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Effectiveness of The Supreme Court Regulation Number 2 Of 2015 Concerning Procedures of Simple Settlement

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Abstract: The purpose of this study is to examine and analyze the application of perma no. 2 year 2015 in Bantaeng District Court, and to know and analyze the factors that influence the application of Supreme Court Regulation no. 2 years 2015. The type of research undertaken in this study is empirical law research (non-doctrinal legal research) which is a legal research method that focuses attention on the reality of law in society, or serves to see the law in the real sense and examines how the law in the community. The effectiveness of the law is the legislation of lower and higher level aims so that the public and law enforcement officials can implement consistently and without distinguishing between one community and the other.The application of Supreme Court regulation no. 2 year 2015 in the District Court has not been effective.

Keyword: Effectiveness, Supreme Court , Simple Settlemen

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I. INTRODUCTION

Civil Law is a part of law that governs the settlement of disputes arising from the conflict of private interests between legal subjects one with other legal subjects, between persons with persons, persons with legal entities and legal entities with legal entities.[1] Civil law is also a place for the subject of punishment to demand harm, both material and immaterial damages, against any legal subject that violates the private interests of other legal subjects. A civil dispute arises when the rights of either party have been reduced or eliminated so that those who feel disadvantaged claim their rights through an intermediary of the judiciary or better known as litigation. This will not be a problem when the solution is concise with less cost than the disputed matter value of the case. However, in reality the settlement of cases sometimes cost a lot, so it can hamper the financial development of the parties concerned.The process of settling cases that require a lot of money also usually requires a long time. But some people are more concerned with the matter than to question the amount of costs incurred during the process of the event took place or how long the run until the decision. This is certainly not in line with the principle, fast, simple and low cost which is one of the important principles in litigation process. When the law through the principles contained in the Basic Law of Judicial Power (Law Number 48 Year 2009) stipulates that the judiciary in Indonesia is implemented in a quick, simple, and light cost, but in reality the principle of the speedy administration of justice has not yet been realized. If they want to find the cause, it is no longer in the legal sector, but the obstacle lies in the non-legal sector such as economic factors (such as the lack of judicial facilities), political factors (eg no government policy to increase budget for judicial bodies, such as the addition of the number of judges and other judges), cultural factors (among others the hardening of "prestige culture") among the citizensA Dispute Settlement arising in the business world is a problem in itself, because if the business person faces a certain dispute, then he or she will be faced with a long and costly trial process while in the business world, the desired dispute resolution is what can take place quickly and cheaply. In addition, dispute resolution in the business world is expected as far as possible not to undermine further business relationships with whom he has ever engaged in a dispute. This is certainly difficult to find if the party concerned brought his dispute to court. Because the court settlement process (Litigation), will end in the defeat of one party and the victory of the other. In addition, there can be general criticism of the dispute resolution through the courts, that is, because:

[1] See, Achmad Ali, 2002, ***Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*** PT. Gunung Agung Tbk, Jakarta.

1. Settlement of disputes through courts is very slow; Dispute settlements through courts that are generally slow or called waste of time are caused by a highly formalistic and highly technical examination process. In addition, the increasingly heavy stream of cases resulted in courts being burdened with too much burden.
2. Costly case fees; The cost of cases in the dispute resolution process through courts is very expensive. The more so when it comes to the length of dispute resolution, as the longer the dispute settles, the more costs are incurred. This cost will increase if taken into account the cost of lawyers who are also not smal.

Based on the various shortcomings of dispute resolution through the courts that so in the business world, the parties to the dispute may prefer to resolve the dispute faced out of court. Wirjono Prodjodikoro argued "The nature of civil procedure law in Indonesia should be in accordance with the nature of the way the Indonesian people in applying for justice in general, very simple.In practice, however, the settlement of cases in the Court is in contrast to the principle adhered to by civil law itself. Because the settlement of cases in the Court takes a long time with a convoluted process and the expenditure of justice seekers who continue to swell due to renting a lawsuit or in the masapenyaianaian existing case. Not long ago, the Supreme Court has issued Regulation No. Supreme Court. 2 Year 2015 on Procedures for Settlement of Simple Claims. The term simple lawsuit is commonly referred to as the claim claim court, which is a civil lawsuit ringandengan fast case resolution process. Some restrictions have been set out in Supreme Court Regulation No. 2 of 2015. For example, in the filing of the Lawsuit, the maximum object value of Rp.200.000.000,00 (two hundred million rupiah) with a term of completion of this case up to 25 days must be decided. The verdict is final and binding at the first level. The procedure for filing a simple lawsuit is also not required to be represented by lawyers or advocates as well as in ordinary civil lawsuit cases. However, the parties (Plaintiffs and Defendants) with or without legal representation shall be present directly during the trial. Therefore, a Claim can not be filed if the Defendant is not known of residence or domicile. The use of advocate services will certainly cost a lot. The rule actually contains the emphasis of the parties need not use advocate services to make the judicial process more effective and efficient (litigation of efficiency). The simple lawsuit case is not designed as a dispute, but it seeks to solve the legal problems facing the stakeholders quickly and simply. A simple jurisdiction is included in the authority or scope of the general court. Not all cases can be solved by filing a simple Lawsuit. All material of Supreme Court Regulation No. 2 of 2015 is appropriate and has been applied in many countries. Like, the settlement period is limited, with a single judge, there is a limit on the value of the lawsuit, and the final decision at the first level.

Formulation of the problem

1. How effective is the application of Supreme Court Regulation no. 2 year 2015 at Bantaeng District Court?
2. What factors affect the effectiveness of perma number 2 of 2015 in the Bantaeng District Court?

Theoretical framework

Theoretical framework in the study using the theory of legal effectiveness proposed by Surjono Soekanto. In his scientific view, he argues that the effectiveness of a law is determined by five (5) factors. The five factors that can be used as a benchmark to determine the effectiveness or absence of a law, namely: Factor of law itself (law), law enforcement factors ie the parties that form and apply the law, facilities and facilities that support law enforcement, Factors society, ie the environment in which the law applies or applies. Cultural factors, namely as a result of work, inventiveness and sense that is based on human initiative in the social life.[2]He further revealed that the five factors above are closely related. Because the five factors mentioned, is the essence of law enforcement, is also a benchmark than the effectiveness of law enforcement. He added that the first element that determines the functioning of written law properly or not depends on the rule of law itself.If you look at the ideas and legal concepts contained in the theory of legal effectiveness proposed by Soerjono Soekanto, seems to have relevance to the theory of legal effectiveness proposed by Romli Atmasasmita, that; the factors that hinder the effectiveness of law enforcement lie not only in the mental attitude of the law enforcement apparatus (judges, prosecutors, police, and legal counselors), but also lie in the often neglected factor of legal socialization.[3]Observance of the law is not separated from the awareness of law, and good legal awareness is the obedience of law, and good legal unconsciousness is disobedience. Statement of legal obedience must be juxtaposed as a cause and a result of awareness and observance of the law. The law is different to the other sciences in human life, the law is different to the art, science and other profesionalis, the structure of the law is essentially based upon the above commitment and not obligation. A moral obligation to obey the rules of forming characteristics and role in society.

[2] Achmad Ali, Ibid
[3] Ibid

In reality the adherence to the law is not the same as other social obedience, obedience to the law is an obligation that must be carried out and if not implemented will arise, it is not so with sanctioned obedience, obedience social while not implemented or carried out social sanctions then in force in the community this is what being penghakim. It is no exaggeration when obedience in the law are likely to be imposed. Obedience itself can be distinguished into three types,[4]

II. DISCUSSION

The law of civil procedure is a formal civil law which regulates how civil law is enforced if there are any certain offenses. There is no uniformity of opinion about the boundaries of the experts and doctrine in defining the Civil Procedure Code itself. The expert opinion that one has some essence that approached the same about the definition of the Civil Procedure Code. With this will be quoted some opinions of experts related to the translation of the definition of Civil Procedure Code. In general, the Civil Procedure Law is a legal regulation governing the process of settling civil cases through judges (since the Court) since the filing of the lawsuit, the implementation of the lawsuit, until the decision of the Judge. The Civil Procedure by Sudikno Mertokusumo is a legal regulation governing how to guarantee compliance civil law material by judge mediation. In other words, civil procedure law is a legal regulation that determines how to guarantee the implementation of civil material law. More concretely, it can be said that the Civil Procedure Law regulates how to file rights claims, examine and decide upon and execute rather than judgment. One civil law expert Abdul Kadir Muhammad gave the definition of Civil Procedure, namely "The law of civil procedure is a legal regulation that serves to maintain the civil law as it should be[5]. Because the settlement of the case is requested through a court (judge), the civil procedure law is formulated as a legal regulation governing the process of settling civil cases through the courts, from filing the lawsuit up to the execution of the judge's decision. "The Civil Procedure Code is summarized concisely as a set of rules ordinances governing the ordinance the implementation of civil law or the application of civil law rules in practice.In the application of the Basic Civil Procedural Code of hand in practice that is the principle and theory. Principle can mean the foundation, foundation, foundation, principle, and soul or aspiration. The legal principle (Rechtbeginsellen) is one part of the rule of law. The principle of law is general and abstract, so it becomes a spirit or spirit in a law.Roeslan Saleh mentioned that every time the apparatus establishes the law, this principle always keeps urging into the legal consciousness of the shaper[6]. There are four substantive elements in the principle of Civil Procedure namely the value of the underlying legal system (philosophic), the existence of legal principles), the existence of legal rules and the last is the legal society supporting the system (legal society). Paton mentions it as a means of making the law alive, growing and developing it shows that the law is not just a collection of rules. If it is said that in the presence of the principle of law, the law is not merely a collection of rules, it is because the principle contains the values of ethical demands, when a rule of law is understood, there may be no ethical considerations in it and it can be perceived the direction of the expected direction so far.[7]Having known some substantive elements about the principle of law, will be discussed further related to the principles used in the Civil Procedure Code. The principles of Civil Procedure Law in Indonesia as follows:Open Justice Principles for the Public (Openbaarheid van rechtspraak) This principle is a fundamental aspect of the practice of trial proceedings. Because before the Panel of Judges starts to hear civil cases, the Panel of Judges must state that the trial is declared open and open to the public. This affects the validity of the verdict to be decided by the Panel of Judges and may affect the cancellation of the decision by law in accordance with Article 13 paragraph (1) to paragraph (3) of Law Number 48 Year 2009 concerning Judicial Power. Formally this principle opens a chance for soccial control which means that the proceedings have no meaning if held publicly.Except if otherwise provided by law or if based on important reasons contained in the minutes of the proceedings ordered by the judge.

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[4] Kelman (1966) and l. Pospisil (1971) the book of Prof. Dr. Achmad Ali, S.H., MH Menguak theory of law (Legal Theory) and a theory of Justice (Judicial Prudence) including the Interpretation Act (legisprudence)

[5] Abdul Kadir Muhammad, 1992, *Hukum Acara Perdata Indonesia (*Indonesian Civil Procedure Code) , Bandung: Citra Aditya Bakti, p.22

[6] R. Subekti, 1977, *Hukum Acara Perdata,* Jakarta: Bina Cipta, p.5.

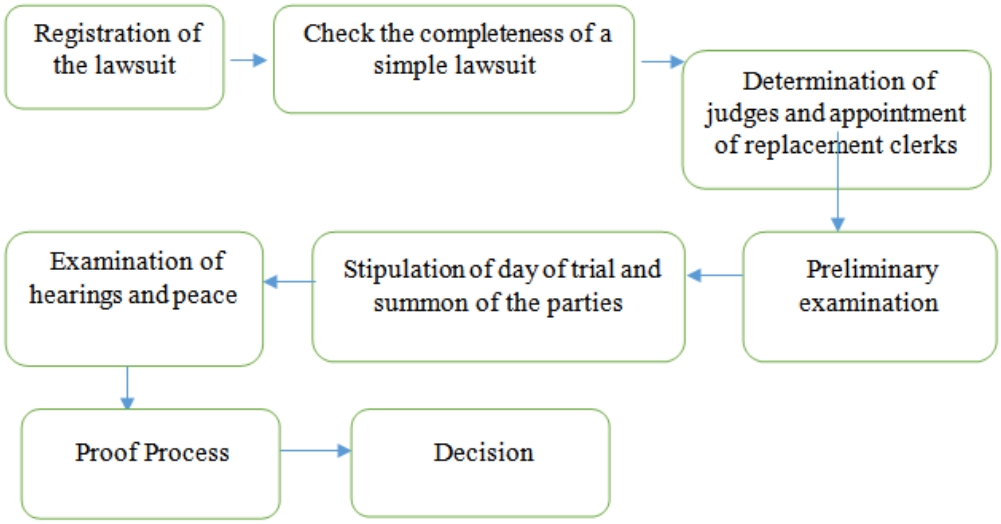
[7] M.Yahya Harahap, 2005, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan.*

1. Passive Judge (Lijdelijkeheid van de rechter), in the Civil Procedure Law one of the principles is that the judge is passive. This principle implies that the judge in examining civil cases is only examining cases posed by the parties only, with the scope and subject matter of the dispute determined by the parties themselves.
2. Mohammad Saleh and Lilik Mulyadi provide a conclusion related to the notion of "judge is passive" in terms of two dimensions of the coming of the document and from the broad side of the dispute. First, in terms of the initiative's vision of the coming case, or not, the lawsuit relies on an interested party who feels or perceives that his or her rights have been violated by others. If no lawsuit is filed by the parties then there is no judge to adjudicate the case (Nemo judex sine actore). Secondly, in terms of the broad vision of the subject of the dispute, only the parties are entitled to determine so that the judge only starts on the event submitted by the parties concerned (secundum allegat iudicare). If viewed in Article 130 HIR or 154 RBg, the parties may freely revoke the case which has been brought to trial and the judge shall not be impeded. In practice, however, the application of the principle of "judge is passive" has undergone a shift, especially with respect to the provisions of Article 178 HIR or 189 RBG. The existence of the provisions of Article 178 of HIR or 189 of this RBG changes the view that the judge in civil case mumutus is more active. With this it can be seen that the judge will only adjudicate cases if there are parties filing a lawsuit to the court, but with the shift the judge is also required to be more active and entitled to provide advice and solutions to each party litigation.
3. Listening to both the litigants (Audiet Alteram Partem). In Article 4 Paragraph (1) of Law Number 48 Year 2009 on Judicial Power stated that "the Court judges according to the law by not discriminating the person. That is, the judge in judging the civil case it must be fair to impose both litigants with equal and impartial capacity against either party when examining, adjudicating, and deciding cases. The judge shall not give a basic conclusion by stating one of the parties is true without giving the other party the opportunity to express his opinion before the trial. This principle also applies in the application of burden of proof to the parties. With the principle of Audiet Alteram Partem, the judge must be fair in charging the proof that the chance to lose or win both sides remain the same as not limping.
4. 4) Conduct a fee (Nietkosteloze rechtspraak). In principle, the cost of proceeding for the first-level court is stipulated by the Head of District Court as regulated in the provisions of Article 1 paragraph (1) and Article 3 paragraph (3) PERMA number 2 of 2009 concerning the Cost of Case Settlement Process and its Management to the Supreme Court and its subordinate courts. This principle shall also be governed by Article 121 paragraph (4), Article 182, Article 183 HIR or Article 145 paragraph (4), Article 192 up to 194 RBg. Where the court fee covers the cost of the court, the summoning of the parties and the stamp duties. Particularly for those parties unable to pay the court fee, they can apply to the Head of the local District Court with free trial (prodeo) as regulated in Article 237 HIR or Article 273 RBG which reads: "Whoever wants to go to litigation, either as a plaintiff or a defendant is unable to bear the cost, can obtain permission free of charge." In practice, if a person is going to litigate freely, the parties concerned must be completely inadequate by attaching an incomplete certificate made by the Village Head and known to the Camat where the parties live. Furthermore, this legal aid funding shall be borne by the State Budget. The judge's decision shall be accompanied by reasons. All court decisions shall contain the reasons for the decision as a whole as a basis for consideration to hear, Article 184 HIR paragraph (1) or Article 195 paragraph (1) RBg. This argument is used by the judge as a form of accountability to the public, and also to show that the examination is done objectively and fairly so that the decision is authoritative not solely determined by a particular judge, but because of the argumentation of its ruling by the law (ratio legis).
5. Simple Judgment, Quick and Low Cost, This principle is contained in Article 2 paragraph 4 of Law Number 48 Year 2009 on Judicial Power which reads: "Justice done with simple, fast and light cost".The purpose of the principle of fast, simple and lightweight trial is in every case that entered from the time of the examination until the decline of the procedure is done in a simple no convoluted so that affect the time period of completion of the case. Quickly, representing that the judiciary should be implemented in a fast duration of examination with regard to the efficiency of time used so as not to berimbas on the accumulation of incoming cases due to too long the examination process. Mild cost in the implementation of cost event law is suppressed to a minimum so that it reaches all levels of society seeking justice[8].
6. In the settlement of the simple lawsuit case, there are several stages to be passed during the trial. Procedures and procedures of the implementation of the procedural law have been regulated in detail in PERMA Number 2 Year 2015. The examination begins with the registration of the Claims at the Registrar of the District Court authorized to hear cases and end with the reading of the judgment by a single judge. The

[8] Achmad Ichsan, 1967, ***Hukum Perdata I.B***, Pembimbing Masa, Jakarta, p.35

clerk shall determine the qualification of his case in advance by analyzing whether the lawsuit filed by the lawsuit can be examined by simple settlement of the lawsuit or will be examined in civil proceedings. If it turns out that the case is included in the object of a simple lawsuit it will be followed by a preliminary examination, but if the case is not included in the simple lawsuit object the case will be examined with a regular event.[9]

The scheme of plot and stages of procedural law in the settlement of simple lawsuit as set forth in Article 5 paragraph (2) PERMA Number 2 Year 2015 are as follows:



A simple lawsuit is included in the authority or scope of the General Courts. Not all cases can be resolved by filing a simple lawsuit. The limitation of the simple lawsuit material has been regulated by PERMA No. 2 of 2015, particularly Article 3 and Article 4 which, if summarized as follows:

1. Claims are filed against a breach of contract of promise (wanprestasi) and / or unlawful act with a claim must not be greater than Rp 200.000.000,00 (two hundred million rupiah);
2. The case concerned is not under the jurisdiction of special courts such as commercial courts, industrial courts, and others;
3. Excluding land rights disputes;
4. The parties in a simple lawsuit shall consist of plaintiffs each of which shall not be more than one unless having the same legal interest;
5. Defendants unknown where they live, can not be filed a simple lawsuit;
6. Both the plaintiff and the defendant must be within the same jurisdiction of the court; and

Both parties both the plaintiff and the defendant are required to attend all proceedings with or without the presence of their legal counsel. But in practice it is not easy to determine the case is purely a matter with a simple material object, an example in the dispute of accounts payable is no guarantee of land or pledge of land. Because in determining the position of the case each party must be different, it could be the plain party declared this default, but the defendant stated the land dispute.This needs to be reviewed further during the registration period of the case so that no mistakes will be made in the determination of the matter of the lawsuit whether it will be resolved through a simple settlement of the lawsuit or through the ordinary examination process as there are several qualifications for the case to fall into the category of simple suit in accordance with Article 3 paragraph (1) and paragraph (2) of Regulation of the Supreme Court Number 2 Year 2015.

V. CONCLUSION

The effectiveness of the law is the legislation of lower and higher level aims so that the public and law enforcement officials can implement consistently and without distinguishing between one community and the other.The application of Supreme Court regulation no. 2 year 2015 in the District Court has not been effective.The five factors that affect the effectiveness of the application of the Supreme Court regulation is the Factor of law itself (law), law enforcement factors namely the parties that form and apply the law. Factors of facilities and facilities that support law enforcement.The societal factor, ie the environment in which the law is

[9] Pitlo, 1986, ***Pembuktian dan Daluwarsa (terj.),*** Intermasa, Jakarta,p. 10

applicable or applied. Cultural factors, namely as a result of work, inventiveness and sense that is based on human initiative in the social life.

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