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SMALL CLAIMS COURT MECHANISM IN BUSINESS DISPUTE RESOLUTION AS AN ATTEMPT TO APPLY FAST-TRACK BASIS IN THE DISTRICT COURTS AND ITS COMPARISON WITH SOME COUNTRIES

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Abstract

The implementation of Small Claims court mechanism according to Supreme Court Regulation (PERMA) Number 2/2015 concerning Procedures for Small-Claims Court Resolution recently granted a breakthrough in the civil justice system particularly in Indonesia. It was reached by the Supreme Court in order to reduce the court burden against cases with disputes below IDR 200 million rupiah. The disputes resolution by Small Claims court mechanism is done by a single judge assisted with registrar and must completed within 25 working days, the final decision is binding, thus unable to ask for appeal or judicial review. This article tries to comprehend dispute resolution through Small Claims mechanism in several state courts, such as Medan district Court, Palu, and the Jember. The study, also aims to comprehend the comparison of Small Claims mechanism in Indonesia and small claims in the Netherlands and UK in business disputes resolution. The study employs a normative juridical method. Based on the studies, the implementation through Small Claims court mechanism in Indonesia has been carried out in accordance with the Supreme Court Regulation Number 2/2015. Comparison on business dispute resolution using Small Claims court mechanism in Indonesia and in Netherlands and UK proof that the proof mechanisms whether in Indonesia, Netherlands and United Kingdom relatively simple. Legal remedies for Small Claims decision in Indonesia and the verdict in the Netherlands and in England are limited. The distinction is that the case number in Indonesia is higher than the number in the Netherlands and England.

Keywords: *Small Claims court, Procedure of Civil Law, the Supreme Court Regulation, Indonesia, Comparative Law*

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I. INTRODUCTION

A. BACKGROUND

With the increasing economic globalization, business relationships have experienced a very rapid development. Nowadays, business partnerships can be carried out by almost all socioeconomic status of societal levels. Not only that, connections between stakeholders in the process of businesses, such as employer–employee relationships have definitely entered into cross national borders, including business

transactions carried out by small, medium and cooperative businesses. This development resulted in the expectations of business management not only as accessible as the judiciary as one of the dispute resolution processes. Furthermore, business people need rapid and a relatively inexpensive dispute resolution process. Thus, it is therefore argued that dispute resolution should secure and accommodate the parties' interests.[1]

The obvious issue has been devoted to the judiciary in Indonesia that has essentially adopted good judicial principles in comprehensive ways, known as simple, fast, and low-cost conducted. This is expressly regulated in Article 2 (4) of Law Number 48 Year 2009 concerning Judicial Authority. Based on Article 2 (4) it stated that "the judiciary shall be carried out in a simple, fast, and low-cost conducted." The Supreme Court then issued a Supreme Court Circular Letter Number 2 Year 2014 concerning Settlement of Cases in the State Courts and High Courts. This formulated Circular is an appeal to the judges of the first and appellate courts which confirm the deadline for settlement of disputes, 5 (five) months.

With regard to this issue, simple, fast and low-cost principles are the most basic judicial principles and administration service of justice heading into effective and efficient principles.[2] These three formulated principles have been pursued in such a way as to be properly implemented by the entire justice system in Indonesia, especially the civil justice system.[3]

Simple justice system is intentionally considered as the trial is held in efficient and effective ways in cases dispute resolution.[4] Based on a simple principle, much atention has been devoted to the judiciary carried out by adopting a clear process, systematic, understandable, easy to carry out, convoluted, and the provisions governing the judicial

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[1] Man S. Sastrawidjaja, Hukum Kepailitan dan Penundaan Kewajiban Pembayaran, Bandung: Alumni, 2006, pg.71.

[2] Sunaryo Sidik, Kapita Selekta Sistem Peradilan Pidana, Malang: UMM Press, 2005, pg.46

[3] Pramono Sukolegowo, "Efektivitas Sistem Peradilan Cepat, Sederhana, Biaya Ringan di Lingkungan Peradilan Umum", Jurnal Dinamika Hukum, Vol. 8 Nomor1, 2008, pg.2

[4] Sunaryo Sidik, Op. Cit, pg. 46

process do not have diverse interpretations with the needs of people seeking justice or law enforcers, thus a simple judicial system is interpreted equally by various involved parties regardless of differences in education levels, socio-economic conditions, and culture.[5] In this regard, a range of civilities of proceedings governing to various interpretations can cause difficulties in achieving higher legal certainty. In addition, justice seekers are also increasingly reluctant to resolve their disputes through the courts.[6] Ironically, the simple principle is not often interpreted as a principle that animates the level and institution of the judiciary as a whole. Such principle, however, is only applied with regard to Supreme Court Regulations.

As such, the principle also occupied by the Indonesian justice system is the fast principle. Based on this principle, the judiciary can provide fair and legal certainty decisions on dispute resolution in a relatively fast period of time. It is concerned to make justice seekers may receive a resolution of the Supreme Court Regulation based on fairness and legal certainty in fast period of time.[7]

With the adoption of a three-tiered judicial system, it seems difficult to implement such fast principle. This is due to the fact that justice seekers who are not satisfied with the decisions of the first level judiciary would appeal to the appellate court. Furthermore, if the appeal court ruling is also considered not to provide justice for justice seekers, they may file an appeal to the Supreme Court. In fact, a decision on the Cassation level can also be submitted for review. As a result, there is not only buildup cases in the Supreme Court, most importantly the judicial process to achieve a verdict that has legal force can still continuously last so long. Case accumulation can be seen from the rest of the case at the end of 2014. At the end of 2014, the remaining cases recorded were 4,425 cases.[8] The high sum of cases that have accumulated has

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[5] Ibid, pg.47.

[6] Sudikno Mertokusumo, Hukum Acara Perdata Indonesia, Yogyakarta: Liberty, 2006, pg.36.

[7] http://kepaniteraan.mahkamahagung.go.id/keadaan-perkara-ma/keadaan-perkara-ma-th-2014, accessed on 29 March 2018, at 5a.m. West Indonesia Time.

[8] http://www.hukumonline.com/berita/baca/lt5507feab13091/tahun-2014--sisa-perkara-terendah sepanjang-sejarah-ma, accessed on 29 March 2015, at 5a.m. West Indonesia Time

made it difficult to achieve case resolution in a short time. Settlement is prioritized for first registered cases. Later cases might be delayed. On account of, it is difficult to realize the application of fast principles to the Indonesian justice system.

This condition is clearly not in accordance with the needs of currently people seeking justice who are racing against business risks. Such delay in the judicial process can disrupt the business activities of business management. This may result in not receiving profits, and further, it can also cause losses and even result in bankruptcy.

The results of the World Bank research (the World Bank - International Finance Corporation - Doing Business 2011) also confirmed the weakness of the Indonesian justice system for business people, the settlement of business disputes through Indonesian courts take too long. According to the results of this formulated study, this weakness was clearly caused by several factors disclosed as follows:[9]

1) In the first level of the court, the dispute resolution process does not take place effectively;
2) High case costs needed;
3) The cost of expensive legal aid services.

The ineffectiveness of the trial process at the first and appellate courts can be due to the provisions governing the procedure. Civil dispute resolution in Indonesia is still subject to and based on the provisions of the Het Herziene Indonesische Reglement (HIR) based on STB 1848 Number 16 jo.Stb 1941 Number 44 / Recht Reglement Buitengewesten (RBg).[10] This provision is still in force until now on the basis of Article II of the Transitional Rules of the 1945 Constitution, the 4th amendment. Provisions that are more than 150 this year are certainly not possible to protect the development of business disputes that occur at this time.

The business dispute resolution process other than through the court, based on the provisions of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution, is regulated by a dispute

[9] Efa Laela Fakhriah, Eksistensi Small Claims Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan, Research Report Year 2012, pg. 4
[10] Sudikno Mertokusumo, op. Cit., pg.1

resolution mechanism through arbitration and alternative dispute resolution. It means that dispute resolution can not only be submitted to general courts, but also it can be resolved through arbitration or alternative dispute resolution.

Based on Article 60 of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution, the arbitral decision is final, has a permanent legal force and binds the parties. This provision confirms the absence of a tiered settlement mechanism. In fact, Article 48 has confirmed the maximum time limit for the implementation of arbitration, 180 (one hundred and eighty) days after the formation of the arbitrator or the arbitral tribunal. This period cannot be extended with an arbitrator decision, but can only be extended with the agreement of the parties.

In view of arbitral decision implementation and court wage through arbitration, the arbitration desision shall be registered with the State Court. For the National Arbitration Decision, Article 59 of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution, it is registered with a state court whose authority covers the residence of the respondents. However, International Arbitration Decision cited in Article 65 jo. Article 67 of this law, it shall be registered with the Central Jakarta District Court. Thus, even though it is strictly regulated the nature of the arbitral award is final and has legal force, it turns out that the arbitration award shall be registered with the court. In this regard, the binding authority of the arbitral award that has not been registered with the court is not the same as the court decision. Most importantly, litigation fees are generally much greater than litigation costs, because arbitrator wages shall be paid by litigants.

With regard to the period of implementation, the provisions of the dispute resolution processes through alternative dispute resolution explicitly stipulate that the process shall be carried out in a short time. Article 1 number 10 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stated that alternative dispute resolution consisted of consultation, negotiation, mediation, conciliation or expert judgments. All types of alternative dispute resolution based on the agreement of the parties are organized to be resolved in a short period

of time.[11]

Article 2 (2) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution confirmed that "dispute resolution solved through alternative dispute resolution is settled in direct meeting by the parties for a maximum of 14 (fourteen) days ..." Furthermore, Article 6 (7) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution also confirmed the importance of addressing short processing time limit. It assured that "efforts to resolve disputes or differing opinions through a mediator by upholding confidentiality and an agreement must be reached not later than 30 (thirty) days in a written form signed by all concerned parties."

The results of the arbitration award and dispute resolution through alternative dispute resolution do not necessarily have forced authority over the parties. Thus, it is important to design clear mechanism for dispute resolution procedures that have forced power as well as court decisions demonstrated in a simple, fast and low-cost conducted based on the case sum.[12] On the other hand, the provision of the applicable Law in Indonesia, HIR and RBg, do not consider the lawsuit value . Provision in the Procedure Law are mere similar for all claims. [13]

In some countries, civil litigation with small claims can be resolved through the small claims court. In several countries, its term is popularly known as the small claims tribunal or small claims procedure. This procedure has been developed both in common law countries and in civil law countries, both in developed countries and developing countries. Some countries that have organized simple justice procedures for lawsuits with small case values include Australia, Austria, Canada, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, the Netherlands, Norway, Poland, Portugal,

[11] Article 2 Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

[12] Efa Laela Fakhriah, Eksistensi Small Claims Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan, Research Report Year 2012, pg. 10.

[13] Elijana, Sosialisasi Rancangan Undang-Undang tentang Hukum Acara Perdata, Chapter VII Section 4 and 5, Jakarta, 1 July 2013, pg.2.

Sweden, Switzerland, the United Kingdom and the United States. [14]

In Indonesia, this procedure has been concerned when the Supreme Court Regulation No. 2 of 2015 (SC Reg 2/2015) was issued concerning the Procedure for Small Claims Court Resolution. The Supreme Court Regulation consists of 33 articles issued on August 7, 2015 through the State Gazette of the Republic of Indonesia in 2015 Number 1172.

This has drawn broad attention and become a central topic to ensure that civil cases that involve no more than IDR 200 million (currently about US$15,000) can be settled through a simpler trial process than the general court process. In this respect, it emphasized that the small claims court resolution is defined as "procedures for examination at a trial of civil claims with a material claim amount of at most IDR 200 million settled by simple procedure and proof".[15]

The Supreme Court Regulation No. 2 of 2015 (SC Reg 2/2015) concerning the Procedure for Small Claims Court Resolution confirmed that small claims tribunals are included in the absolute authority of the district court. Therefore, other courts are not authorized to examine and try such claims. Such regulation also emphasized that the procedure for resolving disputes with this mechanism must be brief. Completion of a simple lawsuit case as a whole must be completed not more than 25 (twenty five) days.

Based on the background of the emerged Supreme Court Regulation, it is important to conduct further research on the mechanism of small claims in the district courts in Indonesia, such as the Medan District Court, the Palu District Court, and the Jember District Court which represent western, central and eastern Indonesia as well as it is significantly necessary to establish legal comparison with the small claims court applied in the United Kingdom and the Netherlands.

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[14] Kurniawan, "Perbandingan Penyelesaian Sengketa Konsumen di Indonesia dengan Negera-negara Common Law System", Jurnal Hukum dan Pembangunan, 44th Year, No. 2 (April-Juni 2014) pg.280-285.

[15] Article 1 point 1 Supreme Court Regulation No. 2 of 2015 concerning Procedures on Resolution through Small Claim Court (Gugatan Sederhana).

B. RESEARCH QUESTIONS

Some of the legal issues to be examined in the current formulated study are as follows:

1) What is the Small Claim Court mechanism in the business disputes resolution in the state courts in Indonesia (the Medan District Court, the Jember District Court and the Palu District Court) in the context of implementing a fast trial principle?
2) How is the comparison among the Small Claim Courts law in Indonesia, the Netherlands and the United Kingdom in resolving business disputes?

C. RESEARCH OBJECTIVES

The objectives of the recent study are as follows:

1) To figure out the Small Claims Court mechanism in the business disputes resolution among the state courts in Indonesia (the Medan District Court, the Jember District Court and the Palu District Court) in the context of implementing a fast trial principle.
2) To find out the comparison among the small claims court Law in Indonesia, the Netherlands and the United Kingdom in resolving business disputes.

D. RESEARCH METHOD

With regard to research methods, several considerable matters are concerning forms of research, research typology, data types, data collection tools, and data analysis methods.

1. Forms of research

In this study, the current formulated research is a type of normative legal research. This is due to legal materials used in this study. This research method examines the law as a basis for guiding various fields of life that govern order and justice.[16]

[16] Sri Mamudji, et.al., Metode Penelitian dan Penulisan Hukum (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), pg.4

2. Research typology

The scientific research typology used is descriptive, that is describing precisely an individual, symptom, or certain group to determine the frequency of a symptom.[17] The main data used is in the form of secondary data and then the data is analyzed qualitatively thus it is highlighting at the depth of data and if seen from the form, this research is kind of evaluative research because it can contribute to the future work of such line of research.[18]

3. Data Types

In normative legal research, through secondary data,[19] its type consists of primary legal materials, secondary materials, and tertiary materials.

a. Primary legal material

To investigate the matter, the present study employs primary legal material as its authorized judicial material that binds the society.[20] Primary legal materials include:

1) The 1945 Constitution of the Republic of Indonesia Fourth Amendment;
2) Law Number 48 of 2009 concerning Judicial Authority;
3) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
4) Law Number 40 of 2007 concerning Limited Liability Companies;
5) Het Herziene Indonesische Reglement (HIR) based on STB 1848 Number 16 jo. Stb 1941 Number 44 and/or Recht Reglement Buitengewesten (RBg);
6) Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small claims court resolution
7) Circular Letter of the Supreme Court Number 2 of 2014

[17] Ibid., pg.4.
[18] Soerjono Soekanto, Pengantar Penelitian Hukum, 3rd Printing, Jakarta: Penerbit Universitas Indonesia, 2012, pg.10.
[19] Soerjono Soekanto and Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, 16th printing. Jakarta: RajaGrafindo Persada, 2014, pg. 24.
[20] Soerjono Soekanto, Pengantar Penelitian Hukum, pg. 52.

concerning Settlement of Cases in the District Court and High Court.

8) Supreme Court Regulation Number 1 of 2016 concerning Mediation.
9) Supreme Court Regulation Number 3 of 2018 concerning Online Case Administration in Courts.

b. Secondary legal material

Secondary legal material is judicial material that can provide an explanation of primary legal material.[21] This include the results of research, books, literature, scientific articles, and journals that elaborately discuss small claims court mechanism and business dispute resolution processes.

c. Tertiary legal material

Tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials.[22] It consists of the Large Indonesian Dictionary, and the Black's Law Dictionary.[23]

4. Data Collection Tools

The data collection tool shall be conducted by collecting information from a diverse source of documents to collect secondary data.[24] Library Research Method is a research conducted to find a range of appropriate and relevant secondary data, including: legislation, books, journals, research results, internet materials, and other literature. Furthermore, in this study, interviews are conducted through related sources.

5. Data Analysis Method

This study uses a qualitative approach as a method of data analysis. The qualitative approach in data analysis is aimed at analyzing data from document studies and interviews where the data is then analyzed using related legal theories. Conclusions are taken deductively, such as drawing specified conclusions in relation to the central topic of general

[21] Ibid, pg. 52.
[22] Ibid, pg. 52
[23] Sri Mamudji, et.al., Op. Cit, pg. 31.
[24] Ibid, pg. 31.

matters.[25]

II. SMALL CLAIM COURT MECHANISM AT JURISDICTION

The term small claims court (hereafter referred to as the SCC) as cited in the Supreme Court Regulation Number 2 of 2015 concerning Procedures for small claims court resolution is a procedure for resolving civil disputes with certain conditions and restrictions with process simplification purposes thus cases resolution can run quickly in accordance with the principle of justice, known as simple, fast and low-cost conducted. In Article 1 Number 1 the Supreme Court Regulation Number 2 of 2015 stated that the small claims court resolution is simple procedures for examination at a trial of civil claims with a material claim amount of at most IDR 200 million settled by simple procedure and proof".

Within Black's Law Dictionary it is stated that small claim court (SCC) is defined as a court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, usually claims to collect small accounts or debts, also termed small debts court; conciliation court. According to the Local Court Act 2007 s35 (2), New South Wales Consolidated Acts states that small claims court is a court that provides formalities for people who want to claim a sum of money without having to hire a lawyer and the claim material is not large, besides the case examination is not complicated and simplified thus it does not necessarily require a lot of money such as filing a case in court. Meanwhile, according to John Baldwin in his book "small claim court in the country court in England and Wales" stated that the small claim court is an informal court, simple and inexpensive and has legal force.[26]

Based on the history of its development, small claim court (SCC) has been developed in the United States at the beginning of the twentieth century precisely in 1913 in Cleveland as a form of litigation settlement reform systems which generally require a long time with a

[25] Surakhmad Winarso, Metode dan Tekhnik dalam bukunya, Pengantar Penelitian Ilmiah Dasar Metode Teknik, Bandung: Tarsito, 1994, pg. 17.

[26] Ridwan Mansyur and D. Y. Witanto, Gugatan Sederhana Teori, Praktik dan Peraturan Mahkamah Agungsalahannya, 1st printing, Jakarta: Pustaka Dunia, 2017, pg. 1.

high level of complexity and complexity and process costs expensive.[27] Small claim courts are growing rapidly in a range of countries in the world, among countries that adhere to the common law system and the civil law system. SCC is a mechanism for settlement through court conducted with faster and simpler examination process for types of default cases with small contract values and acts against the law that the sum of material loss is not huge, it is also a middle ground between alternative dispute resolution mechanism that are simple and flexible with a settlement mechanism through the courts, thus decisions taken have binding legal powers and is executable.[28]

The establishment of special resolution procedure for small disputes is necessary is not only beneficial for developed countries, but also for developing countries such as Indonesia as one indicator that can guarantee the ease and legal certainty of business people and investors to invest their capital in Indonesia, for what purpose, it is expected to boost economic growth from the business and trade sectors. This simple and fast settlement mechanism through small claims court is very beneficial for the community, especially the lower middle class, inasmuch as they would be able to resolve their disputes to the courts.

The reasons to go to small claims court compared to the procedure for civil disputes resolution in general is cited as follows:[29]

1) Case interrogations are informal;
2) The resolution process is faster and more efficient;
3) The value of the demands is small thus it is easier to implement;
4) Used for small-scale civil disputes that can be resolved in a fast, simple, and inexpensive way;
5) The decision has binding power that can be enforced by the court.

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[27] Nocoley Grenstad, Dispute Setllement in a Southern Small Claims Court, Norway's Tribunal, Florida, 1983, pg. 66 as stated on the research report of Efa Laila Fakhriyah named "Mekanisme Small Claim Court," on achieving a simple, fast and affordable justice in http://download.portalgaruda.org/, accessed on 12 July 2018.

[28] Anita Fariana, Penerapan Acara Singkat dan Acara Cepat Dalam Penyelesaian Sengketa Perdata di Pengadilan Suatu Tinjuan Politik Hukum Acara Perdata, Jurnal Hukum Acara Perdata (ADHAPER), Vol. I, No. 1 January – June 2015, pg. 34.

[29] Ibid, pg. 35.

The requirements for filing a small claims court are:[30]

1) The Plaintiff is an individual or legal entity;
2) The plaintiff and defendant may not be more than one unless the legal interests are the same;
3) There is legal relationship that forms the dispute basis with the defendant whether the dispute is a default or an illegal act;
4) Both the plaintiff and defendant shall reside in the same court jurisdiction;
5) Shall not involve land rights or fall under the jurisdiction of special courts, such as commercial courts, business competition, consumer disputes, and settlement of industrial relations disputes;
6) Damages of IDR 200 million at most;
7) Both the plaintiff and defendant shall be present during all of the court proceedings (cannot be absent and represented by an attorney).

The small claims court procedures are as follows:[31]

1) The small claims court is examined and decided by the court within the scope of general judicial authority;
2) The small claims court is led by a single judge appointed by the Chairperson of the District Court;
3) The small claims court lasts no later than 25 days from the first trial day;
4) Involved parties cannot submit claims, provisions, exceptions, conventions, interventions, replications, duplicates or conclusions.

The small claims court stages are as follows: [32]

1) Registration;
2) Examination of file completeness;
3) Judges Determination and Registrar appointment;

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[30] Badan Penelitian dan Pengembangan Hukum dan HAM Kementrian Hukum dan HAM Republik Indonesia, Penerapan Mekanisme Small Claim Court dalam Penegakan Hukum Di Indonesia, 1st printing, Jakarta: Pohon Cahaya, 2017, pg. 40.
[31] Ibid, pg. 49-50.
[32] Ibid, pg. 50-56.

4) Preliminary Hearing;
5) Session Hearing;
6) The role of the judge in seeking peace;
7) Evidence;
8) Decision;
9) Implementation of the decision.

Based on the description above, the small claims court is the scene of choice for certain disputes with several requirements, and the plaintiff is allowed to choose whether to submit it in forms of the small claims court or through an ordinary claim. In principle, therefore, the small claims court offers solutions and benefits to parties who litigate a model of dispute resolution with low costs, fast processing time and uncomplicated procedures as in ordinary civil cases resolution in the district Court.

III. BUSINESS DISPUTES RESOLUTION

With regard to business dispute resolution, the discussion is divided into types of business disputes and ways of resolving business disputes.

A. TYPES OF BUSINESS DISPUTES

Economic globalization has resulted in increased relations of business transactions with various forms, methods, both at the local, national and international levels. This condition increases the chances of disputes among concerned parties. Disputes may be caused by various things. It can be disclosed that all terms of disputes arise among parties that have legal relations in business activities can be categorized as business disputes.

Business disputes are essentially categorized into disputes relating to the Engagement. According to Prof. Subekti, an engangement is a law between two people or two parties, based on which one party has the right to demand something from the other party and the other party shall fulfill such demand.[33] Article 1234 of the Civil Code regulates that something or achievement consists of:

a. Giving something;

[33] R. Subekti, Hukum Perjanjian, Jakarta : PT Intermasa, 2005, pg. 10.

b. Doing something; and
c. Not doing something.

Based on Article 1233 of the Civil Code, the source of engagement is:

1). Law

Engagement originating from law can be sourced from:

a) Law only
Engagement originating from law is solely an engagement which with the emerging of certain legal events is determined to create a legal relationship (engagement) between the parties concerned, regardless of whether the arising of the legal relationship is desired by the parties.[34]

b) Law as a result of human actions
The purpose of the engagement originating from the law as a result of human actions is to do a series of behaviors of a person, then the law attaches legal consequences in forms of an engagement to that definite person. A person's behavior can be in forms of:[35]
   i) A legal act (*rechtmatige*);
   ii) An Illegal act (*onrechtmatige*).

2). Agreement

Based on Article 1313 of the Civil Code, the agreement is defined as "An agreement is an act by which one person or more is bound to another person or more". In essence, every agreement that has been agreed upon should be carried out in good faith. However, in practice, there is a violation of the agreed engangement. When this occurs, a dispute may arise between the parties making the agreement.

Disputes relating to this engagement are categorized into *lex generalis* in accordance with the provisions of the Civil Code. Furthermore, business disputes specifically regulated in legislation include:

[34] Mariam Darus Badrulzaman, KUHPerdata Buku III Hukum Perikatan dengan Penjelasan, Bandung: Alumni, 1996, pg.8 as cited by Rosa Agustina, Perbuatan Melawan Hukum, (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003), pg.30.
[35] Ibid., pg. 31.

a) Business competition disputes

Juridically, business competition is generally associated with market-based economic competition, known as a situation in which business actors, business entities and individuals, with healthy and free competition in the market, obtain consumers of products or services in an effort to seek profits.[36] When business people carry out their business in good and honest ways, the business competition that occurs is fair business competition. However, disputes in the field of business competition can arise when there are business actors who conduct business in fraudulent or unlawful ways.

b) Customer Disputes

Law Number 8 of 1999 concerning Consumer Protection does not regulate the definition of consumer disputes. However, the definition of consumer dispute is regulated in Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency. Based on Article 1 point 8 this decree stipulates that consumer disputes are disputes between business actors and consumers who demand compensation for damage, pollution and/or who suffer losses due to consuming goods and/or utilizing services. Consumer disputes, in essence, are disputes that arise as a result of violations of consumer rights.[37]

Matters resulting in business disputes include:

i) The occurrence of default
ii) There are various forms of default. Forms of default include:[38]
iii) Do not act what is promised;
iv) Carry out what is promised, but not in accordance with the agreement;
v) Do what is promised but late;
vi) Do an act which according to the agreement is prohibited.

One of the parties conducts Acts againts the law which results in

[36] Andi Fahmi Lubis, et.al., Hukum Persaingan Usaha: Antara Teks dan Konteks, Jakarta:Creative Media, 2009, pg. 21.
[37] Praditya, Penyelesaian Sengketa Konsumen, Jakarta : Grafindo,2008, pg. 135.
[38] R. Subekti, Hukum Perjanjian, Jakarta : PT Intermasa, 2005, pg. 50.

material loss to the other party

Provisions for acts against the law are contained in Article 1365 of the Civil Code. Article 1365 of the Civil Code stipulates that "every act that violates the law which brings harm to another person, requires the person who caused the wrong to issue the loss, compensates for the loss". The definition of acts against the law in Indonesia comes from the terminology of the Dutch language, called as "Onrechtmatige Daad". The term "against" is active and passive. The purpose of active of the term "against" is "intentionally doing an act that causes harm to others". Actions that cause this loss are actively carried out. Meanwhile, passive from the term "against" occurs when "deliberately keep quiet or be passive without moving their bodies that causes harm to others".[39]

In line with Hoffman, Mariam Darus Badrulzaman emphasized that an act is categorized as Act Againts the Law when fulfilling the following conditions: [40]

1. There must be an act
   It means that an act can be positive (good) or negative (bad), that is, every act to do (active) or not to do (passive)
2. The act must be against the law
3. There is a loss
4. There is a causal relationship between acts against the law and losses incurred; and
5. There is an error (*schuld*).

A. MECHANISMS OF BUSINESS DISPUTE SETTLEMENT

Business disputes can be overcomed in various ways, either through alternative dispute resolution (non litigation) or through court (litigation).

Business Dispute Settlement through Alternative Disputes Resolution

Resolution through alternative dispute resolution is regulated in Law

[39] M.A. Moegni Djojodirdjo, Perbuatan Melawan Hukum, Jakarta: Pradnya Paramita, 1982, pg.13 as cited by Rosa Agustina, Perbuatan Melawan Hukum, Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003), pg.36.

[40] Mariam Darus Badrulzaman, Op. Cit., pg.31.

Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. According to Article 6 of this Law, disputes or differences in civil opinion can be resolved by the parties through alternative dispute resolution based on good faith, excluding ruled resolution through the court, in this case by filing a claim to the District Court. Article 1 number 10 of Act Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates that alternative dispute resolution covers consultation, negotiation, mediation, conciliation or expert judgment.

In relation to arbitration, alternative dispute resolution can be divided into two types as follows: [41]

a. Alternative to adjudication
   The purpose of alternative to adjudication is that arbitration is not included in alternative dispute resolution
b. Alternative to litigation
   The purpose of alternative to litigation is that arbitration is an alternative form of dispute resolution.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has regulated the business disputes resolution through alternative dispute resolution described as follows:

a. According to Article 6 paragraph (2) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, direct negotiations of parties are carried out by direct meetings of the parties with no more than 14 (fourteen) days, the results of which are stated in a written agreement.
b. Article 6 paragraph (3) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates that in the event that direct negotiations between parties do not succeed in producing an agreement, business disputes can be resolved through the assistance of someone or more expert advisor and with the help of a mediator.
c. If within 14 (fourteen) days with the help of an expert advisor or mediator failing to reach an agreement to resolve a business

[41] Suyud Margono, ”Pelembagaan Alternative Dispute Resolution (ADR) di Indonesia,” in Hendarmin Djarab, Rudi M. Rizki and Lili Irahali, Prospek dan Pelaksanaan Arbitrase di Indonesia, Bandung: PT Citra Aditya Bakti, 2001, pg.24.

dispute between the parties, Article 6 paragraph (4) of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution stated that the parties can request assistance from arbitration institutions or alternative dispute resolution institutions to appoint a mediator.

With regard to dispute resolution through alternative dispute resolution, Article 6 paragraph (7) of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution confirmed that an agreement of a written business dispute resolution is final and binding on concerned parties to be carried out in good faith.

Most importantly, the provisions of Article 6 paragraph (7) also stipulated that the written agreement must be registered in the District Court within a maximum period of 30 (thirty) days after the agreement is signed.

1. Business Dispute Settlement through Arbitration

Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.[42] According to the provisions in force in Indonesia, Article 1 number 10 of Act Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulated that alternative dispute resolution covers consultation, negotiation, mediation, conciliation or expert judgment. This means that Indonesia adopts an alternative understanding of dispute resolution as "alternative to adjudication" that distinguishes arbitration on the one hand and alternative dispute resolution on the other.[43]

The scope of disputes that can be resolved through arbitration is strictly regulated in Article 5 of Act Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This article stipulates that disputes that can be resolved through arbitration are disputes in the field of trade and concerning rights which according to law and legislation are fully controlled by the parties to the dispute. However,

[42] Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 point 1.

[43] Suyud Margono, Op. Cit., pg.24.

disputes which according to legislation cannot be held by peace cannot be resolved through arbitration. Thus, business disputes are a type of dispute that can be resolved through arbitration.

The basis for the process of resolving business disputes through arbitration is the making of an arbitration agreement. An arbitration agreement is an agreement in the form of an arbitration clause stated in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises.[44] The arbitration agreement is separated from the underlying agreement. Article 10 letter h of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution confirmed that the termination or cancellation of the principal agreement does not result in the arbitration agreement being canceled. Even though the principal agreement is declared invalid, however, the arbitration agreement is still valid.

2. Business Dispute Settlement through court

Business dispute resolution can also be organized through a court. Dispute resolution through a court based on applicable provisions, known as HIR / RBg. In addition, the procedural law that also applies in the judiciary is the provisions of Rv regarding proceedings in court that have not been regulated in the HIR/RBg.[45]

Provisions for proceedings in court based on the provisions of HIR/ RBg and Rv do not distinguish cases based on case values. The HIR only distinguishes claims and requests. Thus a case with a small case value will go through a procedure that is the same as a case with a large case value. For example, a case with value of only IDR. 20 million rupiahs would go through a trial similar to a case with value of IDR 1 billion rupiahs.

Based on the provisions of HIR / RBg and Rv, the case is not based on case value. The HIR only distinguishes claims and requests. Based on the Supreme Court Circular Letter Number 2 of 2014, both the first

[44] Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 point 3.
[45] R. Tresna, Komentar HIR, Pradnya Paramita, Jakarta: 1989, pg. 15.

trial and appellate courts are expected to settle faster cases. For the first trial, it is urged to settle disputes for a maximum period of 5 (five) months. Meanwhile, for the appeal court, it is urged to settle disputes for a maximum period of 3 (three) months.

In an effort to faster dispute resolution both at the first level court and the appeal court, an electronic case-based management system has been implemented. This system is regulated in the Supreme Court Regulation Number 3 of 2018 regarding Online Case Administration in Courts.

Prior to the issuance of Supreme Court Regulation Number Number 2 of 2015 concerning Procedures for Small Claims court, cases with small claim value continue through proceedings in court in accordance with the provisions of HIR / RBg. For parties who are not satisfied with the decisions of the first level court, the person concerned can file an appeal. Furthermore, if the appeal decision is also considered not to provide justice, the concerned party however can file an appeal. This process of proceeding can not fulfill simple, fast, and low-cost judicial principles for justice seekers.

One of the mandates of the National Medium-Term Development Plan (RPJMN 2015-2019) is the easy and fast reform of the civil procedural legal system. This mandate is very reasonable by considering the number of cases that shall be completed by the Supreme Court each year, it is recorded 12000 up to 13000 cases in 2011-2014.[46] In view of this, the provisions of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for Small Claims court resolution only regulate the "objection" legal action on court decisions on simple claims. The mechanism of dispute resolution through Small Claims court is one of the efforts to limit the number of cassation attempts to the Supreme Court.

According to Suwardi, the court has the duty to assist justice seekers by trying to achieve a simple, fast, and low-cost justice system. This principle is achieved by resolving disputes through Small Claims court. The implementation of Supreme Court Regulation Number 2 of 2015

[46] "MA Upayakan Inisiasi Penyelesaian Gugatan Perdata Sederhana.: Lihat http://www.pembaruanperadilan.net/v2/2014/04/ma-upayakan-inisiasi-penyelesaian-gugatan-perdata-sederhana/, accessed on 20 september 2018, 06.40 a.m.

concerning Procedures for Settling Simple Laws is intended to fulfill State priorities based on the 2010 - 2015 RPJMN to increase ease doing of business. [47]

Based on the Ease of Business Survey, Indonesia occupies a relatively low position in the ease of doing business. According to the 2014 Survey, the dispute resolution with case value of 2 (two) times per capita income, which is equal to approximately USD 8000, in the Central Jakarta District Court can take more than 400 days by taking 40 stages. Meanwhile, for cases with the same case value in Singapore and Malaysia courts, the resolution of the dispute only needs to take 23 and 32 stages.[48]

Indonesia is included in the category of unfriendly country to business people. In connection with this, the World Bank conducted a survey of 189 countries. According to the results of the World Bank survey, Indonesia is ranked 114th. Its ranking is among the lowest, compared to other ASEAN countries. The ease of business survey conducted by the World Bank places Singapore at number 1, Malaysia at 20, and Philippines at 95.

One effort to increase the ease of business ranking is important for Indonesia to shorten the period and dispute resolution process. In Indonesia, an average business dispute resolution takes up to 460 days with the required costs reaching 118% of the value of the lawsuit. This kind of dispute resolution clearly wastes time and closes access to justice for the small society.[49]

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[47] Brought by Y.M. Suwardi, Wakil Ketua Mahkamah Agung Non Yudisial, Focus Group Discussion "Introduksi dan Penerapan Sistem Peradilan Perdata Sederhana (Small Claim Procedure) pada Sistem peradilan Indonesia", Jakarta, 3 April 2014.

[48] "MA Upayakan Inisiasi Penyelesaian Gugatan Perdata Sederhana, Op. Cit., accessed on 20 September 2018, 06.40 p.m. West Indonesia Time.

[49] "Mekanisme Gugatan Sederhana Reformasi hukum dalam mempercepat proses sengketa bisnis." See http://pn-parigi.go.id/ma/index.php/cdetailberita/tampil_berita/21, accessed on 20 September 2018, 7.20 p.m. West Indonesia Time.

IV. IMPLEMENTATION OF FAST PRINCIPLES THROUGH SMALL CLAIMS COURT IN STATE COURTS

Principle is something that can be used as basis, support, core and fundamental. Principle is something that can be used as a place to rely on, to return something that we want to figure out.[50] Principles are fundamental assumptions and considerations which are the basis for the laying of social behavior. [51] According to AR. Lacey principle is a law that is high in location, and on it can be hung, rested, juxtaposed with many other laws. [52]

In Law Number 48 of 2009 there are judicial principles. The District Court in carrying out its main duties shall adhere to one of the principles of justice as stated in Article 2 of Act Number 48 of 2009 which states, among other things, that the trial is carried out in a simple, fast and low-cost conducted. Besides, according to Article 4 of Law Number 48 of 2009 concerning Judicial Authority it is stated that the judiciary is carried out in a simple, fast and low-cost conducted. In addition, it was also stated that in civil court cases help justice seekers and try their hardest attempt to overcome all obstacles in order to achieve a simple, fast and low-cost judiciary.[53]

Within the appendix of Presidential Regulation No. 2 of 2015 concerning the 2015-2019 Medium Term Development Plan Book I National Development Agenda states that one of the directions of policy and strategy in the field of law is implementing an easy and fast reform of the civil law system, an effort to gain national economic competitiveness. Therefore, a systematic strategy is needed for the revision of laws and regulations in the field of civil law in general and specifically related to contract law, IPR protection, establishment of small claims court disputes and increased utilization of mediation institutions.[54]

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[50] Mahadi, Falsafah Hukum Suatu Pengantar, Bandung: Citra Aditya Bakti, 1989, pg. 19.

[51] Rahardjo Satjipto, Ilmu Hukum, Bandung: Alumni, 1986, pg. 5.

[52] Mahadi, Op. Cit., pg. 120.

[53] Mohammad Saleh, Penerapan Asas Peradilan, Sederhana, Cepat, dan Biaya Ringan Pada Eksekusi Putusan Perkara Perdata, Cet. 3, Yogyakarta: Penerbit Graha Cendekia, 2016, pg. 39.

[54] Ridwan Mansyur dan D.Y. Witanto, Op. Cit., pg. 11.

The term "fast" literally means in a short time, immediately, no complexity. Fast refers to whether the case can be resolved fast or slowly. The fast principle in the judicial process here means that the case resolution takes not too long. The Supreme Court in Circular Number 1 of 1992 provides a maximum time limit of 6 (six) months, meaning that each case shall be resolved within 6 (six) months from the registered time in the court, except if indeed according to legal provisions it cannot be resolved in time 6 (six) months. However, this provision was later replaced by a Supreme Court Circular Number 2 of 2014 concerning Cases Resolution in the District Court and High Court which contained appeals to the judges of the first and appellate courts which confirmed the deadline for dispute resolution, 5 (five) months. The expected resolution to be carried out quickly will still have to run on the right, fair and thorough legal regulations.[55] With this fast principle, the most importantly expected thing is a process of examination that relatively does not take a long time to years according to the simplicity of the Civil Procedure Code.[56]

In the explanation of Article 2 paragraph (4) of Law Number 48 of 2009 it is stated that simple, fast and low cost principles are the basic judicial principles of the implementation and administration of justice services that lead to effective and efficient basis and principles. Fast shall be interpreted as a strategic effort to make the justice system an institution that can guarantee the realization or achievement of justice.[57] This does not mean that as long as it is resolved as soon as it is implemented, juridical considerations, thoroughness, accuracy, and sociological considerations that ensure a sense of justice in society are also taken into account. This principle includes fast in the process, fast in results, and fast in evaluating the performance and productivity level of judicial institutions. The simple, fast and low cost principle in the court shall not exclude accuracy and precision in seeking truth and justice. Thus, simple case investigation shall be carried out without

[55] Arto A Mukti, Mencari Keadilan (Kritik dan Solusi Terhadap Praktik Peradilan Perdata di Indonesia), Yogyakarta: Pustaka Pelajar Offset, 2001, pg. 65.
[56] M. Yahya harahap, Kedudukan Kewenangan dan Acara Peradilan Agama (Undang-Undang Nomor 7 tahun 1989), pg. 71.
[57] Sidik Sunaryo, Kapita Selekta Sistem Hukum Peradilan Pidana, Malang: UMM Press, 2005, pg. 47.

convolution, shall be effective and efficient, and easily understood by litigants. Resolution of cases shall be fast with a maximum time limit of 5 (five) months as stipulated in, and the case fee shall be as cheap and accessible to the public as possible.

In an effort to resolve faster disputes, a Supreme Court Regulation Number 2 of 2015 was issued concerning Procedures for Small Claims court resolution. Small claim court (SCC) is a civil dispute resolution procedure with certain conditions and restrictions with the aim of simplifying the process so that cases resolution can run quickly in accordance with the principle of justice, known with simple, fast and low-cost. In Article 1 point 1 of the Supreme Court Regulation Number 2 of 2015 it is stated that the Small claims court resolution is a procedure for examination at a trial of a civil suit with no more than IDR 200 million settled by procedure and the proof is simple.

Dispute resolution through small claims court has the following characteristics: [58]

1) Generally it is part of a judicial system or special court outside the judicial system that is independent;
2) There are restrictions on what cases can be submitted or not in the small claims court;
3) There is a limit on the claim value, and in general, the small claims court can be submitted to a dispute in which the claim value is small;
4) Lower case costs compared to the costs of ordinary civil cases submitted to court;
5) A simple and informal procedure so that parties unfamiliar with legal issues can submit by themselves;
6) investigation process is fast and convoluted;
7) With such a quick, simple and low-cost procedure, the litigant parties do not need neither the assistance of an advocate nor legal advisor;
8) Alternative dispute resolution is more open, in the sense of allowing peaceful efforts facilitated by the judge;

[58] Kurniawan, Op. Cit., pg. 283.

In general, Small claims court examines material demands for compensation.

In the Civil Code, a certain case is not classified based on the value of the lawsuit, thus whatever the value of the claim is, it remains subject to the process of ordinary cases resolution with all applicable procedures, including to file ordinary and extraordinary remedies. For cases where the value of a small dispute becomes irrelevant to be submitted to the court. Through small claims court, it is determined that the dispute resolution process is based on the value of the claim where the value of the small claims court can be processed more quickly and the examination is limited only at the district court level. Thus, the presence of such small claims court provides solutions and benefits for litigants, and in turns, they can resolve their disputes at a low cost, fast processing time and without the complexity of the procedure as happens in the common event process. [59]

The establishment of a special resolution procedure for dispute that has a small value of demands is necessary not only to benefit developed countries but also developing countries such as Indonesia, as an effort to increase trust from both domestic and foreign investors to boost economic growth from the business sector and trading. Through a small claims court mechanism the settlement of cases becomes faster and simpler, and the verification is also easier and less complicated, so that this can support the process of resolving business disputes, especially middle to lower scale businesses.[60] This is also one of the indicators that can guarantee the ease and legal certainty of business people and investors to invest their capital in Indonesia, thus it can be expected to boost simple and fast through very beneficial small claims court for the community, especially the lower middle class, to be able to settle their disputes at court.

[59] Efa Laila Fakhriyah, Op. Cit. http://repository.unpad.ac.id/ accessed on 5 August 2018.
[60] Anita Afriana, Op. Cit., pg. 34.

IV. IMPLEMENTATION OF SMALL CLAIMS COURT IN SEVERAL STATE COURTS IN INDONESIA (THE MEDAN DISTRICT COURT, THE PALU DISTRICT COURT, AND THE JEMBER DISTRICT COURT)

The implementation of dispute resolution through the small claims court mechanism that will be reviewed in several state courts in Indonesia is the implementation of the small claims court in Medan District Court, Palu District Court, and Jember District Court.

A. RESEARCH IN THE MEDAN DISTRICT COURT

Based on the results of the research to Medan District Court, it can be highlighted that the small claims court mechanism in Medan District Court is carried out in accordance with the provisions of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for the small claims court resolution. When register for the small claims court, the Plaintiff registers a lawsuit through a one-stop service (PTSP). Registration of the claim by attaching the legalized document. The PTSP applied in Medan District Court has been currently online in accordance with the provisions of the Supreme Court Regulation Number 3 of 2018 concerning Online Case Administration in Courts. Furthermore, the court will calculate the down payment for the case. The down payment is paid to the Bank which has an office in Medan District Court office, such as PT Bank Rakyat Indonesia (BRI) and PT Bank Tabungan Negara (BTN). After the Plaintiff pays a case fee, the claim will be numbered and registered in a simple claim register. Long-term fees for cases are vary for they are determined based on the distance of the parties' domicile. The down payment for the case is for the cost of summoning the parties by the court. In a small claims court, the calling of the plaintiff at most one call and call the defendant at most twice. The amount of the down payment for small claims court that was once determined in Medan District Court included: IDR. 1,086,000 rupiahs / IDR. 1,6111,000 rupiahs/ IDR. 1,111,000 rupiahs/ Rp. 1,261,000 rupiahs.

In practice, the Registrar in the Medan District Court, is mandated to examine the administrative requirements of whether the lawsuit registered fulfills the requirements as the small claims court as stipulated in Article 3 and Article 4 of the Supreme Court Regulation Number 2

of 2015 concerning Procedures for small claims court resolution. If it meets the specified requirements, the case file will be submitted to the Chairperson of Medan District Court to be appointed by the Judge. After being determined by the Judge, the Registrar may appoint a Substitute Registrar and submit the case file to the Judge specified.

Furthermore, the Judge will examine the substance of the case whether the proof of the case is simple or not in accordance with the provisions of Article 3 and Article 4 of the Supreme Court Regulation Number 2 of 2015 concerning Procedures for small claims court resolution. If the Judge views simple evidence, the judge determines the first trial day. However, if in the Judge's view, the proof of the case is not simple, the Judge will issue a determination to cross the lawsuit from small claims court register.

Regarding this stipulation, there are no legal remedies and the remaining down payment costs will be returned. The remaining down payment costs will be notified in writing to the plaintiff. If the remaining down payment costs are not taken by the plaintiff within a certain period of time, the remaining money will be returned to the State treasury. The case of the small claims court in Medan District Court shall be decided no later than 25 working days from the first day of the hearing in the presence of the complete Plaintiff and Defendant. At the first session, the Judge will seek peace without mediation as stipulated in the Supreme Court Regulation Number 1 of 2016 concerning Mediation. For parties who are not satisfied with the decision, the person concerned can file an objection to the Chairperson of the Medan District Court within 7 working days either after the verdict is read or after the decision is made.

Based on the data obtained in this study, the number of small claims court cases examined by the Medan District Court are as follows:

in 2015 : - case;

in 2016 : 2 cases;

in 2017 : 14 cases;

in 2018 : 44 cases until 24 August 2018, consist of:

a. Acts againts the law : 4 cases

b. Default Judgement : 40 cases

The most frequently examined and decided is a default case, concerning the banking credit disputes. In the practice of small claims court resolution, several obstacles faced by the Medan District Court include:

Regarding the domicile of the parties, the parties shall be in one court area. In some cases, when signing a credit agreement, the parties are domiciled in the jurisdiction of the Medan District Court. However, when the small claims court is filed and the defendant is summoned, it is known that the defendant has moved to another domicile or is unknown where they live;

In terms of determining whether proof is simple or not, the Judge has difficulty determining it. This is because in the Supreme Court Regulation Number 2 of 2015 concerning Procedures for small claims court resolution, it is not explained how simple the verification criteria are;

In the case of granting power, the principal shall still be present. Many complaints were expressed by the litigants because they are considered troublesome and disrupted their work.

Several judges at the Medan District Court significantly questioned whether cases concerning labor, bankruptcy and intellectual property rights with a claim value of IDR 200 million rupiahs and simple proof in the future could be categorized in a case that could be resolved through small claims court.

For the procedures of small claims court execution is just the same as an ordinary claims execution. Because the decision on small claims court is payment of a sum of money, the execution is carried out by auction. With regard to execution, the Plaintiff shall definitely issue an auction fee that is not small and is likely not worth with the claim value. The Plaintiff shall also comprehend the exact property of the defendant who can be executed. If the defendant's assets cannot be found, the plaintiff only wins on paper. With regard to execution, is it possible for the execution procedure to be simplified?

The case value in the small claims court is at most IDR 200 million in the jurisdiction of the Medan District Court it is considered very small. Many parties who question whether it is possible for the value of this

case to be raised to at least IDR 500 million for future arrangements?

Regarding the resolution of such small claims court, the parties tend to respond positively because the resolution is faster and costs less. In fact, in several cases, there is peace between the parties. In some banking credit cases, the customer as a debtor initially did not want to pay off the debt, but after small claims court was filed, the debt was immediately repaid. In addition, the parties also did not experience difficulties because in the small claims court, the judge played an active role in various matters, including: seeking peace; explain procedural law; guide proof; and explain legal remedies for decisions.

B. RESEARCH AT THE PALU DISTRICT COURT

Based on data obtained from research conducted at the Palu District Court, the small claims court mechanisms are as follows:

That the Plaintiff registered a lawsuit at the Registrar's Office after paying the case cost, then the file was checked by the Registrar in this case the Panmud Civil. Furthermore, the Chairperson of the District Court through its appointment appoints a Single Judge to examine the case, as well as the Registrar appoints a Substitute Registrar to assist the Judge at the trial;

Before the Judge determines the trial day, the Judge firstly studies the lawsuit whether fulfilling the requirements is examined through the small claims court mechanism. If fulfilling the conditions, the Judge shall determine the day of the hearing and order the Bailiff to call the parties (Plaintiffs and Defendants) to be present on the determined trial day;

On the first trial day, the parties are begged to achieve peace. If peace is not achieved, the examination will continue with the reading of the lawsuit, after which the Defendant will be given the opportunity to answer the Plaintiff's claim, and then prove it from the parties and the verdict from the Judge.

The number of disputes that have been resolved using the small claims court mechanism in 2017 was 27 (twenty seven) cases and in the current year 2018 there were 8 (eight) cases. The most common type of dispute is banking defaults, known as bad credit score;

The time period for resolving a dispute is in accordance with the Supreme Court Regulation Number 2 of 2015 concerning the small claims court, such as not more than 25 working days from the first trial; Meanwhile, related to the down payment that shall be completed for resolving disputes is in accordance with the calling distance or radius of the parties;

In the evidence process, the evidence made in a the small claims court is under principle the same as the proof of the ordinary claim, still referring to the provisions of Article 183 HIR / 283 Rbg, as well as evidence as in Article 184 HIR / 284 Rbg. In the small claims court, based on legal facts (evidence), the Judge makes a dispute principal and draws simpler conclusions. This is due to the fact that the rule of law of the General Law in the dispute over the small claims court is not as complicated as a normal civil case.

The obstacles faced by the Judges or among parties in the small claims court are the inconsistency of the parties in terms of attending the trial and in preparing evidence that will be submitted at the trial.

The response of the parties in the implementation of the provisions of the small claims court mechanism is quite good and effective because besides the time of dispute resolution is relatively short, the evidence is simple, and the cost of cases is mild. However, the the small claims court mechanism has not been well-known due to lack of socialization to the community; That the parties did not encounter difficulties because the Judge examining the active dispute helped to direct the parties neutrally for the smooth running of the trial. If one of the parties not present at the hearing is based on a legitimate and proper summons, the case is examined in accordance with the legal provisions of the normal civil claims (death claim or examination and decided on a verstek).

That the small claims courts are very effective in resolving cases, because in addition to the short time, legal remedies are only in the form of objections filed against the court which decide the lawsuit, so that justice seekers may quickly get a legal certainty over the dispute and besides that the principle is simple fast and low cost experienced by justice seekers.

If the small claims court prosecuted has been decided by the Judge,

the parties who are dissatisfied with the decision of the Judge (Single Judge) is permitted to submit a legal action called objection and examined by the Panel of Judges according to the stipulation of the Chairperson of the District Court.

In general, the execution of decisions from the small claims court is not a matter because the claim wage is materially relative. And among the parties, peace often occurs. And in the the small claims court implementation, the majority losing party has carried out the decision voluntarily.

The ideal dispute resolution is 60 (sixty) days while prioritizing quality, especially in the examination of disputes so that the parties can understand clearly about the case, the subject matter thus the parties have perspective of the dispute truth.

Small claims court mechanism is suitable for resolving business disputes, because in principle business disputes are simple and require rapid and related solutions to economic growth.

That the strengths and weaknesses of the Small claims court mechanism with ordinary lawsuits in resolving business disputes are:

The small claims court excesses in dispute resolution process is fast and low cost and even simple proof. Because in the small claims court there are no demands for provisions, exceptions, recommendations, replications, duplicates, and conclusions only cover the subject matter and one party may not exceed one person unless they have the same legal interests. Then the parties shall reside in the same jurisdiction of the District Court and the address of residence is clearly known.

The small claims court mechanism, before the Judge determines the day of hearing, the claim has been reviewed, studied by both the Registrar and the Judge, so that the claim is formally fulfilled;

The weakness of the small claims court is that the court must be attended by the parties accompanied or without accompanied by their Legal Counsel or known as Proxy. This makes frequent delays due to the lack of consistency of the parties attending the trial determined by the Judge. In an ordinary lawsuit if it has been authorized by the parties there is no obligation to attend the hearing, it is sufficiently attended by

the proxy in accordance with the power of attorney made by each party.

That the small claims court mechanism is highly expected to be maintained and implemented because it greatly expands the access of justice seekers to obtain justice and legal certainty over the disputes it faces and particularly it mproved socialization to justice seekers.

C. RESEARCH IN THE JEMBER DISTRICT COURT

Based on the findings of study and interviews conducted in the Jember District Court, it can be seen that the small claims court mechanism carried out in the Jember District Court is in accordance with the Procedure for the small claims court resolution as stipulated in the Supreme Court Regulation Number 2 of 2015;

Based on data obtained from the Jember District Court in 2017 there were 111 (one hundred eleven) the small claims court cases, while in 2018 there were 40 (forty) cases up to the beginning of August, but three cases have not been decided. The most types of cases often resolved by the small claims court mechanism in the Jember District Court is the case of accounts payable;

The time needed to resolve the small claims court dispute is no more than 25 (twenty five) days from the first trial day in accordance with the provisions of the Supreme Court Regulation Number 2 of 2015.

The amount of down payment and case fees depends on the address of the parties and the number of parties called, due to the connection with determining the cost of the call. In accordance with the Supreme Court Regulation if the defendant is absent, once more call is made, so that the call costs are automatically calculated twice for the plaintiff and 3 times for the defendant, plus the cost of registering cases, stamp, process: editorial information (three) regions per ring: for ring 1 the call cost is IDR. 75,000.00 (seventy five thousand rupiahs), ring 2 the call cost is IDR. 100,000.00 (one hundred thousand rupiahs) to IDR. 150,000.00 (one hundred fifty thousand rupiahs), and ring 3 the call cost is IDR. 150,000.00 (one hundred fifty thousand rupiahs) until IDR. 175,000.00 (one hundred thousand seven hundred and five thousand rupiahs).

In proving the case, there is no distinction with proof in a normal civil

case, such as using evidence provided for in Article 164 HIR, including letters, witnesses, suspicions, confessions and oaths. However, the process of proof is carried out simply and the judge is active in the case investigation, this is different from the ordinary civil case examination;

The constraints faced by judges or among parties are the readiness of all parties to be able to settle a claim within 25 (twenty five) working days, for instance: invalid calls, thus redial calls must be made which means they have taken the specified period by the Supreme Court Regulation, while the valid calling requirement received by the parties is at least three days before the trial commences.

The response of the parties regarding the implementation of such small claims court is very positive, this is evidenced by the number of cases registered in 2017 reaching 111 cases. In addition, there are no obstacles or significant difficulties in presenting the parties because to follow the trial agenda, most importantly the parties can follow the trial agenda according to a predetermined schedule. The ideal dispute settlement according to the judge is peaceful dispute resolution.

If, however, one party is unable to present after officially summoned, then the examination is carried out without the presence of the defendant in the event that the absent defendant has been properly and legitimately summoned 2 (two) times, but if the plaintiff is absent while the plaintiff has been officially called and appropriate, the lawsuit will be aborted. Whether the small claims court mechanism is effective in resolving this case depends on the parties, but in the case of simple matters solving such as a small sum of debt, this will be very helpful among the concerned parties.

If there is a decision related to the intended small claims court, dissatisfied parties may file an objection in accordance with Supreme Court Regulation number 1 of 2018.

A small claims court mechanism is compatible with a business dispute with a loss of less than IDR 200 million rupiahs, but for the greater loss business dispute it requires less simple proof thus it cannot be resolved through small claims court.

In a small claims court, the fulfillment is carried out to complete the principle of low-cost, simple and fast. In the small claims court,

there were only few involved parties, the maximum sum was IDR. 200,000,000 (two hundred million rupiahs), in other words the evidence was simple and immediately actively assisted by the judge. Whereas, in resolving business disputes in ordinary lawsuits, the parties involved are certainly more numerous, the use of legal counsel is also needed, the claim material is more complicated and solutions may take longer to resolve.

Based on the implementation of the small claims court from 2015 to the present, its management is still necessary for simple business disputes. Throughout completing such small claims court cases, the Jember District Court has never carried out the execution procedure for the small claims court execution request.

V. THE COMPARISON OF SMALL CLAIMS COURTS IN INDONESIA AND IN THE UK AND IN THE NETHERLANDS

The Small claims courts comparison in Indonesia and in the UK and in the Netherlands consists of the comparison of Small claims courts concepts, case criteria, parties, competent courts, and case examination procedures.

A. THE CONCEPT OF SMALL CLAIMS COURT IN THE NETHERLANDS

The Netherlands is one of the countries known as having a simple and fast principle of civil dispute resolution which is one of the mechanisms is mainly similar to the small claims court mechanism, which is known as the term *kortgeding*.[61] The concept has existed for a long time, and it is well-known even during the Dutch colonial era in Indonesia. The concept was also one of the systems used in civil cases resolution for European groups in the Dutch East Indies at that time. The arrangement of such mechanism can be found in Article 223 Rv, that the definition of a short event is a procedure for resolving civil cases that is accelerated or shortened for certain types of disputes whose procedures are carried

[61] Ridwan Mansyur dan D. Y. Witanto, Gugatan Sederhana: Teori, Praktik dan Peraturan Mahkamah Agung dan permasalahannya, cet. 1, ed. 1, (Jakarta: Pustaka Dunia, 2017), pg. 8.

out by the court sending a written call to the defendant.[62]

The procedure of *kortgeding* in the Netherlands is divided into two, cases involving other countries in the European Union[63] and cases based on the national law of the Netherlands. Each procedure is distinguished based on the subject involved in the case and the type of case. Both also have some technical differences. The different arrangements is a consequence of Dutch membership in the European Union, which has some legal unification related to relations between one country and another.

In the small claims court procedure which refers to the unification of laws in the European Union, the Regulation (EC) Number 861/2007 of the European Parliament, the criteria for cases included in the case that can be examined by the mechanism of small claim court are as follows:[64]

Civil cases and commercial cases dealing with community law. The cases are not allowed to be carried out by a small claims court are: [65]

a. Case concerning the status and capacity of individuals.
b. Family wealth law case.
c. Bankruptcy Case
d. Case concerning social security
e. Arbitration
f. Case of employment
g. Case of renting movable property
h. Cases of violation of privacy rights, including blasphemy.
i. Cases with a total compensation value of EUR 2000.00 are included, and include interest, and other costs.
j. The case involves at least one legal subject from another country in the European Union other than the Netherlands.

The small claim court based on the Dutch national law has criteria:[66]

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[62] Ibid., pg. 9.
[63] European Judicial Enforcement. The European Small Claims Procedure in the Netherrlands. April 2012, hlm 1-2.
[64] Ibid., pg. 1-2.
[65] Ibid., pg. 2-3.
[66] European Judicial Network, Small claims – Netherlands, https://e-justice.europa.eu/content_small_claims-42-nl-en.do?member=1, accesed on 21 Augustu 2018.

a. Cases with a total compensation value of up to EUR 25,000.00 or cases that cannot be determined but the estimated value does not exceed EUR 25,000.00.

b. Cases included in this form include employment, leasing, agency cases, lease purchase and sales contracts to consumers, as well as appeals for traffic fines and minor cases.

The mechanism for implementing the small claims court procedure based on law in the Netherlands commences with summons both at the district court level and sub-district court. The parties can go forward without being represented by a lawyer, but for cases examined by the district court there is an obligation to progress by being represented by a lawyer. The case examination at the sub-district court level (before the district court) was carried out by a single judge. Examination of evidence refers to the law of proof of Dutch, where in principle the judge has the right to assess the evidence presented, it is also regulated equally for case procedures based on unification of EU law, as stipulated in Article 9 Regulation EC Number 861/2007.[67]

B. CONCEPT OF SMALL CLAIMS COURT IN THE UNITED KINGDOM

Similar with the small claims court in the Netherlands, the mechanism in the UK is based on the court principle at an affordable cost but still has quality procedures and can accommodate a large number of justice seekers.[68] This procedure is carried out in the country court where the scope of the case includes:[69]

a. Case of accounts payable
b. Case of personal compensation.
c. Defaults regarding objects or property
d. Housing dispute

Cases that can be examined by the small claims court mechanism must first be assessed by the judge, that the claim meets the criteria with a value of no more than £ 5,000, the type of case and the perspective of

[67] Ibid.
[68] The Constitutional Affairs Committee appointed by the House of Commons, The courts: Small Claim, London: The Stationery Office Limited, 2005, pg. 3.
[69] Ibid., hlm 6.

the parties.[70] The procedure for implementing the case commences with the sending of a copy of the claim to the defendant along with a form which will later be filled out by the defendant and then sent back. Based on the information from the form and the case faced by the defendant, the judge will decide on the most appropriate procedure to examine the case.

When the small claims court procedure is employed, it does not have to follow strict rules of verification. In the trial, the evidence does not have to be sworn in to him, even the judge can choose not to ask the parties to examine the evidence given by his opponent as long as the argument given by the judge is strong. A hearing can also be carried out without an examination in the court thus the examination is only carried out based on the documents given before the judge. The timeliness of the parties in fulfilling the judge's request. In this matter, the judge's consideration is mainly important.

From the cross-examinations, the judge subsequently constitutes a decision containing all considerations and orders related to the concerned case. Based on the decision, the parties can file an appeal by submitting an application for the appeal to the Judge examining the case. The application must be submitted within 14 (fourteen) days from the decision received by the parties.[71]

VII. COMPARISON OF SMALL CLAIMS COURTS IN INDONESIA AND IN THE UK AND IN THE NETHERLANDS

The comparison consists of case criteria, parties, competent courts, and case inspection procedures.

A. CASE CRITERIA

As previously explained, the procedure for disputes resolution through the small claims court in the Netherlands based on The Regulation (EC) Number 861/2007 of The European Parliament,[72]

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[70] Ibid., hlm7.

[71] European Judicial Network, Small Claims-England and Wales, https://e-justice.europa.eu/content_small_claims-42-ew-en.do?member=1, accesed on 21 August 2018.

[72] Ibid., pg. 1-2.

is a civil and commercial case dealing with community law with the following exception (1) cases concerning personal status and individuals capacity; (2) legal cases of family wealth; (3) bankruptcy cases; (4) cases concerning social security; (5) arbitration; (6) employment cases; (7) renting of immovable property cases; and (8) cases of right to privacy violation, including blasphemy, each claim worth a maximum of EUR 2,000.00 (two thousand Euros). The provisions based on Dutch national law possess different criteria including employment, leasing, agency, leasing and sales contracts to consumers, as well as appeals to traffic fines and minor cases with a maximum claim value of EUR 25.000.00 (twenty five thousand euros).

Meanwhile, the cases provision applied in the UK that can be cross-examined by the small claims court mechanism include cases of accounts payable, personal compensation cases, and defaults relating to objects or property, housing disputes. The maximum claim value of these cases is £ 5,000.00 (five thousand pounds).

Arrangements regarding the small claims court in Indonesia in the Supreme Court Regulation Number 2 of 2015 have determined that the case criteria that can be examined by such mechanism are in addition to cases where dispute resolution is carried out through special courts as stipulated in legislation and disputes cases involving land rights. In addition, the value of the claim in the case may not exceed the amount of IDR 200,000,000 (two hundred million rupiahs).

Based on these comparisons, it can be figured out that the provisions of case criteria that can be examined through the small claims court mechanism in Indonesia have a wider scope compared to the types of cases determined in the Netherlands and in the UK. In Indonesia, all civil law or cases can be resolved through the mechanism except cases in special courts and land disputes. Then in terms of the highest claim value, then in Indonesia has a higher maximum limit compared to the provisions in the Netherlands and England.

B. PARTIES

Based on the provisions of the Dutch national law, the parties submitting cases with a small claims court mechanism are allowed to go forward without being represented by a lawyer. However, there

is an obligation for cases examined by the district court to progress represented by a lawyer. Meanwhile, if the case involves at least one legal subject from another country in the European Union other than the Netherlands, the provisions based on The Regulation (EC) Number 861/2007 of the European Parliament apply.

Provisions in the UK regarding the skills and parties authority in filing cases through the small claims court mechanism are determined based on British civil law. As in Indonesia, the provisions regarding the omission of the parties may refer back to the regulations related to applicable civil law. In contrast, specifically in Indonesia, it is regulated regarding the number of parties who can submit a case, because they are not allowed to be more than one, unless there is the same legal interests.[73]

C. AUTHORIZED COURT

In the Netherlands, the authorized courts examining small claims court cases are the district courts and sub-district courts. While in the UK, the authorized court to examine cases through such mechanism is the county courts. Yet in Indonesia, a court that has the authority to handle small claims court cases is a court within the scope of the general court.

D. CASE INVESTIGATION PROCEDURES

Basically, filing cases examined by the small claims court mechanism is similar among the Netherlands, the UK and Indonesia. In each of these countries, the small claims court case was submitted by the involved parties to the authorized court.

The mechanism for implementing the small claims court procedure is based on law in the Netherlands to commence a summon both at the district court level and sub-distcit court. As for the UK, to begin with the claims, the plaintiff write down the claim in a prepared form, the copy of which will be received by the defendant, it is then answered by the defendant through the form included with a copy of the claim.

[73] Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Republik Indonesia tentang Tata Cara Penyelesaian Gugatan Sederhana, Supreme Court Regultaion No. 2 of 2015, Art. 4.

Based on these forms, the judge will subsequently decide on the most appropriate procedure to resolve the case raised by the parties. Meanwhile, in Indonesia, the lawsuit filing is commenced with registration in the court clerk by filling in the provided form.

Furthermore based on the document from the registration, a judge will be appointed to assess whether the case can be examined by the mechanism of the small claim court. Afterwards, as in the Netherlands and in England, the parties will be summoned.

An examination with a small claims court mechanism in the Netherlands is carried out by a single judge. Both based on European Union law and Dutch national law, the examination of evidence in this case refers to the proof of the Dutch law, that the assessment of the evidence submitted is entirely the authority of the judge to determine it.

Meanwhile, the examination of such cases in the United Kingdom is also carried out by a single judge with a proof method that is not as strict as the ordinary examination. The evidence does not have to be sworn, it is only necessary to check documents given before the judge.

The judge may ask the parties to examine the evidence given by the opponent as long as the argument given by the judge is adequately strong. Hearing, as one important thing to note in this case, is about the timeliness of the parties to fulfill the judge's request, because this becomes very important for the judge's consideration.

Based on the cited examination of evidence, a decision is finally issued and if, however, the parties are not satisfied, they are allowed to submit an appeal, which must be submitted within 14 days of the decision received by the parties.

Yet in Indonesia, the inspection mechanism for the small claims court is also examined by a single judge, in the similar ways as an ordinary examination. In this case, the demands are merely in forms of provision, exception, reconciliation, intervention, replication, duplication and conclusions are not permitted to be submitted.[74] Based on the examination, the judge issues a final decision and with respect to the decision, the parties can file an objection, if however, the decision

[74] Ibid., Art. 17.

is deemed unsatisfactory.[75]

VI. CLOSING

By way of conclusion, the current section consists of conclusion and suggestion.

A. CONCLUSIONS

Based on results obtained in this line of research, some formulated conclusions are as follows:

1) Based on the results of in this line of research at the Jember District Court, the Medan District Court, and the Palu District Court, disputes resolution through the mechanism of small claim court in the context of implementing a fast judicial principle has been carried out in accordance with the provisions of Supreme Court Regulation No. 2 of 2015 concerning Procedures for Small Claims Court Resolution. All accomplished cases can be settled in accordance with the procedures set out in the Supreme Court Regulation with no more than 25 (twenty five) working days. The resolution of business disputes in Indonesia through a Small Claims Court mechanism has significantly increased. Most of the small claims court cases are about business disputes. The most numerous business disputes are banking credit disputes and accounts payable. Business disputes within the scope of acts against the law are far less than those in defaults judgement. this is due to the fact that the evidence in the small claims court is demanded to be simple. The mechanism for resolving business disputes through the small claims court is the most widely used by the bank in solving the bad credit matters. There have been a range of inputs to the courts studied regarding the resolution of bankruptcy disputes, consumer protection disputes, intellectual property rights disputes with a maximum value of IDR. 200,000,000, and simple evidence in the scope of cases that could be resolved through the small claims court mechanism.
2) By comparing the law of business dispute resolution through

[75] Ibid., Art.19.

the small claims court in the Netherlands and in the UK, it can be figured out that the sum of the small claims court cases in Indonesia is much higher than in the United Kingdom. However, in relation to the evidence mechanism, all those states must be simple. Another similarity is that legal remedies on the lawsuit are simple and the small claims court verdict in the Netherlands and in England are both very limited. Such limitation in the effort can be achieved by the fast principle of disputes resolution.

B. SUGGESTIONS

With regard to disputes resolution through the small claims court mechanism, some considerable suggestions are as follows:

1) It is necessarily recommended that the Supreme Court of the Republic of Indonesia creates the cheaper and faster execution arrangements for the small claims court decision than the execution procedures in other proceedings.
2) The Supreme Court are suggested to improve dispute resolution procedures through the small claims court by including bankruptcy disputes, consumer protection disputes, intellectual property rights disputes with a maximum case value of IDR 200 million rupiahs and simple proof under the cases that can be resolved through the small claims court mechanism.

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