits regarding breach of contract are guided by Article 1243 of the Civil Code and unlawful acts are guided by Article 1365 of the Civil Code. The judge at the court is tasked with resolving a case by examining and adjudicating the disputing parties as fairly as possible in a trial that is open to the public according to the applicable laws and regulations (formal law), in this case the civil procedural law (HIR) guided by the Civil Code. . Settlement of civil lawsuits (defaults and unlawful acts) in the District Court takes a very long procedure, around 6 (six) months and requires high costs. Then, if the civil case ends with the losing party, they will file an appeal, cassation and judicial review so that justice seekers with small claims will not file a lawsuit at the District Court.

This relates to simple, fast and low cost judicial procedures based on Article 2 paragraph 4 and Article 4 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power which requires the existence of important principles in civil procedural law, namely simple, fast and low cost. From this idea, it is necessary to have a form of dispute resolution procedure as is known in countries that adhere to the *common law system* by giving authority to resolve cases based on the size of the value of the dispute object, so that dispute resolution can be achieved quickly, simply and cheaply, through a mechanism. which is called *small claims court* .

Responding to public concerns (in this case justice seekers), the Supreme Court provided a new legal breakthrough by adopting the practice of small lawsuits. A simple lawsuit called *small claims court* is a new breakthrough in procedural law in Indonesia, with the principle of being simple, fast and low cost to open up wide access for the public to obtain justice. Then, as the implementing regulation for Simple Claims is Perma Number 2 of 2015 concerning Procedures for Settlement of Simple Claims and then refined with Perma Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims based on civil procedural law. (HIR) and the Civil Code as law.

Settlement of Simple Claims according to Article 1 number 1 PERMA Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims is the procedure for examining civil lawsuits with a maximum claim value of IDR 500,000,000 at trial. (five hundred million rupiah) which was completed using simple procedures and proof.

The District Court as one of the judicial institutions under the Supreme Court has exercised court authority to resolve small claims disputes in the court's jurisdiction. Dispute resolution using a small claims court *in* the District Court must meet the following requirements:

1) The maximum value of the material claim is IDR. 500,000,000, (five hundred million rupiah).

2) Small claims cases include cases of breach of contract/default, or unlawful acts/acts against the law.

3) It is not a civil case that specifically resolves disputes and is not a land rights dispute.

4) Each party, namely the plaintiff and the defendant, may not have more than 1 (one) unless they have the same legal interests.

5) If the defendant's place of residence is unknown, a simple lawsuit cannot be filed.

6) The parties, both plaintiff and defendant, are domiciled in the same jurisdiction.

a) In the event that the plaintiff is outside the jurisdiction of the defendant's residence or domicile, the plaintiff, when filing a lawsuit, appoints a proxy, incidental proxy, or representative whose address is in the defendant's jurisdiction or domicile with a letter of assignment from the plaintiff's institution.

b) The parties, both plaintiff and defendant, are obliged to attend each hearing in person with or without being accompanied by a proxy, incidental proxy or representative with a letter of assignment from the plaintiff's institution.

If all the requirements above are met, the plaintiff can register a simple lawsuit at the District Court clerk's office through the One Stop Integrated Service (PTSP) officer at the civil desk. The plaintiff can fill in the lawsuit form that has been provided at the clerk's office or type the lawsuit by the plaintiff himself or ask for legal assistance. to type a simple lawsuit at the District Court Posbakum Office. The simple lawsuit submitted by the plaintiff must contain information regarding the identity of the plaintiff and defendant, a brief explanation of the case and the plaintiff's demands. When registering a small claim, the plaintiff is required to attach proof of a letter that has been legalized by the local post office. The plaintiff is obliged to pay court costs or If the plaintiff is unable to do so, he or she can submit a petition for free or *prodeo* .

The stages of resolving a simple claim in the District Court include registration, checking the completeness of the simple claim, determining the judge and appointing a replacement clerk, preliminary examination, determining the trial date and summoning the parties, hearing and conciliation examination, evidence and decision. That, the stages of settling a simple lawsuit are in accordance with Article 5 of Perma Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims. If there is an objection to the decision, the party who feels aggrieved can submit an objection application containing a memorandum of objection to the District Court and it will be resolved within 7 (seven) days after the decision of the Panel of Judges. The Panel of Judges will examine and adjudicate the case of objection to the simple claim based on the decision and file of the simple claim, application for objection and memorandum of objection, counter memorandum of objection.

A distinctive feature of simple claims settlement is that there are no replica and duplicate procedures. Some parties support it because this method is considered to be able to reduce the time for case examinations, while on the other hand, parties who disagree consider this method to be ineffective because there is no opportunity for each party to submit a reply and a duplicate. The practice above, when tested with the legal thinking put forward by Gustav Radbruch, writes that law has three basic legal values, namely justice, expediency and legal certainty, described as follows:

1) Legal justice *(philosophical) states* that in the past ordinary civil cases generally filed lawsuits with high loss values because if those who filed lawsuits with low loss values would suffer losses because the settlement took a long time and the costs were high, whereas now with Perma Number 4 of 2019, simple lawsuit cases with a material value of Rp. 500,000,000 (*five hundred million rupiah*) can be settled using simple evidentiary procedures within 25 days from the first trial at a low cost. This has certainly fulfilled legal *(philosophical) justice* for people seeking justice with high material loss values and low material loss values, each of whom can submit a civil dispute resolution with a simple lawsuit.

2) Legal *(juridical) certainty* that previously ordinary civil cases (Defaults and Unlawful Actions) were guided by the Civil Code and Civil Procedure Law (HIR, RBG, RV) were rules inherited from Dutch colonialism, whereas now the Supreme Court as the highest judicial institution has issued Perma Number 2 of the Year 2015 concerning Procedures for Settlement of Simple Claims and has been updated with Perma Number 4 of 2019 concerning amendments to Perma Number 2 of 2015 concerning Procedures for Settlement of Simple Claims. This of course has fulfilled legal *(juridical) certainty* by implementing Perma Number 4 of 2019 as a

guideline for resolving small claims in court for parties in dispute so that a legal product emerges in the form of a court decision which each party must comply with.

3) The benefits of law *(sociological)* are that in the past the settlement of civil cases resulted in a backlog of cases in court so that the settlement time was relatively long, whereas now the settlement of civil disputes with simple claims has reduced the volume of civil cases in court because they can be resolved within 25 days. This has certainly fulfilled legal benefits for the Court and for the parties to the dispute because it does not drag on in resolving the dispute.

2. **Procedures for Settlement of Civil Disputes Through Mediation in Court.**

The basis for considering the implementation of Regulation of the Supreme Court of the Republic of Indonesia Number 01 of 2008 concerning Mediation Procedures in Court, is:

1) That mediation is a quicker and cheaper dispute resolution procedure, and can provide greater access for the parties to find a satisfactory resolution and fulfill a sense of justice.

2) That integrating mediation into court procedures can be an effective instrument for overcoming the problem of backlogs of cases in court as well as strengthening and maximizing the function of court institutions in resolving disputes in addition to adjudicative court procedures.

3) That the applicable procedural law, both Article 130 HIR and Article 154 RBg, encourages the parties to take peace procedures which can be intensified by integrating mediation procedures into litigation procedures at the District Court.

4) Whereas while waiting for statutory regulations and taking into account the authority of the Supreme Court in regulating judicial proceedings which are not yet sufficiently regulated by statutory regulations, for the sake of certainty, order and smoothness in procedures to reconcile the parties to resolve a civil dispute, it is deemed necessary to establish a Court Regulation Great.

5) That after evaluating the implementation of the Mediation Procedure in Court based on the Regulations The Supreme Court of the Republic of Indonesia Number 2 of 2003 apparently found several problems originating from the Supreme Court Regulation, so that the Supreme Court Regulation Number 2 of 2003 needs to be revised with the aim of making greater use of mediation related to litigation procedures in the Court.

The scope and powers of the PERMA have been explained in Article 2 which states that the scope and powers of the PERMA are: (1) This Supreme Court Regulation only applies to mediation related to litigation procedures in the Court. (2) Every judge, mediator and parties are obliged to follow the dispute resolution procedures through mediation as regulated in this

Regulation. (3) Failure to undertake mediation procedures based on this regulation constitutes a violation of the provisions of Article 130 HIR and/or Article 154 Rbg which results in the decision being null and void. (4) The judge in considering the case decision is obliged to state that peace has been attempted in the case in question through mediation by mentioning the name of the mediator for the case in question.

Apart from that, the types of cases mediated in Article 4 are stated in paragraph: (1) Except for cases resolved through commercial court procedures, industrial relations courts, (2) objections to decisions of the Consumer Dispute Settlement Agency, and objections to decisions of the Commission (3) Competition supervisors Business, all civil disputes submitted to The Court of First Instance must first seek a settlement through peace with the help of a mediator.

Mediation procedures are provisions regarding the stages and procedures or steps to implement or organize something. Supreme Court Regulation Number 01 of 2008 which regulates the stages and procedures for using mediation in three contexts. The first context, the use of mediation at the start of the trial as a strengthening of peace efforts based on Articles 130 HIR and 154 Rbg. The second context is the use of mediation after the initial mediation attempt has failed and the case has entered the stage of examination by a judge. The third context is strengthening the results of mediation outside of court by the judge, but most of the provisions in Supreme Court Regulation Number 1 of 2008 are more related to the use of mediation in the first context.

The stages of the Mediation Procedure in Article 13 concerning Submission of Case Resumes and Length of Time for Mediation Procedures, states: (1) Within a maximum of 5 (five) working days after the parties appoint an agreed mediator, each party can submit a case resume to each other and the mediator. (2) Within a maximum period of 5 (five) working days after the parties fail to select a mediator, each party can submit a resume of the case to the appointed mediator judge. (3) The mediation procedure takes place no later than 40 (forty) working days after the mediator is selected by the parties or appointed by the chairman of the panel of judges as intended in article 11 paragraphs (5) and (6). (4) Based on the agreement between the parties, the mediation period can be extended by a maximum of 14 (fourteen) working days from the end of the 40 (forty) day period as intended in paragraph 3: (5) The mediation procedure period does not include the examination period case. (6) If necessary and based on agreement between the parties, mediation can be carried out remotely using communication tools.

The final agreement of the mediation procedure results in two possibilities, namely the parties reaching a peace agreement or failing to reach a peace agreement. If the parties succeed in

reaching a peace agreement, Supreme Court Regulation Number 1 of 2008 requires the parties to: a. formulate a peace agreement in writing and sign it; b. express written agreement to the peace agreement if in the mediation procedure the parties are represented by legal representatives; c. Return to the judge on the appointed trial day to notify the peace agreement. The mediator does not have the authority to decide the dispute. The mediator only helps the parties to resolve the problems submitted to him. In disputes where one party is stronger and tends to show its power, a third party plays an important role in equalizing it. An agreement can be reached through mediation, if the disputing parties succeed in reaching mutual understanding and jointly formulate a dispute resolution with concrete directions from the mediator.

Failed mediation can be attempted again through the mediation repetition procedure. Supreme Court Regulation Number 1 of 2008 contains the spirit to continue to provide opportunities for peaceful dispute resolution at each stage of case examination after the failure of mediation at the initial stage. This spirit is reflected in Article 18 paragraph (3) which reads: "At each stage of the case examination, the judge examining the case remains authorized to encourage or strive for peace until before the pronouncement of the verdict." Efforts to reconcile after the case has entered the examination stage at the First Instance Court take place within a maximum of fourteen working days after the parties express their desire to reconcile to the examining judge and are mediated directly by the judge examining the case. So the parties no longer have the autonomous right to choose a mediator in mediation or peace for cases that have entered the examination stage.

3. ***Small Claim Court* Litigation Procedures and Mediation in District Courts.**

a. Reconstruction of Case Settlement Through *Small Claim Court* (Simple Lawsuit).

1) S History of *Small Claims Court* in Indonesia.

The practice of *small claims court* lawsuits in Indonesia was initially thought to be contrary to human rights because if you want to reduce people's rights in civil lawsuits, you cannot use Perma but must go through law. Likewise, requests *for Voerbaar bij voorraad money* (decisions that can be implemented immediately) not regulated in *small claims court*, including *Conservatoir Beslag* (disputed property belonging to the defendant). In fact, the existence of *the Voerbaar bij voorraad uit* and also *the Conservatoir Beslag* is a guarantee of legal certainty, justice and benefits for the parties themselves.

The history of *Small Claim Court (SCC)* lawsuits was first established in 1913 at the Cleveland Court, Ohio, United States and Indonesia. The SCC Court was only established in 2015 through Supreme Court Regulation (PERMA) Number 2 of 2015 concerning Procedures for Settlement of Small Claims, stipulated in Jakarta on August 7 2015 by the Chairman of the Supreme Court Muhammad Hatta Ali, and on the same date the PERMA was promulgated by the Minister of Law and Human Rights, Yasonna Laoly. PERMA Number 2 of 2015 consists of 9 chapters and 33 articles. This PERMA is a big step from the Supreme Court to realize case resolution according to the principles of fast, simple and low cost. This Perma is also expected to help small, underprivileged communities whose disputes have very little value and take a long time to resolve in court, so that there is no longer the term *"fighting for the goat but losing the buffalo"* .

This regulation cuts civil procedural procedures, namely within 25 days it is carried out using a simple process. However, simple lawsuit proceedings are only for civil cases that meet the requirements, namely:

a) The minimum claim is a maximum of IDR 200,000,000.00 (two hundred million rupiah) and the claim is material, immaterial claims cannot be submitted because the proof is not simple.

b) The dispute is not related to land disputes or lawsuits which have special courts like labor unions.

c) The plaintiff and defendant must be in the same jurisdiction. For example, people who live in Slawi will only be able to sue people in Slawi.

d) The plaintiff and defendant each consist of 1 person, but can also be 2 or more people if they have the same legal interests.

The defendant's whereabouts must be clear and cannot be summoned from the local District Court.

2) The concept of resolving civil disputes through the *Small Claims Court mechanism* is to support the principles of simple, fast and low-cost justice.

The concept of *a small claims court* is a legal entity that is intended to provide a fast and economical solution to resolve disputes that does not require expensive costs. In general, *small claims court* is also defined as "People's Court" the real one. This is in line with the purpose of establishing *a small claims court* , which is to provide small and technical formalities for proper consideration of lawsuit material, examination of uncomplicated cases to resolve simple disputes that do not require a lot of money to cover formal litigation costs. Apart from that,

both parties will submit their respective claims to the judge and usually the judge does not need to have extensive knowledge of the law itself to apply it in a simple dispute.

The demand to fulfill the principles of justice that is simple, fast and low cost, has been mandated by Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power. Further in the explanation it is said that "simple" is an examination and the resolution of cases is carried out in an efficient and effective manner. What is meant by "low costs" are case costs that can be afforded by the public. However, the principle of simplicity, speed and low costs in examining and resolving cases in court does not exclude thoroughness and accuracy in seeking truth and justice.

small claims court mechanism (procedure) varies from one country to another. In Ireland, *small claims court* is defined as a service carried out by the District Court regarding claims brought by consumers against providers of goods or services, however, this shows that *small claims courts* in Ireland only relate to claims involving consumers who have suffered losses. However, most *small claims courts* relate not only to consumer lawsuits, but also to any other civil dispute. This will be further explained below.

Therefore, *small claims courts* are more often referred to as *Small Claims Tribunals* or *Small Claims Procedures,* which can further be considered as courts with fast procedures that are generally separated from but under the jurisdiction of the first court. With a court that has a fast dispute resolution procedure, many disputes will be handled quickly with simple verification.

The Mall Claim Court is intended to increase access to the courts by providing “fast, cheap and fair services for financially disadvantaged parties. High processing costs The law can be an obstacle to obtaining justice, especially in cases where the number of lawsuits is not large. To overcome this, the costs of filing a lawsuit with the Court are made to be very affordable.

To balance procedural procedures, and minimize litigation costs, neither party is represented by legal counsel. Instead, they must appear in person and present their own claims. The judicial process is also carried out informally. The Court's informal and simple procedures will be effective and enable even laymen to file their own cases with ease.

If we look at the definition of *small claims court* as a mechanism for resolving civil disputes through the courts but using short, simple and fast application of procedural law (different from case resolution in general) and the aim is to be able to resolve civil (business) disputes where the value of the claim is small so that it can be resolved efficiently and effectively, *the small claims court mechanism* can be used as one of the supports for achieving/implementing the

principles of simple, fast and cost-effective justice. light; as expected by the justice-seeking community.

3) *S mall Claim Court* in the Judicial System in Indonesia.

The existence of *the small claims court* is to bridge the gap between *non*- litigation dispute resolution, the results of which do not provide binding force, and litigation settlement, which provides more legal certainty, so that a fast, simple and low-cost dispute resolution mechanism is obtained with decisions that have binding force because resolved through litigation and a case examination mechanism that is separate from the contradictory (usual) case examination. *small claims court* mechanism is in the path of resolving disputes through the courts, but with a procedural procedure that is different from the ordinary civil case examination process, namely with a short (simple) procedure. Therefore, *small claims court* decisions have the same legal force as decisions of court judges in general. Institutionally, *the small claims court mechanism* is in the District Court, but the case examination procedure is different from the contradictory case examination process (ordinary case examination procedure).

The types of cases that can be resolved through *small claims court* are cases with a small claim value that can be resolved in a short time and handled by a single judge, namely civil cases where the economic value of the claim is relatively small and do not require complex case administration and evidence processes and can be resolved using short/simple procedural law, such as consumer disputes, debts and receivables, buying and selling goods, claims for damage to goods, service costs, MSME disputes, and other disputes arising from contractual relationships.

b. Mediation according to Indonesian Laws and Regulations**.**

In order to maintain their survival as social creatures, humans are involved in various activities in the fields of nutrition, protection and reproduction, but as God's most perfect creatures, their basic needs are not limited to these three things alone. According to AH Maslow (Purnadi Purbacaraka and Soerjano Soekanto), basic human needs include:

1) Food, shelter, clothing;

2) Safety of self and property;

3) Self-esteem;

4) Self-actualization;

5) Love.

In order not to fall into conflict in meeting their needs, humans need various guidelines or benchmarks. What is called a norm or rule. One of these rules is the rule of law. Humans need rules as a form of effort to create an orderly and peaceful situation in life together, which will

be created if community activities are harmonized into a pattern of activity that is stable, steady and ongoing. The creation of this situation is at least influenced by:

1) There is a set of rules that are organized into a system and function to provide guidelines regarding how people in society should behave.

2) There is a process called socialization, namely the process of teaching or education, both formal and informal, which works to "incorporate" these rules into people's personalities, so that they become part of their personality.

3) There is a process called the social control process, namely repressive processes carried out by society and/or by certain parties entrusted with authority for this, with sufficient means to "lead" members of society to act in accordance with existing rules.

The law that develops in Indonesia consists of written law and unwritten law, all of which are the basis for the formation of Legislative Regulations. Meanwhile, the goals of the Indonesian state as included in Pancasila and the 1945 Constitution are the great ideals and hopes of all Indonesian people in order to realize the legal ideals (rechtsidee) that are just and prosperous for all the people and all of Indonesia's bloodshed. The fourth principle of Pancasila seeks to realize this by means of "popularity led by wisdom in deliberation/representation".

Moh. Koesno stated that rechtsidee is an idea from the culture of the society concerned about what and how is called law. Thus, rechtsidee for the culture in question is the basic measure of what is considered law in that society. As a measure, the content is a concoction of values that live in society, which originate from various categories of values and demands of the natural surroundings of the community that adheres to that culture. The development of law in society is increasingly widespread, in responding to disputes as a result of social interactions between members of society, including the family as the smallest element of society, these disputes usually occur between parties who feel that other people are not fulfilling their rights, while the other party is required to fulfill their obligations. When viewed from the perspective of substance, procedures and social or cultural systems, the law is expected to be an instrument of community empowerment. The public expects a legal regulation that harmoniously provides law for law enforcers in implementing legal rules. Much more important than that is providing certainty, that apart from the community being guaranteed and protected by legal, social, economic, political and other rights, there is also the availability of the principle of independence in choosing and determining the best way to resolve a problem, for the Indonesian people this is felt to be very important. significant. Scholten's view which states that law consists of a process of reasoning and norms, is also related to the spiritual values of a society. If norms do not accommodate these values, it will result in social disharmony.

Mediation efforts both inside and outside court can be carried out in civil cases, in order to bring about peace between the disputing parties. The intended mediation is the resolution of cases through a negotiation process to obtain an agreement or peace between the parties with the assistance of a mediator, which is integrated in the judicial procedure system based on Perma Number 1 of 2008. Perma Number 1 of 2016 provides regulations regarding peace agreements, which are agreements resulting from mediation in a form of document containing provisions for dispute resolution signed by the parties and the Mediator which will then be confirmed by a deed of peace.

The existence of mediation outside state courts has long been recognized in Indonesia, in Article 18B paragraph (2) of the 1945 Constitution "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law".

Out-of-court mediation is regulated in Law number 30 of 1999 concerning arbitration and alternative dispute resolution, 7 Article 6 paragraph (1) states that "Civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on faith. either by setting aside litigation settlement in the District Court". Cases where it is still possible to carry out mediation outside of court include certain civil cases such as husband and wife disputes in marriage, disputes over inheritance, disputes due to mutual feelings of entitlement to waqf assets, as well as wills and other family dispute cases. Alternative dispute resolution under this Law is carried out through various methods including arbitration, consultation, negotiation, mediation, conciliation or expert assessment and all of these can be done outside of court. The agreed decision or peace agreement can be stated in a private deed.

Law Number 32 of 2004 concerning Regional Government, provides confirmation of the institutionalization of dispute resolution outside of court, namely through village justice or village peace, whose existence is still recognized in resolving village community disputes. Government Regulation Number 72 of 2005 states that resolving disputes between village communities is one of the obligations of the village head with assistance from village traditional institutions. Another rule states that resolving community disputes that occur in villages is a responsibility attached to the position of village head as owner of village authority, this is contained in Article 26 paragraph 4 letter (k) of Law of the Republic of Indonesia Number 6 of 2014 concerning Villages.

The success of mediation cannot be separated from the role of the mediator as an intermediary. A mediator will help the parties frame the existing problem so that it becomes a problem that

needs to be faced together, in order to produce an agreement the mediator must help the parties to formulate various options for resolving the dispute which must be acceptable and satisfying to both parties. The main role that a mediator must play is to bring together different interests in order to reach a common ground that can be used as a starting point for solving the problem. They can teach parties how to engage in effective problem-solving negotiations, assess alternatives, and find creative solutions to their conflicts.

The formal requirements for a decision or peace agreement, apart from being guided by Articles 130 and 131 HIR, can also be found in the provisions of Articles 1581-1864 of the Civil Code (KUHPerdata), which are then supplemented by Perma Number 1 of 2016, namely as follows:

1) Agreement to end the dispute. Article 1851 of the Civil Code clearly requires that a peace agreement is intended to end an ongoing case or to prevent a case from arising. The peace agreement must end the case completely and in its entirety, nothing should be left behind. Peace must bring the parties aside from all disputes, there is no longer anything to dispute because everything has been regulated and the resolution has been formulated in the agreement.

2) The peace decision is made in writing. Article 1851 of the Civil Code in Article 130 HIR, requires that a peace decision must be made in writing, it is not permissible to make it verbally (orally), meaning that it is not only stated in the form of an authentic deed, the decision or peace agreement can also be stated in a private deed.

3) Carried out by parties who have authority. Article 1852 paragraph (1) of the Civil Code, which requires that to conclude a peace a person must have power or authority (authorized), otherwise he will give up his rights to the matters contained in the peace. So the party who makes the peace agreement must be someone who has the authority to carry out legal actions to say peace. If there is an error in persona (mistake regarding the person) or due to fraud or coercion, such a peace agreement can be cancelled, this is in accordance with the contents of Article 1859 of the Civil Code.

4) The parties agreed to peace. A peace agreement must be agreed upon by the parties to the dispute. A peace agreement must be made by the parties related to the subject of the dispute. Regulated in the provisions of Article 1851 paragraph (1) of the Civil Code.

5) Resolve existing or ongoing disputes. The provisions of Article 1851 paragraph (1) of the Civil Code require that a peace agreement is intended to end or resolve a "dependent dispute" or to "prevent the emergence of a case. From this provision, the condition that can be used as the basis for a peace decision is that the dispute between the parties has already occurred, whether it has already occurred or has actually materialized but is just about to be submitted to court, so that the peace made by the parties prevents the case from occurring in

court. Dispute resolution through dading is regulated based on Article 1338, 1851-1964 of the Civil Code (KUHPerdata). Article 1338 of the Civil Code provides an explanation that all agreements made legally apply as law to those who make them. This agreement has binding force on the parties.

E. Conclusion .

In principle, civil dispute resolution has two aspects, namely settlement through litigation and non-litigation. In the District Court itself, the place where litigation settlement can be taken also prioritizes the principles of fast, cheap and simple. Procedures for implementing civil dispute resolution using small *claims court* include the registration stages, checking the completeness of small claims, determining the judge and appointing a replacement clerk, preliminary examination, determining the date of trial and summoning the parties, hearing and conciliation examination, evidence and decisions finalized in the maximum time is 25 (twenty five). If anyone has an objection, they can submit a memorandum of objection to be resolved within 7 (seven) days. The repositioning of the implementation of civil dispute resolution using small claims *court* does not yet meet the provisions of Article 4 paragraph 1, Article 5 paragraph 3 and Article 27 so that court *stakeholders need* to evaluate whether it complies with the rules and operational standards for implementing small claims settlement (SOP) in court. Meanwhile, the dispute resolution procedure through Mediation in Court is a breakthrough because it is believed that Mediation is a quicker and cheaper dispute resolution procedure, and can provide greater access for the parties to find a satisfactory resolution and fulfill a sense of justice. The dynamics in the *Small Claim Court* (Simple Claim) and Mediation litigation procedures show that there are still things that need to be perfected, including the requirements for filing a small claim in court *(Small Claim Court)* to make it easier and the socialization of its existence expanded so that the public can access it easily.

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