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THE DIRECT AVOIDANCE OF THE PARTIES IN A SMALL CLAIM COURT IN RESOLVING BUSINESS DISPUTES

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Abstract: In article 4 Paragraph (4) PERMA 4/2019 it was regulated that the troubled entrepreneur in resolving business disputes is required to attend directly, which cannot be represented incidentally, even by a legal representative. However, it turns out that PERMA 4/2019 has not regulated in detail related to the legal consequences of the direct absence of the the troubled entrepreneur. This research is legal research and the approach that this article used is the statute approach and the conceptual approach. The formulation of the problem in this article were: First, the construction of a Small Claim Court and Second in Resolving Business Disputes, Second, the legal consequences of the direct absence of the parties in a Small Claim Court in resolving business disputes. From this research it was found that, First The construction of a Small Claim Court in resolving business disputes that needs to be considered is related to registration, examination of the completeness of a Small Claim Court, determination of judges and appointment of a substitute registrar, preliminary examination, determination of trial day and summons of the parties, trial and reconciliation examination, evidence, and decision and Second the legal consequences of the parties' absence directly in this Small Claim Court in resolving business disputes is the party who is not present in person is considered not to be present at the trial.

Keywords: *Legal Consequences, Resolving Business Disputes, Small Claim Court, The Absence of The Parties.*

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1. Introduction

According to (Paton, 1972) stated that: "**A principle is a broad reason which lies at the base of the rule of law**: it has not exhausted itself in giving birth to that particular rule but is still fertile. Principles, how the law lives, grows, and develops, demonstrate that law is not a mere collection of rules. Through the medium of the principle, the law can draw nourishment from the views of the community, for the *ratio legis* is wide, and deduction from it a particular rule, regard may be paid to the circumstances to which the rule is to be applied (bolding by author)." G.W. Paton's statement shows that the principle of law has been accepted in the science of law as a fundamental thought that underlies legal life and the legal system (Atmadja, 2018). The cause of the principle of law is arguably the fundamental thought that underlies the life of the law and the legal system because indeed, the principle of law is actually the primary idea used in decision making by the powers that represent the

legal system, namely the legislative, executive, and judicial authorities to achieve justice or appropriateness (Marzuki, 2020). With this basis in mind, decisions should be made by the powers that represent the legal system whether or not the experiment is appropriate, not only by statutory regulations but also by legal principles (Adam et al., 2020).

General legal principles (*Algemene beginselen*) relating to this judicial power can generally be found in Chapter II of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law 48/2009). The legal principles related to judicial power include 1) the principle of divinity, 2) the principle of legal justice, 3) the principle of legality, 4) the principle of *contante justitie*, 5) the principle of judicial independence, 6) the principle of impartiality, 7) the principle of capability and acceptability, 8) the principle of accountability (Simanjuntak, 2018). One of the legal principles that can be said to have a central position in judicial power is the principle of *contante justitie* (quick, simple and low-cost judiciary) (Waluyo, 2017). This legal principle has depth, meaning that a judicial process must proceed quickly and not involve high costs (Sihotang, 2016). The importance of this legal principle makes this principle often contradicted with other legal principles. This is also coherent with Enrico Simanjuntak's opinion which states that (Simanjuntak, 2018): "That is why, among all the principles of a good judiciary contained in the Law on Judicial Power, the principle of a simple, fast and low-cost (*contante justititie* principle) is the only principle that is mentioned more than once compared to other principles."

In Law 48/2009, the principle of *contante justitie* is stated in 2 (two) articles, namely Article 2 paragraph (4) and Article 4 paragraph (2). The detailed regulation of Article 2 paragraph (4) of Law 48/2009 is: "The judiciary is carried out in a simple, fast, and low-cost." and Article 4 paragraph (2) of Law 48/2009 is: "The courts assist justice seekers and try to overcome all obstacles and obstacles to achieve a simple, fast and low-cost judiciary." Thus, from the 2 (two) provisions, it can be understood that the judiciary in Indonesia should be carried out in a simple, fast, and low-cost to achieve a simple, fast, and low-cost (Chantieka et al., 2018). This provision is a manifestation of the classical legal principles, namely:: "*Iustitia non estneganda, non differenda* (Justice is not to be denied, not to be delayed)" which has a deep meaning, that achieving justice, but not in a timely manner is a form of injustice too (Nugraha et al., 2019).

In Article 79 of Law Number 14 of 1985 concerning the Supreme Court as Amended by Law of the Republic of Indonesia Number 5 of 2004 and Law Number 3 of 2009 (hereinafter referred to as the Supreme Court Law), it is regulated that further matters that are needed for the smooth running of the judiciary if there are matters that have not been sufficiently regulated in this Law." From these provisions, it can be seen that the Supreme Court has the authority to make further technical arrangements in order to ensure the smooth running of the judiciary or also called *regelende functie* (Sudarsono & Halim, 2019). One of the *regelende functie* regulatory taken by the Supreme Court so that the judiciary can run simple, quick, and at low-cost as mandated by Article 2 paragraph (4) and Article 4 paragraph (2) of Law 48/2009 is to issue the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 267 /KMA/SK/X/2013 concerning the Establishment of a Working Group for Drafting Supreme Court Regulations on Procedures for Settlement of Small Claim Courts. Through this decision, the Supreme Court mandated that a working group be immediately formed to form arrangements related to dispute resolution mechanisms through a Small Claim Court which incidentally can be considered a truly simple, fast, and low-cost judiciary.

The existence of a lawsuit mechanism that is really simple, fast, and low-cost, one of the parties who need it is the entrepreneur. Entrepreneurs who in fact have the potential to have business disputes need a mechanism to be able to resolve their business disputes quickly. This is because if the existing business problems are allowed to drag on, it will cause more losses for these entrepreneurs. In addition, there is the potential for increased distrust from clients and/or business partners of this entrepreneur. Thus, a judicial mechanism solution that is really fast is needed.

On August 7 2015, the solution for the needs of entrepreneurs regarding fast judicial mechanism was answered by the Supreme Court Regulation Number 2 of 2015 was finally issued Procedures for Settlement of Small Claim Courts (hereinafter referred to as PERMA 2/2015). PERMA 2/2015 is considered a legal breakthrough because it regulates things that are considered to simplify the existing judicial process so that the judiciary is simple, fast, and low-cost. For example, Article 25 paragraph (3) PERMA 2/2015 stipulates that: "(3) Settlement of a Small Claim Court no later than 25 (twenty-five) days from the day of the first trial." From these provisions, it can be seen that the maximum time limit for the settlement of cases through a Small Claim Court should not be more than 25 (twenty-five) days from the first trial. This is, of course, very different from the period in ordinary courts, which incidentally is only normative based on Circular Letter Number 2 of 2014 concerning Settlement of Cases in the Court of First Level and Appeal Level in 4 (Four) Judicial Environments (hereinafter referred to as SEMA 2/2014) is 5 (five) months. Another example, for example, in Article 21, paragraph (1) of PERMA 2/2015, stipulates that: "Legal effort against the decision of a Small Claim Court as referred to in Article 20 is to file an objection." This means, in addition to objections, other legal remedies cannot be submitted, which incidentally in the ordinary judicial process, it is still possible for appeals and cassation efforts to be made (Kurniawan et al., 2020). Thus, we could say this rule really answers the needs of entrepreneurs.

“In accordance with its aim to achieve order for the sake of justice and the rule of law will always develop in line with the development of human life (Anwar et al., 2021). "The statement of Khairul Anwar et al. is implied in PERMA 2/2015 which was later refined based on the needs of the times through the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019 concerning Amendments to the Regulation of the Supreme Court Number 2 of 2015 concerning Procedures for Settlement of Small Claim Courts (hereinafter referred to as PERMA). 4/2019). This can also be seen from the provisions considering the letter b of PERMA 2/2015, which states that: "In order to optimize the settlement of Small Claim Courts, it is necessary to improve the Regulation of the Supreme Court Number 2 of 2015 concerning Procedures for Settlement of Small Claim Courts, especially in ha! the value of the material lawsuit, the jurisdiction of the plaintiff and the defendant, the use of electronic case administration, verification, confiscation of guarantees, and execution procedures." On this basis, in PERMA 4/2019, there are new regulations formed based on responding to the needs of the new community. This is done with the aim of further perfecting simple lawsuits, so that the interest of entrepreneurs in using this mechanism is higher.

One of the provisions that have been amended in PERMA 4/2019 is Article 4 paragraph (4), which in detail, stipulates that: "The plaintiff and the defendant must attend each judiciary directly with or without being accompanied by a proxy, either incidental power of

attorney or a representative with an assignment letter of the plaintiff's institution." From these provisions, it can be understood that **Plaintiff and Defendant are required to attend directly, which cannot be represented incidentally, even by a legal representative**. However, it turns out that PERMA 4/2019 has not regulated in detail related to the legal consequences of the direct absence of the Plaintiff/Defendant. There should be a regulation related to the legal consequences of the direct absence of the Plaintiff/Defendant so that the arrangement does not become a *lex imperfecta* regulation (obligation norms which, when not followed, do not cause any legal consequences) (Insiyah et al., 2019).

Based on the description of the background above, the formulation of the problem in this article were: **First**, the construction of a Small Claim Court in resolving business disputes, and **Second**, the legal consequences of the direct absence of the parties in a Small Claim Court in resolving business disputes. The purpose of this article **was**: First, to analyze the construction of a Small Claim Court in resolving business disputes and **Second**, to analyze the legal consequences of the direct absence of the parties in a Small Claim Court in resolving business disputes. To ensure that this article is original, we will describe the differences with articles similar to this article, such as:

1. Article by Nevey Varida Ariani entitled (Ariani, 2018): "Small Claim Courts in the Indonesian Judicial System." Published in the De Jure Legal Research Journal, Volume 18, Number 3, 2018. In this article, the author's focus is to describe the application of a Small Claim Court and its obstacles in the Justice System in Indonesia using qualitative research methods, but the touchstone is still PERMA 2/2015. From the focus of the article, it can be seen that the difference with this article apart from the experiment is not only PERMA 2/2015 but also PERMA 4/2019 is; the focus of this article was also to analyze the legal consequences of the absence of the parties directly in a Small Claim Court.
2. The article by Kuswandi Kuswandi and Mohammad Nasichin entitled (Kuswandi & Nasichin, 2019): "Settlement of Small Claim Courts in Civil Cases in Court." Published in the Pro Hukum Journal, Volume 8, Number 2, 2019. In this article, the focus of the author is related to the procedure for examination in a court of civil lawsuits with a material claim value of at most Rp. 200,000,000.00 with a Small Claim Court mechanism, as stipulated in PERMA 2/2015. From the focus of the article, it can be seen that the difference with this article apart from the touchstone is not only PERMA 2/2015 but also PERMA 4/2019 is; the focus of this article was also to analyze the legal consequences of the parties' absence directly in a Small Claim Court.

2. Research Method

This study used legal research methods. According to Soerjono Soekanto and Sri Mamudji, legal research is a process to determine the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Soekanto & Mamudji, 1985). In this legal research, the main legal issue to be answered is related to the legal consequences of the direct absence of the parties in a Small Claim Court in resolving business disputes.

In this legal research, the approach used is the statute approach and the conceptual approach. The statutory approach is carried out by assessing the reasoning of law and its philosophical background and the development of legal policy (policy) on all legal provisions governing the legal consequences of the direct absence of the parties in a Small Claim Court (Effendi & Ibrahim, 2020). The conceptual approach is used to research legal principles that

can be found in the views of scholars or legal doctrine (Marzuki, 2013). In this study, it is very important to know the legal principles put forward by scholars to make it easier to answer issues related to the absence of the parties directly in a Small Claim Court in resolving business disputes.

3. Results and Discussion

3.1. The Construction of Small Claim Court in Resolving Business Disputes

Ad rectedocendumoportet, primum inquirerenomina, quia rerum cognitio a nominibus rerum dependet (In order to comprehend rightly a thing, inquire first into the names, for a right knowledge of things depends upon their names) (Hiariej, 2015). A classic legal *adagium* that has a deep meaning, that in order to understand a legal concept comprehensively, it must first be described from its definition (Nugraha et al., 2020). This is actually logical, because of a misunderstanding of the concept at the beginning, it can make mistakes in drawing conclusions at the end as the *ex falso, quod libet* law principle (from a false proposition, anything follows) (Nugraha & Katherina, 2019). On this basis, before further elaborating on the construction of a Small Claim Court in Resolving Business Disputes, the definition of a Small Claim Court itself will be described first.

In Article 1 point 1 PERMA 2/2015, it is stipulated that: "Settlement of a Small Claim Court is a procedure for examining a civil lawsuit with a material claim value of a maximum of Rp. 200,000,000.00 (two hundred million rupiahs) which is settled by way of, and the proof is simple." This provision was later changed in Article 1 point 1 in PERMA 4/2019 to become: "Settlement of Small Claim Courts is the procedure for examining in court against civil lawsuits with a material claim value of a maximum of IDR. 500,000,000.00 (five hundred million rupiahs) which is settled with simple procedures and proofs." The provisions of Article 1 point 1 in PERMA 4/2019 are also confirmed in Article 3 paragraph (1) of PERMA 4/2019, which stipulates that: "A Small Claim Court is filed against cases of breach of contract and/or acts against the law with a material claim value of a maximum of Rp. 500,000,000.00 (five hundred million rupiahs)." From these provisions, it can be understood that the construction of a Small Claim Court in its current construction is the process of examining cases of breach of contract (*wanprestasi*) and/or unlawful acts (*onrechtmatigedaad*) in court with a simple proof mechanism with a maximum value of Rp. 500,000,000.00 (five hundred million).

One of the main reasons in PERMA 4/2019 jo. PERMA 2/2015 stipulated about breach of contract (*wanprestasi*) and/or unlawful acts (*onrechtmatigedaad*) in small claim court, because The things that are disputed by entrepreneurs are generally that two things. For example, the entrepreneurs feel that the other party violate the agreement in the contract, then the entrepreneurs will use breach of contract mechanism. So, we can say that this regulation (*in casu*: small claim court regulation) espesically for entrepreneurs.

In addition to the maximum object of the lawsuit is Rp. 500,000,000.00 (five hundred million rupiahs), it turns out that there are qualifications for cases that cannot be included in the object of a Small Claim Court. This can be seen in Article 3 paragraph (2) of PERMA 4/2019, which stipulates that: "2) Not included in a Small Claim Court are: a. cases whose dispute resolution is carried out through special courts as regulated in-laws and regulations; or b. land rights disputes." From the provisions of Article 3 paragraph (1) jo. Article 3

paragraph (2) of PERMA 4/2019, it can be understood that there are cumulative conditions so that a case can be filed with a Small Claim Court, namely (Idham, 2018):

1. Cases of *wanprestatie* or unlawful acts with a material claim value of a maximum of Rp. 500,000,000.00 (five hundred million rupiah);
2. It does not include cases where the dispute resolution is carried out through a special court as regulated in the legislation;
3. Not a dispute over land rights.

Thus, when the entrepreneur is going to use this small claim clourt mechanism, he/she cannot fulfill these reasons.

After understanding the qualifications of cases that can be disputed with a Small Claim Court mechanism, the thing that needs to be understood is related to the parties in this Small Claim Court. Related to this, it can be seen in Article 4 of PERMA 4/2019, which stipulates that: "(1) The parties in a Small Claim Court consist of a plaintiff and a defendant, each of which cannot be more than one unless they have the same legal interest. (2) Against the defendant whose place of residence is unknown, a Small Claim Court cannot be filed. (3) The plaintiff and the defendant in a Small Claim Court are domiciled in the jurisdiction of the same court. (3a) In the event that the plaintiff is outside the jurisdiction of the defendant's residence or domicile, the plaintiff in filing the lawsuit appoints a power of attorney, incidental attorney, or representative having an address in the jurisdiction of domicile of the defendant with a letter of assignment from the plaintiff's institution. (4) The plaintiff and the defendant are obliged to attend each trial directly with or without being accompanied by an attorney, incidental attorney, or representative with a letter of assignment from the plaintiff's institution." From these provisions, it can be understood that related to the entrepreneurs being the Parties in this Small Claim Court, and it is understood that:

1. The parties in a Small Claim Court consist of a plaintiff and a defendant, each of which cannot be more than one, unless they have the same legal interest;
2. The address of the Defendant must be known, so that he cannot use the mechanism regulated in Article 118 paragraph (3) *Herzien Inlandsch Reglement* (HIR);
3. If the plaintiff in a Small Claim Court is domiciled in a different court jurisdiction from the Defendant, then the plaintiff in filing the lawsuit appoints power of attorney, incidental attorney, or representative whose address is in the jurisdiction or domicile of the defendant with a letter of assignment from the plaintiff's institution.;
4. Plaintiffs and defendants are required to attend each judiciary in person;
5. Plaintiffs and defendants are not required to be accompanied by power of attorney, incidental attorney or representative.

As described above, this Small Claim Court is carried out with a simple proof mechanism. The manifestation of this simple evidentiary mechanism is a Small Claim Court settlement stage that is much simpler than the usual mechanism, as regulated in Article 5 paragraph (2) of PERMA 2/2015, which stipulates that: a. registration; b. inspection of the completeness of a Small Claim Court; c. determination of Judges and appointment of substitute registrar; d. preliminary examination; e. determination of the trial day and summons of the parties; f. trial and reconciliation examination; g. proof; and h. decision." In addition, one of the main indicators that this Small Claim Court mechanism is carried out

with a simple proof mechanism is the maximum limit for the settlement of this Small Claim Court which is limited to 25 days, as regulated in Article 5 paragraph (3) PERMA 2/2015 (Putri et al., 2018). However, in fact, there are several Small Claim Courts that take more than 25 (twenty-five) days to be examined in a district court, such as the case with register number 53/Pdt.G.S/2017/PN SBY , which takes 1453 days to process. The next example is the case with register number 55/Pdt.G.S/2017/PN Jkt.Pst, which takes 146 days to process.

From the registration process, things that need to be considered are related to Article 6 paragraph (4) of PERMA 2/2015, which stipulates that: "4) The Plaintiff is required to attach legalized evidence at the time of registering a Small Claim Court. This means that at the time of registration, legalized evidence must be attached so that it can be said that the Plaintiff (*in casu*: the troubled businessman) must have written evidence ready when registering the lawsuit, although it is not further regulated regarding whether or not there is additional letter evidence submitted by the Plaintiff. Related to this registration, the Plaintiff and the defendant can use electronic court case administration in accordance with the provisions of the legislation, as regulated in the origin 6A PERMA 4/2019.

Regarding the inspection of the completeness of this Small Claim Court, it is regulated in Article 7 PERMA 2/2015 that: "(1) The Registrar conducts an examination of the registration requirements of a Small Claim Court based on the provisions of Article 3 and Article 4 of this regulation. (2) The Registrar returns the claim that does not meet the requirements as referred to in paragraph (1). (3) Registration of simple claims is recorded in a special register of simple claims." From these provisions, it is understood that it is the Registrar who is burdened with the responsibility to carry out administrative examinations of Small Claim Court registrations. Regarding the determination of the substitute judge and Registrar, it is regulated in Article 9 of PERMA 4/2019 that: "1) The head of the court determines the Judge to examine a Small Claim Court. (2) The Registrar appoints a substitute registrar to assist the Judge in examining a Small Claim Court." In relation to the Small Claim Court registration process, the determination of the Judge and the appointment of the replacement registrar shall be carried out no later than 2 (two) days, in accordance with Article 10 of PERMA 4/2019.

This is arguably a little different from the usual lawsuit for violating the law/wanprestie in the district court regarding the preliminary preparation. This preliminary preparation is carried out to examine whether/or whether the lawsuit can be qualified as a Small Claim Court. This is similar to the preparatory examination at the State Administrative Court, which is regulated in Article 63 of Law Number 5 of 1985 concerning the State Administrative Court, as amended in Law Number 9 of 2004 and Law Number 51 of 2009 (Pattipawae, 2015). Regarding the preliminary preparation in this Small Claim Court, it is regulated in Article 11 PERMA 2/2015, that: "(1) The judge examines the material of the Small Claim Court based on the conditions as referred to in the provisions of Article 3 and Article 4 of this rule. (2) The judge judges whether the evidence is simple or not. (3) If the judge believes that the lawsuit is not included in a Small Claim Court during the examination, the judge shall issue a stipulation stating that the lawsuit is not simple, delete it from the case register and order the return of the remaining court costs to the plaintiff. (4) Concerning the determination as referred to in paragraph (3), no legal remedies can be taken." Thus, it can be understood that if the judge considers the lawsuit to be not simple, then the judge can issue a ruling stating that the lawsuit is not a Small Claim Court that has permanent legal force (*inkracht van gewjisde*) (Riskawati, 2018).

The judge believed that the lawsuit filed by the plaintiff was simple, so the judge determined the day of the first trial, as regulated in Article 12 PERMA 2/2015. After the first trial date is determined, the parties (Plaintiff and Defendant) must be present. Regarding the presence of the Parties, it is further described in Article 13 PERMA 4/2014 that: "(1) If the plaintiff is not present on the day of the first trial without a valid reason, then the lawsuit is declared void. (2) If the defendant is not present on the first judiciary, a second summons shall be properly made. (3) If the defendant is not present on the second trial day after being properly summoned, the judge decides the case *verstek*. (3a) Against the decision as referred to in paragraph (3), the defendant may file a challenge (verzet) within 7 (seven) days after notification of the decision. (4) If the defendant is present on the day of the first trial and on the day of the next trial he is not present without a valid reason, then the lawsuit is examined and decided in a c*ontradictoir* manner (5) Against the decision as referred to in paragraph (3a) and paragraph (4), the defendant may file an objection."

On the day of the first trial, the judge will be obliged to seek reconciliation by considering the time limit as referred to in Article 5 paragraph (3), as regulated in Article 15 paragraph (1) of PERMA 2/2015. Furthermore, in Article 15 paragraph (2) to paragraph (5) of PERMA 2/2015, it is regulated that: "(2) The reconciliation effort in this PERMA excludes the provisions stipulated in the Supreme Court's provisions regarding mediation procedures. (3) If peace is reached, the judge makes a Decision on the Deed of Peace binding on the parties. (4) Against the Decision on the Deed of Peace, no legal remedies can be submitted. (5) If a settlement is reached outside the trial and the reconciliation is not reported to the judge, the judge is not bound by the reconciliation." In the event that reconciliation is not reached on the day of the first trial, the trial will continue with the reading of the lawsuit and the defendant's answer following Article 16 PERMA 2/2015.

In Article 17 of PERMA 2/2015, it is regulated that: "In the process of examining a Small Claim Court, no claims for provisions, exceptions, reconventions, interventions, replicas, duplications, or conclusions can be filed." From Article 17 of PERMA 2/2015, it is very clear that there are procedures in ordinary lawsuits which incidentally usually make an examination take quite a long time (Harahap, 2017). This is actually logical, considering that a simple and quick examination is the main purpose of this Small Claim Court (Ariadi &Chumaida, 2021). Article 17, then added to Article 17A in PERMA 2/2019, that: "In the examination process, the Judge may order the placement of collateral confiscations on objects belonging to the defendant and/or the property of the plaintiff which are in the possession of the defendant."

In relation to this evidence, Article 18 of PERMA 2/2019 stipulates that: "(1) The argument of the claim which the defendant unanimously acknowledges does not need additional evidence. (2) Against the argument of the claim which is denied, the Judge shall examine the evidence-based on the applicable procedural law." As for the essence of Article 18 paragraph (1), in fact, apart from making the examination run quickly because indeed the argument acknowledged by the defendant is valuable as evidence (*bewijsmiddel*) in the form of an acknowledgment (*bekentenis*) that has been qualified as evidence as stipulated in Article 1923 of the Civil Code and Article 174 HIR.

Regarding the Decision in this Small Claim Court, it is regulated in Chapter V Articles 19 and 20 of PERMA 2/2015, which states, "Article 19 (1) The judge reads the decision in a trial open to the public. (2) The judge is obliged to notify the rights of the parties to file an

objection. Article 20 (1) Decisions consist of: a. the head of the decision with instructions that read "For the sake of Justice Based on the One Godhead"; b. identity of the parties; c. a brief description of the matter; d. legal considerations; and e. finding. (2) If the parties are not present, the bailiff shall notify the decision no later than 2 (two) days after the finding is pronounced. (3) At the parties' request, a copy of the decision is given no later than 2 (two) days after the decision is pronounced. (4) The Substitute Registrar shall record the proceedings in the Minutes of Trial signed by the Judge and the Substitute Registrar." It should be noted that if the parties are not present, the bailiff will notify the decision no later than 2 (two) days after the decision is pronounced, and the decision will be given no later than 2 (two) days after the decision is pronounced which incidentally is so that when there is legal action (objection) can be done immediately (Maskum, 2021).

Regarding objections, as a legal remedy, this can only be submitted no later than 7 (seven) days after the decision is pronounced or after notification of the decision, as regulated in Article 22 paragraph (1) PERMA 2/2015. In the event of an Objection, the notification of the objection along with the memorandum of the objection shall be submitted to the Respondent's objection within 3 (three) days from the date of receipt of the application by the Court and within 3 (three) days, the Respondent of the Objection must submit the counter memorandum of objection which was submitted to the Court, as Article 24 PERMA 2/2015. Upon the objection, the Court's Chief Justice will determine the Panel of Judges to examine and decide on the objection application no later than 1 (one) day after the application is declared complete, as regulated in Article 25 paragraph (1) PERMA 2/2015. Later, the decision on the objection application will be pronounced no later than 7 (seven) days after the date of the determination of the Panel of Judges, as regulated in Article 27 PERMA 2/2015, and notification of the objection decision will be submitted to the parties no later than 3 (three) days after being pronounced, as stipulated in Article 29 PERMA 2/2015 (Arifianti et al., 2017).

3.2. Legal Consequences of the Absence of the Parties Directly in a Small Claim Court in Resolving Business Disputes

According to R. Soeroso, legal consequences are the result of an action taken to obtain a result desired by the perpetrator and regulated by law. The action he takes is a legal action, namely an action taken to obtain a result that is desired by the law (Soeroso, 2013). It is more clear that legal consequences are all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by the law concerned have been determined or considered as legal consequences (Syarifin, 2011). From these two definitions, it can be concluded that legal consequences are a state of birth of rights and obligations for certain legal subjects (Dsalimunthe, 2017).

In connection with the meaning of the legal consequences, the direct absence of the Parties (*In casu*: Plaintiff and Defendant) which incidentally is required to be present in person in Article 4 PERMA 4/2019. Although, in fact it turns out that PERMA 4/2019 does not regulate the legal consequences of the absence of the Parties in detail, even though the norm in Article 4 of PERMA 4/2019 is the norm of obligation. Thus, it can be said that there is a rule vacuum (*leemten in het recht*) (Purwati, 2020) related to the legal consequences of the absence of the Parties directly in the Small Claim Court. So we can say that, when the entrepreneur did not come, then there is not direct legal consequences.

Before describing the legal consequences of the direct absence of the Parties in the Small Claim Court, the essence of the regulation (*ratio legis*) of this matter will be explained, so that the basis for the formation of the legal policy can be understood. The essence of the arrangement of the direct presence of the Parties in the Small Claim Court according to the author is:

1. **In order to quickly find solutions to existing problems**
   With the obligation of the Parties to attend in person, it is hoped that the parties can meet and discuss their wishes directly, thus minimizing the delay of the judiciary. It is true that a legal power of attorney/incidental attorney should be able to represent the will of the power of attorney, but usually the recipient of the power of attorney will ask for a 1 (one) week delay to inquire about the will of the principal. Thus, you could say this is also in order to create a really fast and simple judiciary.
2. **As an effort to create peace**
   The parties who generally have difficulty communicating, because they already have problems are expected to be found directly and mediated by judges who incidentally are obliged to actively offer peace in every process (vide Article 14 PERMA 2/2015) can immediately reconcile. This is actually also to avoid the potential difficulty of creating peace, if it is attended by the giver of the power.
3. **As a manifestation of good faith in carrying out a Small Claim Court**
   The presence of the parties directly is actually a manifestation of the good faith of the parties in resolving a Small Claim Court which in fact prioritizes fast, simple, and low-cost judiciary (Sakina et al., 2018). In the absence of the parties, it is considered that the parties have no seriousness in resolving this Small Claim Court quickly.

Concerning the legal policy of the direct presence of the parties, it is similar to the regulation on mediation in Article 6 paragraph (1) of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures (PERMA 1/2016) in Court which is complete: "The Parties must attend the **Mediation directly** with or without being accompanied by a legal representative." The existence of a direct presence *legis ratio* in this mediation, based on Article 7 paragraph (1) PERMA 1/2016, is a manifestation of the parties to resolve the lawsuit really by prioritizing deliberation and consensus (Puspitaningrum, 2018).

In PERMA 1/2016, Article 7 paragraph (2), it is even regulated related to the form of bad faith from the Parties in Mediation, namely: "a. not present after being properly summoned 2 (two) times in a row at the Mediation meeting without valid reasons; b. attended the first Mediation meeting but never attended the next meeting despite being properly summoned 2 (two) times in a row without valid reasons; c. repeated absences that interfere with the Mediation meeting schedule for no valid reason; d. attending the Mediation meeting, but not submitting and/or not responding to the Case Resume of the other party; and/or e. did not sign the draft Peace Agreement which had been agreed without a valid reason." The existence of qualifications of parties who do not have good faith in this Mediation can actually be analogized by the judge to assess the intentions of the Parties in the Small Claim Court and in the construction of the *ius constituendum*, it should also be regulated related to good faith in the Small Claim Court process. Thus, it can be said that the direct presence of entrepreneurs in this simple lawsuit is a form of good faith from these entrepreneurs.

After understanding the essence of the presence of the Parties in this Small Claim Court, then, of course, it is necessary to understand the legal consequences of the absence of the Parties in the Small Claim Court, which incidentally is an obligation. The thing that needs to be noted is that related to the presence of the Parties in PERMA 2/2015 and PERMA 4/2019, and there are slight differences. The following will describe the details in the table and the differences to make it easier to understand.

Figure 1.
Table of the Differences in Attendance of the Parties in PERMA 2/2015 and PERMA 4/2019

PERMA 2/2015	**PERMA 4/2019**	**Differences**
Plaintiffs and defendants are required to attend directly each judiciary with or without being accompanied by a legal representative	Plaintiffs and defendants are required to attend directly each trial with or without being accompanied by power of attorney, **incidental of attorney or representative with a letter of assignment from the plaintiff's institution**	Previously, in PERMA 2/2015, if the Plaintiff/Defendant gave incidental power of attorney or was represented by a letter of assignment from the plaintiff's institution, then the Plaintiff/Defendant **was not required to attend directly**, but after PERMA 4/2019, even though the Plaintiff/Defendant gave incidental or represented by a letter of assignment from the plaintiff's institution

Source: PERMA 2/2015 and PERMA 4/219

Thus, from the table, it can be seen that after PERMA 4/2019 the Parties are obliged to attend directly without the possibility of not attend directly.

According to the authors, the legal consequences of the entrepreneurs absence directly in this Small Claim Court is the **party who is not present in person is considered not to be present at the trial, even though it is represented by a power of attorney, incidental of attorney, or a representative with a letter of assignment from the plaintiff's institution**. This is related to Article 13 of PERMA 4/2019, which stipulates that: "(1) If the plaintiff is not present on the day of the first trial without a valid reason, then the lawsuit is declared void. (2) If the defendant is not present on the day of the first judiciary, a second summons shall be properly made. (3) If the defendant is not present on the second trial day after being properly summoned, the Judge decides the case *verstek*. (3a) Against the decision as referred to in paragraph (3), the defendant may file a challenge (*verzet*) within 7 (seven) days after notification of the decision, (4) If the defendant is present on the day of the first trial. On the following day, he is not present without a valid reason, and then the lawsuit is examined and decided on a *contradictoir* basis. (5) Against the decision as referred to in paragraph (3a) and paragraph (4), the defendant may file an objection." Thus, in the case of:

1. The plaintiff (*in casu*: the troubled businessman) is not attend directly, without a valid reason, even though it is represented by power of attorney, incidental of attorney or a representative with a letter of assignment from the plaintiff's institution, then the lawsuit was declared null and void;

2. The defendant is not attend directly, without a valid reason, even though he is represented by power of attorney, incidental of attorney or a representative with a letter of assignment from the plaintiff's institution, then the lawsuit is called for a second summons properly and if he is not attend directly, the judge decides the case *verstek*
3. In the event that the defendant is attend directly on the day of the first and on the day of the next judiciary, and he is not attend directly without a valid reason, then the lawsuit is examined and decided in a *contradictoir*.

4. Conclusion

The construction of a Small Claim Court that needs to be considered is related to registration, examination of the completeness of a Small Claim Court, determination of judges and appointment of a substitute registrar, preliminary examination, determination of trial day and summons of the parties, trial and reconciliation examination, evidence, and decision. As for the legal consequences of the direct absence of the parties (*in casu*: the troubled businessman) in this Small Claim Court, the parties who are not present in person are considered not to be present at the trial, even though they are represented by a proxy, incidental power of attorney, or a representative with a letter of assignment from the plaintiff's institution. This has a consequence, that if the plaintiff (*in casu*: the troubled businessman) is not present in person, without a valid reason, even though it is represented by the power of attorney, incidental attorney, or representative with a letter of assignment from the plaintiff's institution, the lawsuit is declared void, if the defendant is not present in person, without any valid reason even though represented by the power of attorney, incidental attorney or a representative with a letter of assignment from the plaintiff's institution, then the lawsuit is made a second summons properly, and if it is not present in person again, then the Judge decides the case *verstek*, and if the defendant is present in person on the first trial day and the next trial day is not present in person without a valid reason, then the lawsuit checked and decided *contradictoir*.

Reference

Adam, H., Ristawati, R., Ramadhanti, S., & Nugraha, X. (2020). Pembentukan Badan Usaha Milik Desa Di Sumberanyar Pasuruan Untuk Peningkatan Kesejahteraan Masyarakat. *Dinamisia : Jurnal Pengabdian Kepada Masyarakat*. https://doi.org/10.31849/dinamisia.v4i2.3414

Anwar, K., Iskandar, Mubarok, H., Amin, S., & Hernida, A. (2021). *Hukum Perceraian Adat; Tinjauan Fiqih & Peraturan Perundang-Undangan Perkawinan Di Indonesia*. CV. Dotplus Publisher.

Ariadi, B. S., & Chumaida, Z. V. (2021). *Problematika Pelaksanaan Penyelesaian Gugatan Sederhana Guna Mengurangi Penumpukan Perkara Perdata : Suatu Kajian Small Claim Court*. Jakad Media Publishing.

Ariani, N. V. (2018). Gugatan Sederhana Dalam Sistem Peradilan Di Indonesia. *De Jure*, *18*(3), 381–396.

Arifianti, E. D., Shader, M., & Jebabun, A. (2017). Perluasan Akses Terhadap Keadilan Melalui Gugatan Sederhana: Sebuah Refleksi. *Jurnal Jentera*, *1*(2), 144–157.

Atmadja, D. G. (2018). Asas-Asas Hukum Dalam Sistem Hukum. *Kertha Wicasksana*, *12*(2), 146.

Chantieka, A. A. S. W., Kekhususan, P., Fakultas, P., & Udayana, U. (2018). Pembuktian Sederhana Dalam Perkara Kepailitan Oleh Agen Sindikasi Kredit Sebagai Pemohon Pailit. *Kertha Wicara*, *7*(3), 1–17.

Dsalimunthe, D. (2017). Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undangundang Hukum Perdata (BW). *Jurnal Al-Maqasid*, *3*(1), 12–29.

Effendi, J., & Ibrahim, J. (2020). *Metode Penelitian Hukum Normatif dan Empiris* (Cetakan ke). Kencana.

Harahap, M. Y. (2017). *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Edisi Kedu). Sinar Grafika.

Hiariej, E. O. S. (2015). *Prinsip- Prinsip Hukum Pidana Edisi Revisi*. Cahaya Atma Pustaka.

Idham. (2018). Gugatan Sederhana (Small Claim Court) Dalam Proses Penyelesaian Sengketa Konsumen Di Indonesia. *JUSTICIA SAINS: Jurnal Ilmu Hukum*, *3*(2), 152. https://doi.org/10.24967/jcs.v3i2.364

Insiyah, S., Nugraha, X., & Danmadiyah, S. (2019). Pemilihan Kepala Daerah Oleh Dewan Perwakilan Rakyat Daerah: Sebuah Komparasi Dengan Pemilihan Secara Langsung Oleh Rakyat. *Supremasi Hukum: Jurnal Penelitian Hukum*, *28*(2), 164–187.

Kurniawan, F., Nugraha, X., Abrianto, B. O., & Ramadhanti, S. (2020). The Right To Access Banking Data In A Claim For A Division Of Combined Assets That Is Filed Separately From A Divorce Claim. *Yustisia*, *9*(1), 46–75.

Kuswandi, & Nasichin, M. (2019). Penyelesaian Gugatan Sederhana Dalam Perkara Perdata Di Pengadilan. *Jurnal Pro Hukum*, *8*(2), 236–261.

Marzuki, P. M. (2013). *Penelitian Hukum : Edisi Revisi*. Kencana Prenada Media Group.

Marzuki, P. M. (2020). Teori Hukum. In *Jurnal Hukum & Pembangunan* (Edisi Pert, Vol. 28, Issues 1–3). Prenada Media. https://doi.org/10.21143/jhp.vol28.no1-3.532

Maskum, H. (2021). Prosedurmelakukan Gugatan Dan Upaya Hukum Terhadap Gugatan Sederhana (Small Claim Court)Dalam Perspektif Perma Nomor 4 Tahun 2019 Tentang Perubahan Atas Perma Nomor 2 Tahun 2015. *Journal Ilmiah Rinjani (JIR)*, *9*(1), 64–75.

Nugraha, X., Frisa Katherina, A. M., Ramadhanty, S. N., & Tanbun, E. P. (2019). Constitutional Question: Alternatif Baru Pelindungan Hak Konstitusional Warga Negara Melalui Concrete Review di Indonesia (Constitutional Question: New Alternative to Protect Citizen's Constitutional Right From Concrete Review in Indonesia). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*. https://doi.org/10.22212/jnh.v10i1.1209

Nugraha, X., & Katherina, A. M. F. (2019). Tanggung Jawab Promotor Perseroan Terbatas Terhadap Kontrak Pra Inkorporasi Di Indonesia. *Media Iuris*, *2*(1), 127–155.

Nugraha, X., Putra, J. E. P., & Putra, K. D. H. (2020). Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (Misbruik Van Omstandigheiden). *Galuh Justisi*, *8*(1), 54–72. https://doi.org/http://dx.doi.org/10.25157/justisi.v8i1.3242

Paton, G. W. (1972). *A Textbook of Jurisprudence: English Language Book Society*. Oxford University Press.

Pattipawae, D. R. (2015). *Fugsi Pemeriksaan Dismissal Dalam*. *20*(1), 37–55.

Purwati, A. (2020). *Metode Penelitian Hukum Teori Dan Praktek*. Jakad Media Publishing.

Puspitaningrum, S. (2018). Mediasi Sebagai Upaya Penyelesaian Sengketa Perdata Di Pengadilan. *Spektrum Hukum*, *15*(2), 275. https://doi.org/10.35973/sh.v15i2.1121

Putri, S. A., Rahmawati, E., & Harrieti, N. (2018). Pendahuluan Gugatan Sederhana. *Jurnal Pengabdian Kepada Masyrakat*, *2*(12), 1–4.

Riskawati, S. (2018). Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana Sebagai Instrumen Perwujudan Asas Peradilan Sederhana, Cepat Dan Biaya Ringan. *Veritas et Justitia*, *4*(1), 131–154. https://doi.org/10.25123/vej.2917

Sakina, S., Putra, D. N. R. A., & Krisnawati, I. G. A. A. A. (2018). Penerapan Penyelesaian Sengketa Dengan Gugatan Sederhana (Small Claim Court) Di Pengadilan Negeri (Studi Kasus Di Pengadilan Negeri Denpasar. *Kertha Wicara*, *7*(4), 1–14.

Sihotang, N. S. (2016). Penerapan Asas Sederhana, Cepat Dan Biaya Ringan Di Pengadilan Negeri Pekanbaru Berdasarkan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman. *JOM FAULTAS HUUM*, *3*(2), 5.

Simanjuntak, E. (2018). *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*. Sinar Grafika.

Soekanto, S., & Mamudji, S. (1985). *Penelitian Hukum Normative Suatu Tinjauan Singkat,*. RajaGrafindo Persada.

Soeroso, R. (2013). *Pengantar Ilmu Hukum*. Sinar Grafika.

Sudarsono, & Halim, A. (2019). Tanda Tangan Elektronik Dalam Pelaksanaan Tugas Pokok Dan Fungsi Lembaga Peradilan. *Jurnal Hukum Peratun*, *2*(2), 149–164.

Syarifin, P. (2011). *Pengantar Ilmu Hukum,*. Pustaka Setia.

Waluyo, B. (2017). *Desain Fungsi Kejaksaan Pada Restorative Justice*. RajaGrafindo Persada.