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### Small Claims in Indonesia: Fundamental Problems and Way Forward

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*Received: March 16, 2022 ▪ Reviewed: May 12, 2022*

*▪ Accepted: June 10, 2022 ▪ Published: July 29, 2022*

**Abstract:**

An analysis of regulation as a legal umbrella and analysis of empirical data suggests that small claims in Indonesia need to be addressed because this trial is not conducted effectively. This article argues that the legal basis for the Indonesian small claim procedure has some weaknesses: identifying the limitations for the claimant, determining the lawsuit value, institutionalizing the initial examination process, settlement procedures, legal remedies submitted against the judge's decision, execution procedures and application of auctions on small claim objects. By adopting a socio-legal approach, this article aims to restructure the small claims procedure in Indonesia, which creates a simple, fast, low-cost judicial system and guarantees legal certainty and fairness to the parties. Additional empirical data and analysis are presented in tabular form to make it easier to pinpoint the root problem. This paper finds that the legal reconstruction of small claims has important implications for judicial reform in Indonesia, primarily to achieve justice and expediency. Some fundamental issues must be attached to strengthen the small claim procedure in Indonesia, i.e., value limitation of loss, reinterpretation of parties, independent appraisal, optimizing the District Court's role, and distinct procedure in small claim auctions.

**Keywords:** fundamental issues, Indonesian judiciary, legal reconstruction, small claim procedure.

### 印度尼西亚的小额索赔：基本问题和前进方向

**摘要：**

对作为法律保护伞的监管的分析和对经验数据的分析表明，印度尼西亚的小额索赔需要得到解决，因为该试验没有有效地进行。本文认为，印尼小额索赔程序的法律基础存在一些弱点：确定索赔人的限制、确定诉讼价值、将初审程序、和解程序、针对法官裁决提交的法律补救措施、执行程序 and 申请制度化。小额索赔对象的拍卖。通过采用社会法律方法，本文旨在重组印度尼西亚的小额索赔程序，创建一个简单、快速、低成本的司法系统，并保证法律确定性和对当事人的公平性。额外的经验数据和分析以表格形式呈现，以便更容易查明根本问题。本文发现，小额索赔的法律重构对印度尼西亚的司法改革具有重要意义，主要是为了实现正义和权宜之计。加强印度尼西亚小额索赔程序必须注意一些基本问题，即损失的价值限制、当事人的重新解释、独立评估、优化地方法院的作用以及在小额索赔拍卖中的独特程序。

**关键词：**基本问题，印度尼西亚司法，法律重建，小额索赔程序。

## 1. Introduction

Small Claims Court (SCC) has long developed in many countries that adhere to common legal and civil law systems (McGill, 2016). Every country implements SCC to provide access to justice for its people without spending much money, which can be solved quickly. Each country has a different concept adapted to its legal politics in its application. However, fundamentally, the SCC model can be classified starting by separating courts/tribunals based on separate courts or tribunals of limited jurisdiction; modified procedures for small claims in ordinary courts; and other simplified procedures (Retnaningsih & Velentina, 2019).

In the United States, the SCC mechanism model separates courts/tribunals based on limited jurisdiction and modifications for small claims in ordinary courts by applying a single judge, no jury, and simple evidence. The cases that can be resolved are also different in each state. However, in general, SCC is used for money debts cases, personal injury, property damage, and breach of a contract. Apart from the United States, the SCC model is also almost similarly applied in India, New Zealand, Hong Kong, and Singapore. In these countries, the presence of SCC is considered adequate to resolve disputes with small losses quickly and efficiently (Wheelan, 1990).

Meanwhile, in the Netherlands, it is preferable to use other types of simplified procedures. Dutch civil procedural law as regulated in *the Wetboek op de Burgerlijke Rechtvoordering* (Rv), recognizes a legal concept called *kortgeding* (short examination). This procedural concept aims to resolve disputes that require an immediate (temporary) settlement/decision according to the nature of the dispute (Margetson & Margetson, 2021). If the dispute does not receive an immediate, timely settlement/decision, then the decision is of no use. This procedure is carried out by means that when a lawsuit comes in, the court will send a written summons to the defendant to appear before the judge to clarify the lawsuit filed against him. *Kortgeding* is a lawsuit procedure separate from the usual procedure. It is unique, carried out in a civil court to obtain a court judge's decision earlier (immediately) in urgent cases that the court must resolve (Art. 223 Rv).

A single judge leads the short procedure examination (Ferraro & Giacalone, 2020; Silvestry, 2018). The examination of the parties can be done verbally, and the decision can only be taken once, namely cassation. However, the decision can be made first even though the legal effort is submitted. The opposition to the court's decision with a short procedure is submitted to the court that decides with a short procedure no later than seven days after the *verstek* decision is notified to the defendant (Mesquita & Cebola, 2022).

To enjoy the court process within the framework of

a simple lawsuit settlement, the fees imposed by each country's members of the European Union are also different. At least three general forms are used to determine the number of fees required: fees with a fixed amount, the imposition of fees according to the percentage of claims submitted, and the determination of variations in court fees according to the case being handled. Concerning the costs incurred by the parties, the government sets a lower fee for cases handled online for British citizens (McDonagh et al., 2018). In contrast, the Spanish government applies a provision for waiver of simple lawsuit fees (Nicora, 2017). As a result, the average fee charged for processing simple lawsuits is around EUR 94.

The European Union countries that use fixed cost provisions in the SCC system are France, Denmark, Greece, Ireland, Malta, Portugal, and Sweden. Hungary is one country that regulates variations in the costing required to access case settlement through the SCC. The Hungarian government has a policy of deferring the payment of court fees and even waiving court fees for individuals with low incomes. This mechanism is carried out to provide easy access for the poor so that all levels of society can feel access to courts.

In South Africa, the SCC aims to facilitate and increase access to justice. The government has taken several policies, ranging from providing court facilities in remote areas that reach up to magisterial districts as equality courts by allowing the use of the ordinary language in courts. This conversion court as a branch provides full service and free legal fees to the public. This important characteristic of the SCC also emphasizes that there is no need to have legal representatives/advisors to represent the plaintiffs (Hulme & Peté, 2021; Pienaar, 2017).

In South Korea, SCC is performed with a simplified procedure (JIFI Court of Korea, 2017). A trial date is immediately set when a complaint is filed, and the deliberation is concluded after one hearing. The characteristics of the SCC in South Korea are that the plaintiffs' spouse, line relationship, and siblings can serve as representatives even without the court's permission. Judges examine witnesses; if deemed necessary, information can be given as a substitute for examining witnesses or evaluators. Decisions can be announced immediately after the hearing is closed, and decisions do not need to mention any basis for consideration. In South Korea, cases that SCC can resolve only relate to the payment of money, other substitutes, or securities of a certain amount, with the lawsuit value being limited to not exceeding 20 million won (JIFI Court of KOREA, 2017; Statutes of the Republic of Korea, 2019).

While in Singapore, it is known as the Small Claims Tribunals (SCT). Its main characteristic lies in the claim's value limitation, which is \$20,000, which can

be granted a waiver of up to \$30,000 if the parties agree. Meanwhile, cases that can be submitted are legal cases that do not exceed two years before being submitted to the court—seeing the development of SCC implementation in several countries previously, this article highlights two critical issues. The first is the fundamental problem of why SCC is not running optimally in Indonesia. The second main issue is strategic efforts going forward so that the SCC provides more justice and benefits for litigants (Harley & Said, 2017).

## 2. Methodology

This article is the result of normative legal and socio-legal research. The source of information is focused on secondary legal material in books, articles, and newspapers, all of which are obtained using document analysis techniques. This article uses legal, conceptual, and comparative approaches. The study and conclusion drawn from research information are then carried out using the deductive syllogism method.

## 3. Fundamental Problems of SCC in Indonesia

Based on statistical data issued by the Supreme Court, small claims always demonstrate an increasing number from year to year. In his 2019 Supreme Court report speech, the Supreme Court Chief Justice stated that the simple lawsuit mechanism implemented in 2015 showed an increasing trend in its use in civil and sharia economic cases. In 2019, the number of simple lawsuit cases reached 8,460 cases, or an increase of 33.65% from 2018, which was only 6,469 cases (Azizah, 2020).

In this article, we use some samples of simple lawsuit handling practices in several regions to support the fundamental issues of SCC in Indonesia. There are at least six regions that will be the object of this research, which include: (a) East Jakarta District Court; (b) Tanjung Karang District Court; (c) Bangko District Court; (d) Kota Agung District Court; (e) Tobelo District Court; (f) Praya District Court. Considering the lack of access to information disclosure from the Courts in Indonesia, the six locations were chosen as samples for the study. The selection of the six regions was based on examples of implementing simple lawsuits carried out in regions with different geographical characteristics and community typologies.

The regulations governing SCC in Indonesia are regulated by PERMA Number 2 of 2015, replaced by PERMA Number 4 of 2019. The limitations and conditions for this simple procedure were then changed. Based on the new regulation, the limit on the value of material losses suffered by the parties is increased to a maximum of IDR 500,000,000 (five hundred million rupiahs). Another later amended provision was related to the domicile area of the plaintiff and defendant. For example, suppose the plaintiff is outside the jurisdiction of the defendant's place of residence or domicile. In

that case, the plaintiff may appoint a proxy, incidental attorney, or representative with an address in the jurisdiction of the defendant's domicile with a letter from the plaintiff's institution.

From the elaboration of the legal basis that is applied as a guideline for implementing the legal mechanism for a small claim, it can be seen that there are several vulnerable points. First is implementing procedural procedures to resolve simple lawsuit cases based on Supreme Court Regulations. According to the authority of the Supreme Court to modify the procedural procedures, the authority to regulate the procedure for resolving simple claims through PERMA SCC is indeed allowed. Nevertheless, on the other hand, these provisions certainly should not be used for an extended period. PERMA is only intended to fill a legal vacuum that has not been regulated in the Law so that justice seekers can still get excellent service.

Second, about the procedure for making PERMA, which mostly only involves officials within the Supreme Court, the substance of the legal rules is part of the authority's attribution or the power attached to the institution. Thus, as a breakthrough initiated by the Supreme Court with a broader long-term goal, the basis for legitimacy placed on the formation of PERMA can be said to be inaccurate. Therefore, a law with legal force with a broader reach is needed to support the small claim's implementation in the future.

Third, the material content contained in PERMA also has limitations. As a legal rule made only to fill the void of legal rules not contained in the Act, the provisions of the contents contained in PERMA cannot exceed the Law. As stated by Lon L. Fuller in *Morality of Law*, a legal system must contain regulations that are not only ad hoc, and there should be no habit of frequently changing the rules. Changes to too frequent regulations will result in disorientation in their application (Murphy, 2005).

Based on several analyses of these fundamental weaknesses, it is then proven by an analysis of the number of small claim cases processed through the fast-paced mechanism in the six District Courts that were the sample of this research. In addition, the six-court selection was emphasized based on the access information disclosure. Finally, the empirical evidence is obtained based on the following conditions such as the East Jakarta District Court (class IA), Tanjung Karang District Court (IA grade), Bangko District Court (IB grade), Kota Agung District Court (II class), Tobelo District Court (II class), and Praya District Court (II class).

### 3.1. The Number of Lawsuits

As a new procedural mechanism and is part of the innovation developed by the Supreme Court as the highest judicial institution. Table 1 will portray whether this procedure has been underway appropriately. This analysis describes the number of lawsuits registered through a small claim procedure.

Table 1. The number of small claim lawsuits

District Court	2018	2019	2020
PN Jakarta Timur Kelas IA	18	24	18
PN Tanjung Karang Kelas IA	23	20	36
PN Bangko Kelas IB	30	24	54
PN Kota Agung Kelas II	2	9	5
PN Tobelo Kelas II	2	12	24
PN Prava Kelas II	15	28	21
Total	90	117	158

Note: Data obtained by the authors from the District Court

Of the six district courts sampled in this paper, the number of small claim lawsuit cases handled by these courts increased from 2018 to 2020. Although the increase is not visible if we look at the data from each court, the increase is happening globally. This data can indicate that the settlement of cases through the submission of a quick procedure with a small claim court is increasingly known by many people.

The characteristics of its territory greatly influence the determination of the court class. Courts that have just been established in the city or district will get the title of class II court. So, in this case, the total number of lawsuits submitted is certainly not as many as those in class I courts. The analysis of each criterion and the number of cases handled must also experience a significant increase in the last three years to advance to court class. It becomes clear that later the practice of filing a case settlement mechanism through a simple lawsuit is still not found in too many class II courts.

The influence of social conditions, economy, communication, and transportation also contributed to the determination of the class category of the court. Economic sectors that can utilize resources will undoubtedly give birth to complex social conditions in society. Business cooperation agreements will be found in areas with these characteristics. Supported by financial stability and easy access to transportation to court facilities, it will create a supportive climate for implementing dispute resolution procedures using the judge's assistance in the trial process.

### 3.2. The Qualification of Small Claim Lawsuit

The subsequent analysis is based on the qualification of the small claim lawsuits registered with the courts. Qualification of such claims follows the type of case that can be filed as a simple lawsuit, namely default or breach of contract and acts against the law. In Table 2, the number of cases related to breaches of engagements in the form of breach of contract or default dominated from year to year.

Table 2. The qualification of lawsuit

District Court	Year	Unlawful action	Default
PN Jakarta Timur Kelas IA	2018	1	17
	2019	4	20
	2020	3	15
PN Tanjung Karang Kelas IA	2018	2	21
	2019	1	18
	2020	0	36
PN Bangko Kelas IB	2018	1	29
	2019	0	24
	2020	2	52

Continuation of Table 2

PN Kota Agung Kelas II	2018	0	2
	2019	1	8
	2020	0	5
PN Tobelo Kelas II	2018	2	0
	2019	5	7
	2020	11	13
PN Prava Kelas II	2018	0	15
	2019	1	27
	2020	0	21

Note: Data obtained by the authors from the District Court

From the data shown in Table 2, the comparison between the number of default cases and acts against the law differs from year to year. For example, of the total 365 simple lawsuit cases registered in the six district court samples for three years from 2018 to 2020, only 34 were filed due to unlawful acts. The remaining 331 cases were disputes resulting from breach of contract or default.

Then, there is a need for a more in-depth analysis of this fact. Are there not many cases that arise due to unlawful acts, or can only a few of these cases meet the criteria of a simple lawsuit? Undeniably, the nominal limit of loss to five hundred million may not be easily fulfilled by justice seekers who suffer losses due to unlawful acts committed by the opposing party. From this point, the lawsuit's simplicity cannot be measured by the limitation value of the lawsuit, which is calculated in money alone. There need to be other factors that can be used to limit losses that can fulfill the elements of simple evidence (Haneman, 2017). Because of the essential nature of a small claim procedure, the existence of a mechanism for proceedings with the SCC is intended so that the court can adjudicate based on a simple, fast, and low-cost principle for cases that can be proven.

### 3.3. The Claimant in Small Claim Lawsuit

From the data shown in the table, some of the lawsuits entered and registered as simple lawsuits come from claims filed by legal entities. Of the total 365 cases registered, legal entities filed at least 295. Individuals registered only 70 cases in a period of 3 years.

Table 3. The number of claimants in 2018, 2019, and 2020

District Court	Individual	Legal Corporate
Jakarta Timur IA	3	57
Tanjung Karang IA	9	70
Bangko IB	17	91
Kota Agung II	3	13
Tobelo II	33	5
Praya II	5	59
Sum	70	295

Note: Data obtained by the authors from the District Court

Regulations related to the plaintiff's residence and domicile location will significantly affect anyone accessing a small claim lawsuit. The plaintiff and the defendant must be in the same jurisdiction to file a small claim lawsuit. Meanwhile, the plaintiff being beyond the jurisdiction of the same court as the location of the defendant's residence should fulfill the

requirements for a representative or proxy appointment. If this provision cannot be fulfilled, the lawsuit submitted cannot be accepted by the judge because it contains a formal defect.

The disparity in the number of plaintiffs dominated by legal entities may indicate that a small claim lawsuit filing procedure is complicated for individuals to fulfill. Restrictions on the location of the plaintiff's and defendant's residences, originally intended to support the process of summoning the parties to be faster and to reduce the costs required for this component, have not been able to fulfill the sense of procedural justice. It will not be a problem for legal entities with complete access to human and financial resources if they must find people who can be appointed to act as representatives or attorneys (Rohmatin & Syafiuddin, 2021). However, this does not seem to be the case with individuals.

The low level of small claims submission has not reached individuals who do not have special competence in the field of law or those outside the defendant's jurisdiction. The small claim procedure made as simple as possible so that everyone can follow it without representing the legal process to a legal expert still has legal obstacles. Procuring small claims based on simplicity, speed, and low cost requires additional costs for those who cannot meet these criteria.

The rules that require the appointment of a power of attorney, incidental power of attorney, or representative in settlement of a simple lawsuit as regulated in Article 4 paragraph (3a) of PERMA SCC also do not reflect the simplicity in the administrative completeness procedure. This condition is because there are other rules in the next paragraph. First, the litigating parties must be present in court with or without being accompanied by a proxy, incidental attorney, or representative appointed based on an assignment letter from the plaintiff's institution.

Restrictions on the domicile location of the parties who contribute to the inequality figure for the parties consisting of individuals and legal entities can undoubtedly indicate the equal distribution of access to justice which a small claim lawsuit cannot accommodate. Therefore, court institutions committed to providing excellent service to the community must socialize the service mechanism for further small claim lawsuit settlement procedures to justice seekers and residents in their area. This criterion needs to be done keeping in mind that the small claim mechanism is intended to provide a simple procedure that everyone can carry out without appointing a proxy (Kadafi, 2019).

For this reason, the active role of the judiciary to go directly to the community and provide exceptional guidance is needed to promote this innovation. However, disclosure of information and access to such information is still minimal for those who have never dealt with the law. Moreover, the target of making this mechanism uses the limitations of the simplicity of the

cases. Table 3 also shows that the Tobelo District Court is the only region with the most significant number of individual small claim lawsuits. With a geographical condition that is not more than 3,000 km<sup>2</sup> and a population of around 190,000 people, it is effortless to accept the socialization of innovations carried out directly by touching the community.

### 3.4. Decisions Failing to Meet Formal and Material Requirements

After understanding the conditions that can affect the case settlement process in the implementation of the small claim court, an analysis can be carried out to see the implementation of the small claim court that has occurred in Indonesia through the data presented in Table 4. Small claim lawsuits have occurred over three years since 2018 in 6 selected District Court areas. These data show the number of cases handled and the influence of the trial procedures on the decisions issued by judges related to the settlement of these cases.

Table 4 shows that the cases were forced to be terminated due to an error in fulfilling the procedure for filing a small claim lawsuit. In this case, the errors referred to included failure to fulfill the material elements of a small claim lawsuit and formal defects that make the lawsuit unacceptable to the judge so that the trial process cannot be continued.

Table 4. Incomplete small claim lawsuit

No	District Court	Year	Dismissal	Niet Ontvankelijke Verklaard
1	Jakarta Timur IA	2018	0	2
		2019	0	1
		2020	0	2
2	Tanjung Karang IA	2018	0	0
		2019	2	3
		2020	5	1
3	Bangko IB	2018	2	1
		2019	0	0
		2020	6	4
4	Kota Agung II	2018	0	0
		2019	1	1
		2020	1	1
5	PN Tobelo II	2018	0	0
		2019	0	0
		2020	0	4
6	Praya II	2018	0	0
		2019	0	0
		2020	0	0

Note: Data obtained by the authors from the District Court

Based on the data presented in Table 4 and Table 1, the comparison of the number of cases that cannot pass the case examination process is as follows: (a) there were five lawsuits out of a total of 60 lawsuits in East Jakarta District Court; (b) there were 11 lawsuits out of a total of 79 lawsuits in Tanjung Karang District Court; (c) there were 13 out of 108 lawsuits in Bangko District Court; (d) there were 4 out of 16 lawsuits in Kota Agung District Court; (e) there were 4 out of 38 lawsuits in Tobelo District Court; (f) 64 lawsuits are declared eligible as small claim lawsuits in Praya

District Court. The judiciary still needs efforts to minimize this failure from the data presented.

In line with the factors originating from the use of a legal basis in implementing a small claim lawsuit, the aspect that can affect the number of lawsuits that cannot meet the requirements lies in the legal source used to be a reference in making an ideal lawsuit. As previously explained, Indonesia does not yet have a positive legal source that can be the only reference for civil procedural law in general. Applying the small claim trial through a simple, fast, and low-budget mechanism is intended to provide every citizen with a sense of procedural justice. Therefore, this article argues that it will be challenging for individuals who do not have in-depth knowledge of the distribution of the rules of civil procedural law.

### 3.5. Final Judgment and Execution Request

From all the data showing that there were cases resolved before reaching the final decision stage, there were still cases that ultimately followed every small claim settlement procedure. As shown in Table 5, not many cases get a final decision from the judge who oversees the case processing. This condition is certainly a good sign if other cases that do not have a final decision have gone through a peace process between the two parties.

Table 5. Judgment and execution

District Court	Year	Approve	Rejected	Execution
Jakarta Timur IA	2018	10	0	0
	2019	2	0	0
	2020	7	0	0
Tanjung karang IA	2018	7	6	0
	2019	2	0	0
	2020	15	0	0
Bangko IB	2018	16	0	0
	2019	16	0	0
	2020	22	0	0
Kota Agung II	2018	2	0	0
	2019	4	0	0
	2020	1	0	0
Tobelo II	2018	1	0	0
	2019	6	0	0
	2020	11	0	1
Praya II	2018	4	0	0
	2019	5	0	0
	2020	5	0	0

Note: Data obtained by the authors from the District Court

Evaluating the implementation of small claim practices in the district courts that are the sample of this study, applying the fast-paced mechanism to settle small claim lawsuits has not shown satisfactory results to meet the expectations of the essential nature of innovative design in the judiciary. Based on the analysis described, it appears that the SCC has not bridged the needs of justice seekers to resolve disputes arising due to violations of the civil rights attached to them. Moreover, settlement based on the applicable law to reach a consensus on compensation for losses suffered, either through complete litigation procedures or peace between the two parties, has not been compelling enough.

## 4. Seeking the Truth Justice: A Way Forward

At least the fundamental issue related to the basics of the procedural justice values includes the limitations for the litigants, the procedure for determining the value of the lawsuit in dispute, the formulation of determining the limit on the value of losses in small claims, institutionalizing the initial examination process, settlement procedures, legal remedies submitted against the judge's decision, simple execution procedures and application of auctions on small claim objects. Given these problems, there is a need for a material reconstruction of the basic rule of law to implement the SCC that meets the values of social justice for all Indonesian citizens.

### 4.1. Limitation of Value of Loss Due to the Small Claim Lawsuit

Changes to the limit value are necessary, considering the rupiah exchange rate will continue to experience inflation yearly. Nevertheless, problems will arise if a change must always follow the change in the rupiah exchange rate in the legal basis used to carry out the procedural mechanism for resolving small claims cases. According to Fuller, its regulations should not be merely ad hoc provisions in an ideal legal system. There needs to be a legal rule consistent with a formula that is easy to understand, and there should be no habit of changing the form of the applicable legal rules. Changes to the material of the content contained in the rule of law will cause the rule to lose its basic orientation.

As can also be seen in several countries that have also implemented the possibility of a quick dispute settlement in the form of a small claim court or other forms that have the exact fundamental nature, there are differences in determining the limits on the value of the lawsuit. As explained in the previous description, countries such as Singapore, the USA, South Africa, South Korea, and Hong Kong have different limits limiting losses. The application of the small claim tribunals implemented by the Singapore government, for example, requires that the value of the loss to be claimed is not more than \$20,000 or the equivalent of approximately Rp. 280,000,000 provided exceptions and the application of a limit of \$30,000 or the equivalent of Rp. 430,000,000 if there is an agreement between the two parties.

Limitations in determining the category of small claims in America have different forms. The limit provisions on the SCC apply to cases with a lawsuit value below \$5,000 or equivalent to Rp. 70,000,000, with further provisions stating that the value is only the value of the pure claim, excluding any interest, fees, or legal services that may be incurred. It arises from a dispute. This figure is also different from the implementation of SCC in South Africa. The application of SCC in a country with the nickname a

rainbow nation can only be used for disputes whose loss value is not more than Rand 15,000 or equivalent to Rp. 14,000,000.

Meanwhile, in South Korea, the government limits submitting small claims for disputes whose lawsuit value is less than 3,000,000 won or around Rp. 370,000,000. Moreover, in Hong Kong, small claims can be submitted to settle disputes in cases with a claim value of less than HK\$ 75,000 or equivalent to Rp. 130,000,000. There are differences in the range of small claims limitations in these countries. Of course, in determining the threshold value of a small claim case, there are various factors that the government considers according to the conditions in their respective countries.

Thus, determining the limit value of a small claim cannot simply adopt the rules imposed by other countries. Therefore, from the results of the analysis of the ideal form of the formulation of the threshold limit value of a small claim, it would be better if the determination of the initial limitation of the lawsuit was determined by a unit of measure that has a more stable exchange rate from year to year. So, the ideal form of measuring the threshold value of the small claim limitation in Indonesia will be more sustainable following the current years if it is based on the calculation of the exchange rate of precious metals or gold (Goldprice, 2022)

Using gold as an exchange rate standard is much more stable than having to base the exchange rate on a fiat-based currency in a floating exchange rate system. However, this system makes the currency system unstable because of comparing one currency value and another country's currency. Fluctuations in the comparison currency can trigger fluctuations that cause the stability of the exchange rate to be unstable. We can find this situation when comparing the rupiah and the dollar exchange rate. Automatically, this will affect the rate of inflation that occurs against the prevailing exchange rate. Inflation is generally interpreted as increasing the price of goods continuously over a particular time.

In the context of this research, the policy regarding the logic of exchange rate targeting can be used by the Supreme Court to design the basic concept of objectivity from nominal determination, which will be used as the limit of the loss value of a small claim. Furthermore, this analogy will become a supporting argument for using gold value as the basis for determining the lawsuit value limitation. Therefore, the legal products issued as the basis for implementing the small claim settlement procedure do not have to undergo periodic changes from time to time.

Suppose it is determined that the limit value of small claims in 2021 is IDR 500,000,000, with the price of pure gold in August 2021 being IDR 1,048,000 per gram. In that case, the limit value of small claims can be calculated based on a calculation equivalent to 477 - grams of gold. Furthermore, this calculation can be adjusted to the gold price when the new regulation is made. Thus, the limits can be more in line with yearly

inflation increases.

#### 4.2. Parties on Small Claim Lawsuit

Considering that the small claim procedure is designed to proceed, it is appropriate that every element that must be fulfilled does not make it difficult for community groups who do not have basic knowledge of court proceedings. Limiting the number of parties is necessary to minimize the possibility that the judge cannot accept the lawsuit based on a formal defect. Of course, with the limitation of the lawsuit being only able to involve one plaintiff and one defendant or more than one person when they have the same legal interest, this can minimize the possibility of an error in persona when making the lawsuit. In this case, an error in persona can be an in-person disqualification because the plaintiff does not have the right to sue or is considered incompetent to take legal action. In addition, this limitation on the number of parties can also minimize the possibility of *gemis aan hoedanigheid* (lack of quality) when the plaintiff incorrectly identifies the party to be sued or the *plurium litis consortium* (a consortium of several lawsuits) when the party being sued is incomplete.

In addition to ensuring that there are no formal defects in the determination of the parties involved, the limited number of litigants can also be used to ensure that the evidentiary procedures in the trial can be carried out simply by listening to statements from the parties. One of the characteristics of the Civil Procedure Code in the HIR is to submit a lawsuit as a form of application to the judge to reach deliberation by conducting direct examinations of the litigants or their representatives verbally. This nature is supported by the absence of provisions in the legal basis of any civil procedure to require litigants to appoint representatives or legal representatives. In the simple evidentiary procedure at the SCC, the judge will only submit the arguments for the lawsuit that have been briefly written down by the parties into the registration form and request additional evidence for arguments that the defendant does not unanimously acknowledge. So, in this context, it will be beneficial if one person only submits the information from each party directly involved in the engagement, which is the source of the dispute. Direct information obtained from the person concerned will undoubtedly be more valid than if the judge must hear and consider the information submitted by an attorney, incidental attorney, or representative appointed by the litigating party.

Related to the electronic court system, utilization in the form of an e-court can be an alternative solution for the imposed territorial boundaries. By using electronic devices, the licensing procedure for carrying out legal remedies across the relative competence of the court can indeed be processed more efficiently. As the European Union countries also apply things like this. To resolve cases that cross the boundaries between cities, the SCC institutions designed can be used to resolve problems involving citizens of other countries

within the European Union. Undoubtedly, this mechanism must be considered and adopted in the SCC institution in Indonesia.

Furthermore, electronic litigation procedures can shorten the time required to summon the parties or notify the competent court in the jurisdiction where the plaintiff resides. In addition, this method does not provide additional costs for the plaintiff, who must seek the appointment of a power of attorney to accompany him. Therefore, developing a combination of the two innovations carried out by the judiciary needs to be used as the primary consideration for reforming the judicial system and the draft Civil Procedure Law.

This suggestion has also been supported by Article 6A PERMA SCC, allowing the plaintiff and defendant to use case administration in court electronically. The electronic court program or e-court designed by the Supreme Court has been developed and is implemented by all court areas in Indonesia. In addition, some special officers must assist justice seekers in operating the system. As a form of developing a modern justice system with social justice, this system can be optimized to help reduce court costs incurred by the parties, simplify processes related to case administration, and speed up proceedings (Luizzi, 2018).

#### 4.3. Independent Appraisal

To determine the value of the loss suffered by the plaintiff and the value of the object of the lawsuit, it is better if the court establishes an independent institution tasked explicitly with estimating the lawsuit's value. This need is inseparable from the administrative needs that must be met by the parties so that the registered lawsuit can pass the initial examination process. One of the requirements for a small claim to be continued in the trial process is the fulfillment of the completeness and validity of the lawsuit documents registered.

The argument for the lawsuit stated must be based on the applicable law, which must include details about compensation based on the facts that occurred. The value of the loss that is not based on accurate calculations will result in the judge declaring that the lawsuit is formally flawed because the lawsuit has no legal basis. In the case of default, the provisions regarding compensation that can be claimed have been regulated in Article 1243 of the Criminal Code to fulfill it. Therefore, it is not a complicated matter. However, this is not the case with the provisions governing disputes arising from unlawful acts.

The nominal value of compensation based on a violation of the engagement is necessary to have an objective standard and not only based on assumptions built by the judge himself. Thus, it is necessary to have an independent estimating agency to determine the small claim value size objectively. In addition, the objective appraisal procedure carried out by an appraisal will help those who have little understanding of this appraisal procedure to complete the lawsuit they have made.

#### 4.4. Optimizing the District Court's Role

There is a need for consideration related to strengthening aspects in the courts of the first instance. Based on Article 1, paragraph 3 of PERMA SCC, the examination of small claims is carried out by a single judge. In essence, the application of this rule is intended so that judges can decide as soon as possible without taking a long time to discuss resolving small claims cases. The purpose of this legal rule is to fulfill the prerequisites related to the small claim settlement period as referred to in Article 5 paragraph (3) of the PERMA SCC, which limits the judge from completing the examination of the lawsuit and reading out the final decision with a time limit not exceeding of 25 days. The calculation of this period starts from the first day the trial is set.

The simplification of the examination procedure in the trial conducted on small claims does not make it difficult for a single judge to decide that it still fulfills the rules of the principles applied in civil procedural law. In a civil procedure, some principles must be met so that the decisions taken by judges in the trial process can be considered valid and fulfill the values of justice for both parties. These principles include: (a) Judges are active and passive (*verhandlungs maxime*). This provision further explains that a judge is waiting (*nemo iudex sine actore*) because the judge is not looking for a lawsuit, but the plaintiff is actively filing the lawsuit. When the lawsuits have been submitted to the court, the judge is obliged and cannot refuse based on the judge's ignorance in the submitted case. Against the decision he issued, a judge must pursue the formal truth obtained from reviewing the lawsuit material and evidence.

#### 4.5. A Distinct Procedure in Small Claim Auction

Concerning implementing the judge's decision in the procedural mechanism within the SCC, there need to be special rules regarding the procedure for confiscation of guarantees that may occur during the examination process. This action relates to the need for the lawsuit filed not to be illusory. Applying an expedited procedure requires a security seizure procedure excluded from general provisions and under the SCC's implementation. For this reason, it is appropriate that the procedure for confiscation of guarantees can be carried out only if a third party raises an objection and an examination is carried out against it using a single judge. This procedure ensures that the bail confiscation procedure will not hinder the trial process.

Meanwhile, the court can follow the plaintiff's execution request with the existence of an auction process on whether the object of the lawsuit has previously been confiscated or not. According to general rules regarding auction or public sales regulations, Indonesia still does not have a positive law regulating these provisions. Therefore, the applicable provisions to carry out the auction procedure are still based on the Ordinance of February 28, 1908, S. 1908-189, which has been in effect since April 1, 1908. In this provision, what is meant by general sale or



*openbare verkopen* (public auctions) is generally an auction or sale of goods to the public. The price bidding on the auction process is carried out by increasing, decreasing, or entering the price on a closed cover.

In an auction process, bids may be made by persons who have been invited or previously notified or are permitted to participate and given the opportunity to bid, agree on the bid price and submit bids on closed covers. The selling process in public like this can only be done before an auctioneer. These rules can only be excluded if a government regulation stipulates so. As a solution to this condition, the Supreme Court, as the highest judicial institution, needs to make a SEMA containing an agreement in the form of an MoU held with the Directorate General of State Assets as an institution under the Ministry of Finance which is authorized to carry out the auction procedure. The MoU must later contain all forms of special rules relating to implementing the collateral confiscation mechanism and the auction of small claim objects, including rules related to the auction deadline.

## 5. Conclusion

Some obstacles are still visible toward the SCC's implementation in Indonesia, so there is a need for a juridical reconstruction of the SCC legal foundation. The substance immaturity in determining the limitations and the SCC model can be seen in the changes to the PERMA SCC made even though it has only been valid for 4 (four) years. The maturation of SCC material also needs to be accompanied by incorporating basic rules regarding SCC institutions into the Civil Procedure Code to maintain the principle of legal certainty. As it is known that PERMA is one of the valid statutory regulations, but this rule should only be used to fill legal voids. Meanwhile, as one of the Supreme Court's innovations, the SCC requires a more robust legal basis, such as an Act.

Although examinations on the small claim procedure have been published frequently, this article offers fresh ideas on some significant matters. This offer is solely aimed at optimizing the small claim court in Indonesia. Nevertheless, this article notices weaknesses, especially the research sample's limitations. Therefore, this article encourages other researchers to use a more extensive sample to provide indicators of new substances to construct small claims rules that are equal and provide legal certainty for the parties.

This article finds that regulations regarding small claims need to be reconstructed in Indonesia from the aspect of legal instruments and the substance side. This article strongly suggests that the small claim legal instrument must be conducted in the Act. Moreover, from the substantive side, the juridical reconstruction that needs to be done, i.e., the first is the value of losses' calculation with the selling price of gold because of the relatively more stable exchange rate. Second, the reconstruction of small claims must captivate broader claimants to fulfill access to justice. Third, it is necessary to strengthen the role of the courts in the first

instance by strengthening the SCB principle in the SCC mechanism and the application of the modern justice system (e-court and e-litigation). Fourth, applying the simple, fast, and low-cost principle in small claims also requires the support of an independent appraisal agency that can be formed as a determinant of the value of the loss and the object of the lawsuit registered in the small claim case. Fifth, to fundamentally support the optimization of SCC implementation, the Supreme Court needs to initiate an agreement with the DJKN as the state auction agency. The agreement results contained an MoU between the two institutions to organize a particular auction procedure for small claim objects legalized as SEMA. The agreement must contain the simplicity of the administrative process for confiscating collateral and auctioning the object of the lawsuit up to the maximum period for the implementation of the auction process.

## 6. Limitations and Further Study

This article is quite conscious that the discussion and writing of conclusions are based on limited data; for this reason, other researchers must examine by using more comprehensive data in the future.

## Authors' Contributions

Salman Alfarasi wrote down the data processing results and, at the same time, examined for secondary data. Meanwhile, I Gede AB Wiranata and H. S Tisnanta assisted in response to the inquiries formulated in this article.

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