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THE SMALL CLAIM COURTS DURING COVID-19: ANALYSIS OF INDONESIAN BANKS' CLAIMS ON BAD CREDIT

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ABSTRACT

The purpose of this study is to discuss the suitability of small claim courts to solve bad credit claims that are filed by banks as an alternative to dispute contract defaults. The study analyses the trend of banks' small claims during the COVID-19 pandemic. This study employed an empirical normative approach. It combines a normative legal approach and additional empirical elements in the form of cases and decisions. The results show that some of the regulations that were released before the pandemic, such as the Regulation of the Supreme Court Number 4 of 2019 on the Settlement of Small Claim Courts, provide benefits for banks to settle credit disputes because they allow various expansions. The Regulation of the Supreme Court Number 3 of 2018 on The Administration of Cases in Electronic Courts has introduced some electronic applications. Although business (bank) litigation remains dominant, the trend of bank claims in the middle of the COVID-19 pandemic has dropped. In contrast, the trend of individual claims has increased significantly. The decline is influenced by countercyclical

policies that are issued by the Financial System Stability Committee. The committee members consist of representatives of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation. It aims to handle and cope with the banks' crisis related to the pandemic.

Keywords: Breach of contract, COVID-19 pandemic, small claim court.

INTRODUCTION

One of the biggest challenges of the current judiciary is the inefficiency in resolving civil cases, especially those that are classified as small cases. The phenomenon is based on high cost and long time. Sometimes, the cost and the time, which are not proportionate with the amount of money causing the dispute, are used up for insignificant matters. This has caused several issues such as the impediment to the public's ability to settle cases in court, the increasing number of informal debt collectors, and an accumulation of court cases due to untimely completion. The number of cases at the Supreme Court, in this case, the general civil chamber, is up to 4,786, according to 2019 statistics. Of the numbers, 1,176 of them are special civil breach of contract cases that have been accumulated from the previous years. The examination of several new cases has been postponed to provide adequate time to resolve prolonged cases in the Supreme Court.

From the first-level court to the cassation, the average period to resolve a matter is seven to twelve years. The judicial process is complicated for several reasons. For instance, the losing party does not accept the court's ruling and files an appeal or cassation. The ruling has no long-term legal effect (*res judicata*), resulting in a backlog of cases (Gaffar, 2021). In the context of business contract disputes, the prolonged period of examinations usually has negative effects on legal uncertainty and tends to have further influence on business certainty and the economic value of the affected parties (Tejomurti, 2017). Thus, business disputes require a quick and simple resolution to generate relatively lesser cost in court and to implement a settlement that is acceptable to all parties without maintaining old problems or creating new ones.

The accumulation of cases is one of the biggest problems in the judicial environment due to its ability to cause ineffectiveness in judicial implementation. It is in line with the trilogy principles of justice, which require fast, simple, and low-cost justice. It is stated in Article 2, paragraph (4) of the Law Number 48 of 2009 on Judicial Power (Mertokusumo, 2009). These principles led the Supreme Court to issue a policy to implement a Small Claim Court (SCC), as observed in several other states like the United States. It is indicated by the Regulation of the Supreme Court Number 4 of 2019 on the Settlement of Small Claim Courts (SCC Regulation). It states that there are no further legal remedies such as appeals and cassation when the examination process has been decided within 25 days.

The SCC is the best method for businesses like banks to resolve the problem of bad credit in the microcredit sector. A report from the Indonesian Banking Association in 2019 has confirmed it. The report shows an increase in bad credit recovery from 2.1 percent in 2018 to 3.2 percent in 2019 due to the Supreme Court decisions on SCC. It is important to understand the effect of the SCC arrangement on the banks' interest in handling bad credit cases as well as the change in the trend of bank claims since the COVID-19 pandemic.

The study focused on ascertaining the appropriateness of SCC for bad credit claims and determining the effect of the latest small claims regulation on banks in filing lawsuits trend before and after COVID-19 (2018-2020). The study is concentrated on eight district courts in six major islands of Indonesia.

METHODOLOGY

This study employed an empirical normative approach. It combined a normative legal approach and additional empirical elements in the form of cases, decisions, statutory, and content analysis. The study is a qualitative study that collected and analysed data to reveal concepts, opinions, or experiences. The secondary data such as acts, books, articles, statistics, reports, and official websites were used to complete the empirical data of related cases. It also analysed the provisions related to SCC and their application in solving bad credit cases as well as the trends of small claims filed by banks between 2018 and 2020 in eight district courts of six Indonesian major islands. It is expected to

be able to present facts about the accumulation of court cases before and after the COVID-19 outbreak. In addition, the suitability and advantages of the SCC system for the banks were compared to the ordinary judicial process, focusing on the application, trial, decision, and appeal stage.

RESULTS

The Implementation of SCC Regulation in Court for the Default Settlement

The first step to saving bad loans before going through litigation is based on supervision actions. It also covers advice to improve business conditions by helping the debtor find prospective markets and clients. The next step is to save credit portfolios through restructuring, reconditioning, and rescheduling. The inability of these steps to resolve the issue normally leads to non-litigation action followed by litigation as the last option. The court is the centre for dispute resolution. It is also associated with numerous advantages due to its ability to confiscate and execute its decisions (Tampi, 2018). On the other hand, there are some disadvantages. They include the long time required in its process, such as in the handling of fiat execution through the regular court that takes an average period of two years, while other runs up for years even though the calculation of bank losses or interest is continuous and cannot be deferred (Kurniawan et al., 2020).

This inefficiency, along with a long period of litigation, frequently results in an overabundance of case files in court. According to the Supreme Court report, district courts in Indonesia tried a total of 83,943 civil cases in 2016, of which 71,456 were received in 2016 and the remaining 12,487 were tumbled over from 2015, then 59,993 were decided in 2016 and 6,843 were withdrawn, leaving 17,107 cases open at the end of December 2016 (Lembaga Kajian dan Advokasi Independen Peradilan, 2018). Therefore, the Regulation of the Supreme Court Number 2 of 2015 was formulated to determine solutions quickly and simply related to the Procedures for Settlement of Small Claim Courts. The cases to be settled through the regulation are designed to be handled by a single judge through a quick and short examination and settlement time with uncomplicated evidence. The five main components used in establishing SCC are:

1. Reduction of court costs;
2. Simplification of the procedure for filing a lawsuit;
3. The judge has a lot of leeway in how the case is handled, and the formal rules of evidence are selected randomly;
4. To remove the need for lawyers, judges and court clerks are expected to assist in litigation both before and during the session, and
5. Judges are given the authority to mandate instalment payments (Weller & Ruhnka, 1990).

They are in line with the purpose of the establishment of SCC, which is to formalise dispute resolution with a small claim value through uncomplicated case investigations at lesser costs (Bestf et al., 1994). The implementation of this concept in Indonesia is based on the Easy and Fast Civil Law System Reform, which is designed to increase the competitiveness of the national economy according to the 2015-2019 National Medium-Term Development Plan (RPJMN). There is a need to direct national laws to support the realisation of sustainable economic growth, regulate issues related to the economy and law, especially in the business and industry fields, as well as to create business and legal certainty. It leads to the revision of civil laws and regulations with particular matters on contract law and the establishment of a quick dispute resolution process known as SCC.

In starting the initiative, the Working Group for the Preparation of Supreme Court Regulations on the Settlement of Small Claim Court Cases has been established based on the Decree of the Chief Justice of the Supreme Court Number 267/KMA/SK/X/2013. It is concluded with the release of the Regulation of the Supreme Court Number 2 of 2015. This regulation has been implemented by all first-level courts after its promulgation on August 7, 2015. The Supreme Court amended it after four years with the release of the Regulation of the Supreme Court Number 4 of 2019 on Settlement of Small Claim Courts (SCC Regulation). The amendment focuses on cases of contract breach and/or acts against the law with the maximum material claim value of IDR500,000,000 (five hundred million rupiah) to be settled through simple evidentiary procedures.

The SCC regulation has some differences from the settlement in ordinary civil cases. First, small claims courts are recorded in a special register, the Small Claims Court Register Main Book. Second,

small civil claims cases are examined and decided through two levels by the same District Court. In the first level, a single judge conducts it. The settlement is limited to a period of no later than 25 working days. In the meantime, the second level is an objection lawsuit that is conducted by a Panel of Judges within seven working days at the level of objection. Third, the objection decision is final and binding and has a limited scope of examination. The examination includes (1) the decision on a small claim case, (2) objection request and objection memorandum, and (3) counter-memory objections. There is no additional examination of the objection and no further legal action after the objection. Fourth, the process of examining a small claim case cannot be filed for provisions, exceptions, conventions, interventions, replicas, duplications, or conclusions. Fifth, in the examination of small claims cases, the judge is required to play an active role in the trial, especially when the parties do not have legal education backgrounds and/or are not accompanied by legal counsel. Sixth, in the absence of the defendant, the judge can continue examining and deciding the case without the presence of the defendant, in contrast to an ordinary lawsuit that requires both parties' presence for the decision to be applicable. Seventh, SCC is filed against default of contract case with a material claim value of a maximum of IDR500,000,000 (five hundred million rupiah).

The SCC is an alternative dispute resolution for banks in bad credit cases but several deficiencies were observed from the amendments to be hindering the public interest, especially banks, as indicated by the changes in several extensions, such as the increase in the material value of the lawsuit from a maximum of IDR 200 million to IDR 500 million. It is also possible to file a lawsuit when the plaintiff is outside the jurisdiction of the defendant's domicile by appointing a proxy and using incidental power of attorney or a representative residing in the jurisdiction or domicile of the defendant with a letter of assignment from the plaintiff's institution according to Article 4 paragraph (3a). Electronic case administration (e-court) can be used, and in absentia, a decision which is associated with the absence of the defendant can be issued. It allows for verzet, which is the defendant's resistance to the decision of in absentia, recognition of the confiscation of guarantees, and execution of decisions. The chairperson of the court is also authorised to issue the remainder no later than seven days after receiving the request for execution to ensure it is quick and at a low cost since it is a simple justice system. It is important to note that none

of these new rules are stated in the previous regulation. The focus is to ease the ability of banks to resolve non-performing loan cases within 25 days, which is better than five months in conventional courts. It is also important to restate that the judge is authorised to order bail confiscation and execution of guarantees.

The collaterals involved in credit contracts at banks are regulated material guarantee institutions in Article 8 paragraph (1) of Law Number 10 of 1998 on the Bank, which states that banks are required to have confidence based on an in-depth analysis of intentions and the debtor customer's ability to pay off debt or repay funds according to the agreement. The last resort in the case of a non-performance loan is to execute this guarantee. It is important to note that, in ordinary courts, the process can only be implemented when the decision has been rendered. It requires up to 5 months for the completion of the decision at the first instance. This is in addition to the delay caused by legal remedies for appeal up to the moment the debtor reconsiders. The time required to complete the decision in Small Claims Court is no more than 25 days and the decision is legally binding in the sense that there is no legal remedy except objections and decision making on the objections.

Article 21 of the SCC Regulation states that the decision on the application for objection shall be pronounced no later than seven days after the date of the determination of the Panel of Judges by the Head of the District Court. It provides solutions not only for banks but also for customers because it is faster and easier compared to the regular judicial process, which normally takes a long time. It often causes an increase in the interest arrears and principal loan to the extent that the collateral value does not have the capacity to cover the loan amount (Susatyo, 2011). For example, late payment due to a protracted settlement is subjected to a late penalty and interest on the remaining loan in the case of a bad credit card. Therefore, the number of bills in the following month tends to increase assuming they are not settled and this further increases the interest (Pratiwi, 2016).

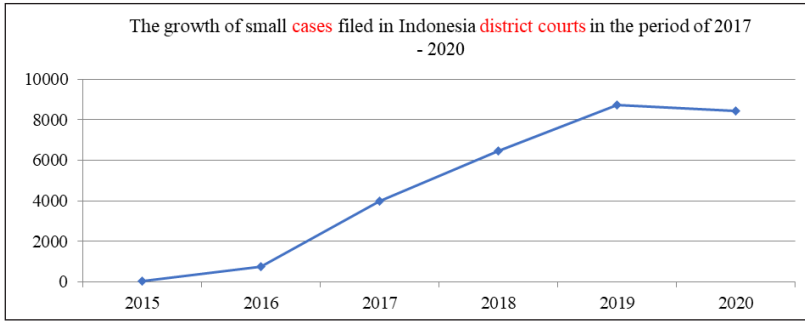
The next benefit for the bank is in Article 31 paragraph 2(a) of the SCR 2019 SCC. It enables the judge to issue a security decision no later than seven days after receiving the execution request letter. This is considered beneficial because banks always face lawsuits from debtors who do not want their collateral to be auctioned using the

usual judicial process (Fakhriah & Afriana, 2019). The SCC allows banks to apply for execution or confiscation of collateral. This is the basis for issuing a warning or reminder (Hartini et al., 2017). Moreover, since the value of the case is not more than 500 million, the figure is normally used as the maximum limit to appoint a bailiff or other party to conduct the auction process (ps.200 (1) HIR/ps.215 (1) RBg. It is important to note that only the State Auction Office, known as the State Auction and Receivable Service Office (KP2LN), has the authority to auction sales of confiscated goods in the normal judicial process.

The bailiff or other parties automatically conducts the execution of an auction in SCC cases. It is intended to simplify the civil justice process up to the execution stage through the SCC procedure. However, there is no attention to the bailiff's competencies in conducting the auction. It means that there is a need for more development and training of the bailiff to become a better auctioneer and conduct the process efficiently. It is necessary to sell the executable goods for a fair value to pay the applicant's rightful money. The ease at which the banks resolve the bad credit disputes is considered an advantage of the SCC procedure. The Supreme Court mentioned that SCR 2019 SCC encourages national economic growth through proactive policies. This latest SCC policy also affects several banking policies, namely an increase in the volume of distribution of People's Business Credit (KUR –*Kredit Usaha Rakyat*) by 36 percent in 2020 and an increase in the maximum micro-KUR ceiling from IDR 25 million to IDR 50 million per debtor. The total accumulated ceiling of the Micro KUR trade sector also rose from IDR 100 million to IDR 200 million. All changes to the KUR policy will take effect from January 1, 2020 (Ariani, 2018).

The Effectiveness of Small Claim Courts on Bad Credit Cases

Only 759 small claims cases were reported to have been filed, which is approximately 0.90 percent of the total number of lawsuits filed in 2015 when the Regulation of the Supreme Court on Small Claim Court was first issued (Mahkamah Agung Republik Indonesia, 2016). The number increased to a total of 8,752 in 2019 when small courts started to become popular (Mahkamah Agung Republik Indonesia, 2019). Later, it dropped to approximately 8,447 in 2020 (Mahkamah Agung Republik Indonesia, 2020), as shown in the following figure.



The figure shows a significant increase in the number of small claim cases recorded in 2018 with a total of 6,464 cases, doubled from the 3,351 obtained in 2017. The public's enthusiasm for the Small Claims Court led to the issuance of the Regulation of the Supreme Court Number 4 of 2019 on the Amendments to the Regulation of the Supreme Court Number 2 of 2015 on Procedures for Settlement of Small Claims Court in 2019. The latest regulation changed the maximum value for the material claim from IDR200,000,000 (two hundred million rupiah) to IDR500,000,000 (five hundred million rupiah), provided the authority to confiscate collateral to the court, and created a new policy for plaintiffs to file a lawsuit irrespective of their jurisdictions through a proxy, incidental power of attorney, or institutional representative with a letter of assignment from their institution domiciled in the same jurisdiction as the defendant, which was not set in the 2015 regulation.

The public, especially the business actors and the banking industry, is more interested in resolving litigation cases at the SCC because the process is fast, simple, accessible, and the decision is final and binding. However, the SCC has certain challenges and obstacles (McGill, 2012), which can be analysed using Friedman's legal system theory. The information from the case studies in eight district courts shows its effectiveness due to its fulfilment of the following three factors (Edelman et al., 2011):

1. Legal substance (legislation);
2. Legal structure, which includes parties that make up the law and the law enforcement (legal apparatus);
3. Legal culture, which includes the legal awareness of the community.

The effectiveness of law indicates working power in regulating or forcing people's obedience. The potency of the law is associated with the factors affecting the proper functioning of the legal system operation. Friedman comprehensively explains, "Legal systems do not float in some cultural void, free of space and time and social context but reflect what is occurring in their societies. In the long term, they assume the shape of these societies, such as a glove that moulds itself to the shape of a person's hand" (Edelman et al., 2011). A similar idea comes from Holmes that, "This abstraction called the law, wherein, as in a magic mirror, we see reflected, not only our own lives but the lives of all men" (Hoffheimer & Gordon, 1993). The elaboration of these two legal ideas led to the following analysis of SCC based on the theory of the legal system.

a. Legislative Factor (Legal Substance)

The Supreme Court, as the top judicial institution in Indonesia, has the mandate to ensure the continuous renewal and development of the judiciary in Indonesia as indicated in the Law Number 3 of 2009. It is the Second Amendment to Law Number 14 of 1985 on the Supreme Court. It was discovered by the apex bank that the public needs a quick, accessible, and effective alternative mechanism to resolve a default of a contract agreement due to certain reasons (Tjoneng, 2017). The reasons include having quick, fair and cheap ways of resolving disputes. This is considered important because of the problems associated with ordinary civil procedural law mechanisms in Indonesia, which are often expensive, delayed, and require complicated costs to resolve a case (Hamzah, 2015).

There are over 30 thousand case files to be examined by 49 Supreme Court judges. Thus, several Supreme Court decisions seem 'rough' without comprehensive legal considerations due to the high workload on the justices, which reduces judges' focus on examining every case critically. The trial period to examine a lawsuit in the first-level court is practically approximately six months apart from the one year required for appeal examination and 2-3 years for the hearing. The calculation was not based on the length of the convoluted execution process (Chan, 2021). Therefore, business stakeholders such as banks and business actors need legal and business certainty. The SCC is considered an innovative method to realise the principles of quick, cheap, and simple justice.

However, Article 3 paragraph 2 of the Small Claims Court Regulation states that "–not included in a simple lawsuit are: a) cases where the dispute resolution is carried out through a special court as regulated in the legislation; or b) land rights disputes." The regulation issues legal problems such as Sharia contract cases, that the SCC should resolve. However, it shall be settled in religious courts based on Law Number 50 of 2009 on religious courts that have used common civil procedural law for a long time. Another case is that the SCC must settle the intellectual property licensing agreement but according to the Indonesian Intellectual Property Rights Act, licensing contract cases are under the jurisdiction of the commercial court.

b. Law Enforcement Apparatus Factor

The use of a single judge in examining and deciding an SCC case is also a problem because it is a non-objective matter. The intention of the SCC Regulation compilers to use a single judge is to ensure the completion of the proceeding since the issues are not usually too complicated and the nominal value of the object of the case is considered insignificant for the maximum IDR500,000,000 (Article 3 of the SCC Regulation). However, the compilers have possibly forgotten that the SCC is an examination of a dispute between one party and another party (plaintiff and defendant). It means the process is in accordance with the rules of the Indonesian Civil Procedure Code. It requires that lawsuits be examined by a panel of three judges. The single judge is only allowed to decide cases that do not contain an element of dispute such as the determination of child guardianship and forgiveness (Ferevaldy, 2018). The process in the SCC Regulation is considered not to be in line with the Law on Indonesian Judicial Powers (Law Number 48 of 2009), Article 11 paragraphs (1) and (2). It states that, "The court examines, hears, and decides on cases with a panel of at least three judges consisting of a presiding judge and two member judges."

c. Community Legal Awareness (Legal Culture) Factor

Another problem is that the SCC has not become a necessity but an option for the community. It leads to its non-maximisation by the people without small claim cases. Moreover, the SCC Regulation stipulates decisions that are already legally binding are to be implemented by good faith voluntarily. The principle of good faith is essential in enforcing verdicts, primarily for contract disputes (Amayreh et al., 2019). It raises the question of whether all decisions

can be implemented voluntarily and by force if necessary and whether the execution cost is still economically balanced with the value of material losses.

It is possible to analyse this issue of execution costs by using the economic analysis of law approach proposed by Posner (1992) that, "The use of economic principles in law because ... economics is a powerful tool for analysing a vast range of legal questions..." (p. 722). Moreover, Polinsky shows that the economic approach is applied to law by legal experts with the intention "to focus on how to think such an economist about legal rules" (Polinsky et al., 2005). Economic analysis of law is focused on assessing the efficiency of making choices as well as the rationality of selecting a better option out of the available choices (Bogatyryova et al., 2021).

The execution costs incurred by the party that wins in SCC are observed not to be economically balanced when compared to the value of the material loss. This is because there is no guarantee that court decisions in civil cases can be enforced effectively in a rational time, thereby leading to the low public interest, especially business actors, to use the courts as a dispute resolution mechanism. There is also a legal problem in that there is probably no guarantee that the verdict can be executed to allow the plaintiff to regain the rights after spending time and money. The Ease of Doing Business (EoDB) data that is released annually by the World Bank ranked Indonesia at 73 of 190 states with a score of 67.96 in 2019. Furthermore, the state was ranked 146 for enforcing contracts and 36 for resolving insolvency in rankings associated with courts.

Article 196 of the HIR (Herzien Inlandsch Reglement) shows that the first thing in executing a decision is for the chairperson of the court to enforce security by ordering the bailiff to summon the execution defendant to be warned to comply with the verdict voluntarily within eight days. The article further states that a decision that meets the conditions for execution cannot be implemented without being preceded by security (Vidmar, 1984). Moreover, a remainder is usually conducted in an incidental trial led by the chairman of the court, which practically occurs once. However, the problem is that the Civil Procedure Code does not regulate when the trial should be held (Halafah et al., 2020). It indicates that there is a possibility of a protracted execution due to the absence of a standard time limit to be followed.

The last problem with the execution procedure, which was quite prominent in the study, is the absence of a firm legal basis that stipulates the person to be charged with the payment of the execution fee and the time it should be paid. Article 197 of the HIR (Herzien Inlandsch Reglement, the procedural law in the trial of civil and criminal cases that apply on the islands of Java and Madura), does not explain the party to be charged with the down payment. It is usually the responsibility of the applicant. There is no legal instrument for the situation when the execution costs do not match the actual needs.

As a comparison, the executions in Italy are not handled by the head of the court. An execution judge is tasked to determine the execution status of a decision to ensure its legality. In the Netherlands, it is the responsibility of an out-of-court institution called Koninklijke Beroeporganisatie van Gerechtsdeurwaarders (KBvG), a judicial professional organisation established under The Judicial Officers Act in the Netherlands. It is important to note that the execution cost is usually paid by the respondent in Italy, which is required to refund the money previously used for the litigation by the applicant (reimbursement). In the Netherlands, the actual cost of execution is also paid by the applicant while the fixed fee is charged to the respondent (Tomuschat, 2009).

The Trend of Bank's Small Claims Cases during COVID-19 Pandemic

Several courts quickly adopted supporting technologies that allow video conferencing and the exchange of documents using web-based platforms such as Teams, Skype, Zoom, Google Hangouts, and Webex in response to the COVID-19 pandemic (Sourdin et al., 2020). A few courts have developed video conferencing facilities to handle the interlocutory or final hearing process (Sourdin et al., 2020) such as the United States Supreme Court (SCOTUS) which used digital audio and video conferencing technology for the first time in its processes (Baldwin et al., 2020). Some states have been using online courts long before the pandemic such as New South Wales, Australia which created CourtLink in the late 1990s to document management and communication and conduct its first online court hearing in 2006 (Legg, 2021). The use of digital litigation provides several conveniences such as online accessibility, punctuality, transparency, data accuracy, secure access to files and information, etc (Ahmed et

al., 2021). Some other benefits of this system, which is tagged 4K, include speed, accuracy, reliability, and consistency (Kurniawan, 2020).

In Indonesia, the digital litigation process is governed by HIR/R.Bg. However, it is considered irrelevant to the public's desire to have simple, quick, and inexpensive justice. Therefore, the government issued a policy that is a major step for the implementation of electronic administration in March 2018: The Regulation of the Supreme Court of Indonesia No. 3 of 2018 on The Administration of Cases in Electronic Courts (SCR 2018 E- court) (Rahman, 2021). The SCR 2018 E-court introduces the Electronic Case Administration (e-court) system to receive lawsuits and requests, answers, replicas, duplication, conclusions, management, delivery, and storage of case documents using electronic systems. Some of the services provided through the application of this policy include e-filing (online case registration in court), e-payment (online case fee payment), and e-summons (online party summoning).

1. e-Filling (online registration)

The use of e-court requires the barrister to create an account and have it verified by the High Court after the ID cards, barrister ID cards, and attached minutes of advocate oath to the registration account. The account can be used to register cases via the e-court application, thereby eliminating the need to appear in person at the District Court.

2. e-Payment (online case fees)

E-payment simplifies the process of paying the court fee through the down payment automatic simulator (e-SKUM). It allows electronic payment using e-banking, m-banking, or bank transfer with a payment deadline of 1 x 24 hours. The e-SKUM is determined by the Chief Justice based on the cost component, configuration, and radius cost amount.

3. e-Summons (electronic summon)

The barrister is allowed to monitor the status of a case through e-court and Case Search Information System (SIPP) to determine the completion, registration, or revision of a file with the notification usually sent electronically through e-mail. An electronic summon can

be sent to the e-mail address of a registered user but in a case where the first summon was served manually, the trial is usually asked for approval to be called electronically through the electronic domicile provided or to continue using the manual system.

The Supreme Court announced the most recent policy on electronic trial in August 2019, approximately seven months before COVID-19 entered Indonesia. The policy is in the form of the Regulation of the Supreme Court of Indonesia No. 1 of 2019 on Case Administration and Electronic Trial (CSR 2019 E-litigation). It is an amendment to the CSR 2018 E-court to offer a new innovation called e-litigation which involves a series of examination and trial processes at the first level, appeal, and cassation. It is effective from January 1, 2020 with some rules modified, such as the right to e-court, which was previously only available to verified barristers and opened to other users. The principles of e-court and e-litigation are speed, simplicity, and low cost, with the fastness associated with the intention to ensure a lawsuit is no longer time-consuming because the plaintiff does not need to appear in court to register the case. The simplicity is related to the possibility of sending an administrative file through e-mail without any physical paper and the low-cost aspect focuses on its ability to eliminate summoning costs and reduce court's accommodation costs, specifically for plaintiffs that live in a different domicile than the defendant. Justice seekers who use e-litigation do not need to go to court because civil cases can be handled electronically from the registration stage to the reading of the judge's verdict except for the time of the hearing or evidentiary agenda, which requires the presence of the parties or their lawyers (Kurniawan, 2020).

The Trend of Bank Claims Before and After the COVID-19 Pandemic

The study examined the Case Search Information System (SIPP) in eight district courts located in six Indonesian islands, including the District Courts of Central Jakarta in Jakarta, Sidoarjo in Surabaya (East Java), Semarang in Central Java, Makassar in South Sulawesi, Samarinda in East Kalimantan, Palembang in Southern Sumatra, Denpasar in Bali, and Jayapura in Papua. It aims to reveal the trend in the small claim cases for a three-year period from 2018 to 2020. The plaintiffs were divided into three categories. It included banks, individuals, and non-bank enterprises. The selection of the courts was also based on the location apart from being the provincial capitals. For

example, Denpasar, Sidoarjo, Jakarta, Semarang, and Makassar are in Zone 1; Palembang and Samarinda in Zone 2, and Jayapura in Zone 4. The Financial Services Authority (Otoritas Jasa Keuangan [OJK]) in the OJK Regulation Number 17/POJK.03/2018 on the Business Activities and Office Networks Based on Bank Core Capital divides banks into Zone 1 to 4 based on their core capital. Those in Zone 1 or 2 are head offices, meaning they have the highest economic potential and experience the most intense level of competition because a higher core capital is usually associated with a wider product scope and a higher lending rate.

The trend of small claim lawsuits in eight district courts from 2018 to 2020 is presented in the following figure.

Figure 1

The Number of Small Claim Cases in the Eight District Courts 2018

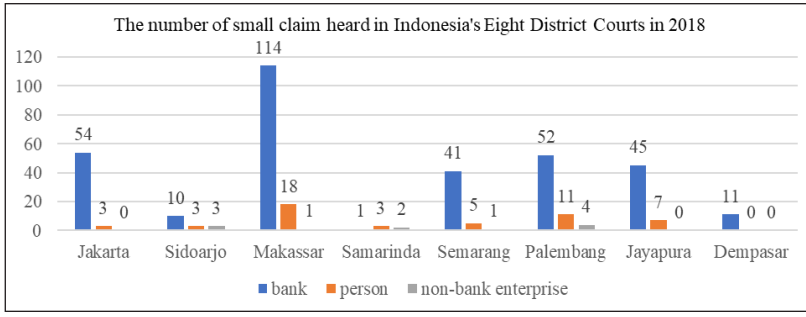


Figure 2

The Number of Small Claim Cases in the Eight District Courts 2019

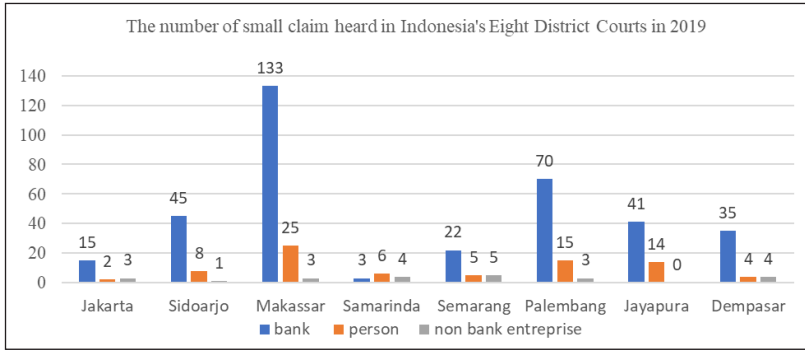


Figure 3

The Number of Small Claim Cases in the Eight District Courts 2020

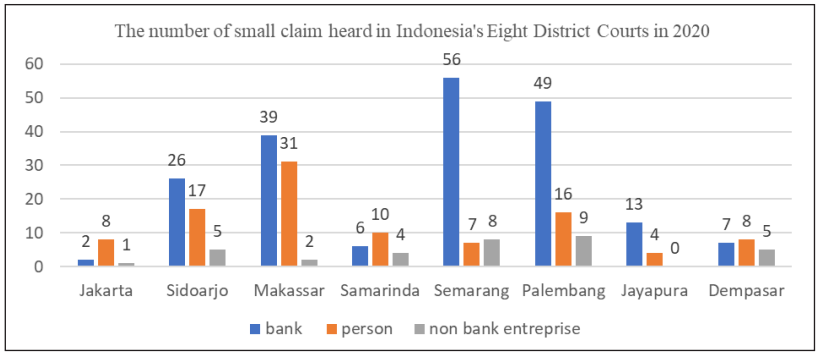
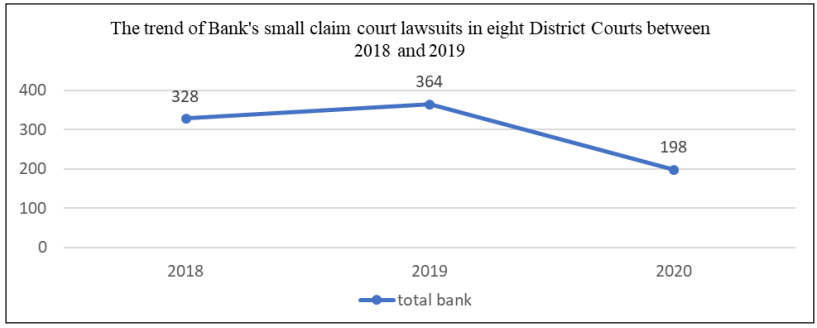


Figure 4

The Trend of Small Claim Lawsuits by Banks in Eight District Courts Between 2018 and 2019



Figures 1, 2, and 3 show that banks dominated the small claim cases between 2019 and 2020 by filing approximately 75.5 percent (920) of the small claims, while individuals filed 18.8 percent (230) and 5.5 percent (68) for non-bank enterprises. Figure 4 indicates an 11 percent increase in the number of small claim lawsuits by banks after the SCR 2019 SCC was issued in 2019 with 364 recorded compared to 328 in 2018. The total small claim lawsuits filed by banks, individuals, and non-bank enterprises increased by 11.2 percent, as indicated by the total of 466 reported in 2019 compared to the 419 in 2018. The total number of cases was reduced by 28.5 percent after the state declared the pandemic in 2020, as indicated by the change from 466 in 2019

to 333 in 2020. The bank lawsuits were reduced significantly by 45.6 percent, from 364 in 2019 to 198 in 2020, as indicated in Figure 4.

The reduction in the number of cases during the pandemic was based on several countercyclical policies issued by the Financial System Stability Committee (KSSK –Komite Stabilitas Sistem Keuangan). The committee's members consist of representatives of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation. It aims to handle and cope with the bank crisis related to the pandemic (Susanto & Masri, 2020). There was immediate issuance of Regulation No. 11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy for the Impact of the Coronavirus Disease 2019 Spread after the President announced that the state had been infected by the virus in March 2020 (Pati, 2020). Article 2 paragraph 1 of the policy states that banks should initiate economic growth stimulus for debtors affected by the virus including micro, small, and medium business debtors.

The debtors affected by COVID-19 are those having difficulty fulfilling obligations to banks due to the direct and indirect impact of the pandemic on the economic sectors of tourism, transportation, hospitality, trade, processing, agriculture, and mining industries. The policy provides an opportunity for affected debtors to restructure their debts. Conventional commercial bank debtors who have the capability of surviving after restructuring are classified as debtors who do not experience a significant increase in credit risk (Stage 1) during the process of calculating the allowance for impairment losses. In the meantime, Sharia Commercial Banks and Sharia Business Units debtors who have the ability to survive after restructuring are classified as debtors with non-impaired financing according to financial accounting standards. The OJK's policy is welcomed by creditors, and this has led most of them to apply for restructuring.

According to the OJK, there were approximately 100 banks with restructured loans at the end of October 2020 with the credit restructuring involving 7.53 million debtors totaling IDR932.6 trillion. The highest beneficiaries of the restructuring process included the micro, small, and medium enterprises (MSMEs) with 5.84 million or 78 percent of the total debtors. The nominal value of credit restructuring by the MSME sector was IDR369.83 trillion. The credit restructuring in the non-SME sector reached IDR 562.55

trillion with 1.69 million debtors (Rasbin, 2020). For example, the PT. BPR Sadana Utama Bali formulated Standard Operating Procedures for credit restructuring due to the COVID-19 pandemic, which can be used as guidelines for prospective and existing customers (Sukerta et al., 2021). PT Bank Rakyat Indonesia (BRI) also restructured IDR183.7 trillion in loans to 2.9 million debtors at the end of June 2020, which equals 21.3 percent of the company's total outstanding loans. Sunarso, President Director of BRI, stated that the COVID-19 pandemic had affected all levels of society, including the MSMEs, and that his company focused on rescuing MSMEs from the beginning to get them back on their feet.

The countercyclical policies also focus on saving banks including conventional commercial banks, Islamic commercial banks, and Sharia business units, in addition to its efforts to rescue affected creditors. The OJK regulation was refined in December 2020 through the OJK Regulation Number 48/POJK.03/2020 on the amendment to the previous OJK Regulation by adding Article 2 paragraph 5. The intention was to assist conventional commercial banks, Islamic commercial banks, and Sharia business units in relation to liquidity and capital policies with the approval of the OJK (Bidari & Nurviana, 2020). The Bank Indonesia also implemented a policy to reduce the BI7DRR policy interest rate by five times in 2020, which was 125 bps, and later became 3.75 percent at the end of the year. It was the lowest level in history. The Deposit Insurance Corporation also issued Regulation Number 3 of 2020 to regulate the placement of funds in banks with a maximum of 30 percent allowed for all banks and 2.5 percent for each bank calculated from the total wealth of the IDIC as of December 31, 2019. One of the objectives is to anticipate and handle financial system stability problems, which can cause bank failure, with the OJK authorised to conduct a feasibility analysis on the bank application and submit the report to Indonesia Deposit Insurance Corporation and the Bank Indonesia.

These countercyclical policies affected the number of lawsuits in SCC during the COVID-19 pandemic, especially in several big cities, specifically Zones 1 and 2, despite the issuance of SCR 2019 SCC and SCR 2019 e-litigation before the pandemic. It is important to note that the trend of lawsuits filed by individuals increased by 100 percent from 50 in 2018 to 101 in 2020, except for Jayapura District Court, which showed a significant decrease for both banks and individuals.

It means that the SCR 2019 SCC and SCR 2019 e-litigation were able to increase the interest of banks in filing small claim cases in SCC. It also improved public interest in the courts.

CONCLUSION

The SCC Regulation and SCR 2019 e-litigation in 2019 has resulted in numerous changes in SCC. This is indicated by the increase in monetary limits, the ability to seize guarantees, and the use of e-litigation in early 2020. This has further significant effects on the number of claims filed by companies (banks) and individuals compared to the previous year. However, the number of cases filed by banks decreased significantly in the middle of the pandemic, even though most of the regulations made during the pandemic provide benefits for business (bank) litigation. On the other hand, individual claims increased significantly. The decline was related to the countercyclical regulations issued by Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation as members of the Financial System Stability Committee (KSSK) to overcome the economic crisis caused by the pandemic.

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