

HOW JUDICIARY SUPPORTS CONTRACT LAW ENFORCEMENT: Indonesian Experience

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Abstract

Contract law enforcement matters since it is one of the indications used by the World Bank to determine ease of doing business. The more effective the settlement of agreement dispute, the better the business environment in a country. The issues with Indonesian Courts are inefficiency, inconsistency, and poor use of technology to support litigation process. This article aims to evaluate why the Indonesian judiciary reformation is yet to be swift and efficient in process. It is normative research using secondary data from regulation documents, books, articles, and journals. The data are analyzed qualitatively by organizing them into categories before coding. Then, they are analyzed using narrative analysis. The research results indicate that the Indonesian judiciary has not wholeheartedly implemented the reforms, indicated by the optional use of e-court and small claim court, lack of mediation skills and facilities, and lack of technology used for litigation process in courtroom. This research contributes in providing accurate information on how the judiciary should improve its performances to function efficiently so it supports government's program to create positive business climate in Indonesia, by requiring simple lawsuit, e-court use expansion, optimal use of technology, and improving the judge's skills.

Penegakan hukum terhadap perjanjian hubungan bisnis memegang peranan penting karena menjadi salah satu indikator Bank Dunia dalam menentukan indeks kemudahan berusaha di suatu negara. Semakin efektif penyelesaian sengketa perjanjian, semakin baik pula iklim bisnis di suatu negara. Permasalahan yang

dihadapi peradilan Indonesia adalah kurang efisien, tidak konsisten, dan juga kurang optimalnya penggunaan teknologi untuk mendukung proses litigasi. Penelitian ini menganalisis mengapa reformasi peradilan belum mengarah pada proses cepat dan efisien. Penelitian ini adalah penelitian normatif dengan menggunakan data sekunder dari peraturan, dokumen, buku, artikel, dan laporan penelitian. Data yang diperoleh dianalisis secara kualitatif dengan mengategorikan informasi sebelum dilakukan kodifikasi. Data yang telah dikodifikasi dianalisis secara naratif. Hasil penelitian menunjukkan bahwa reformasi peradilan belum dilaksanakan sepenuhnya. Adapun indikasinya adalah penggunaan e-court dan gugatan sederhana yang masih opsional, kurangnya keterampilan mediasi yang dimiliki para hakim mediator, serta kurangnya penggunaan teknologi untuk mendukung proses litigasi. Penelitian ini bermanfaat memberikan informasi bagi dunia peradilan tentang bagaimana langkah yang harus diambil untuk menciptakan peradilan yang berfungsi efisien sehingga dapat mendukung upaya pemerintah menciptakan iklim berusaha yang positif di Indonesia dengan cara mewajibkan gugatan sederhana, perluasan penggunaan e-court, penggunaan teknologi dengan optimal dan peningkatan kapasitas hakim.

Keywords: contract, judiciary, law enforcement

Introduction

Problems associated with contractual performances, such as force majeure, supply of goods, compliance and investigations, insurance dispute, tenant and landlord disputes, as well as borrower and bank disputes are dominating civil litigation. Legal protections have come out to shield business players from the contractual breach consequences. However, a more effective, efficient and just litigation is needed. The discussion of the judiciary matters for economic development has long been well established. For example, Perry (2002) points out that legal system plays an important role in economic development and that a central function of the state is to create and enforce rules, which support economic growth.¹ Rubin (2004) demonstrates that legal institutions matter for economic success, and improved methods of implementation of better legal systems are important ways to increase social wealth.² Moreover, in their study, Davis and Trebilcock (2008) argue that there are some reasons for optimism about the potential impact of legal reforms upon development, including economic development.³

1 Amanda J. Perry, "The Relationship between Legal System and Economic Development: Integrating Economic and Cultural Approaches" *Journal of Law and Society* no 2 (2002): 282.

2 Paul H Rubin, "Legal Systems as Frameworks for Market Exchanges in C. Menard", *Handbook of New Institutional Economics* (Heidelberg: Springer, 2005), 34.

3 Kevin E. Davis. "The Relationship between Law and Development: Optimists versus Skeptics" *The American Journal of Comparative Law* (2008) 56 No. 4.[895].

Considering the crucial role of the civil justice system in the economy, the International Monetary Fund (IMF) suggests countries to move toward an efficient justice system as an essential element for sustained economic growth.⁴ According to the IMF, inefficiency in civil litigation is shown by the large number of pending cases in all level of courts. This causes the unbearable workload of the courts including appellate courts. Echoing the IMF, the World Bank also acknowledges the problem associated with pending cases in which it delays the enforcement of contract, an essential element for a positive business climate. The World Bank includes enforcement of contract law as one of the elements in the level of Ease of Doing Business (EoDB) in 190 countries. As a member, Indonesia has to take into account the notes given by the IMF and the World Bank stated above.

Enforcing contracts in Indonesia still face significant problems as indicated by EoDB indicator in which Indonesia ranked 139 among 190 countries.⁵ The enforcing contracts indicator measured the time and cost for resolving a commercial dispute through a local first-instance court (District Court). Besides, the quality of judicial processes index evaluates whether each economy had adopted a series of good practices that promotes quality and efficiency in the court system. The series of good practices comprises four areas: court structure and proceedings, case management, court automation and alternative dispute resolution.⁶

The problems with the Indonesian judiciary include the lengthy process, lack of consistency, excessive caseload and poor use of technology. Palumbo et al (2013) shows that trial length, accessibility of justice and predictability of decisions are detrimental for businesses. In line with Palumbo, Crouch (2021) identifies additional problems in the Indonesian judiciary where she points out that the challenges the court reform faces in Indonesia include the culture of corruption, a lack of professionalism and expertise, and legal uncertainty.⁷ Acknowledging the detrimental effect of the problems, the Indonesian authorities have taken a number of measures to address the inefficiencies and bottlenecks in the functioning of its civil justice system. These include measures to amicable settlement through court-

4 Gianluca Esposito. 'Judicial System Reform in Italy— A Key to Growth', *no 3* (2014).

5 The World Bank Group, "Doing Business 2020, Comparing Business Regulation in 190 Economies: Economy Profile Indonesia" *The World Bank*, 2020, 124, <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

6 The World Bank Group, "Subnational Studies Measuring Business Regulations, Enforcing Contracts", *The World Bank*, 25 April 2022 <<https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/what-measured>> accessed

7 Melissa Crouch, "The Challenges for Court Reform After Authoritarian Rule: The Role of Specialized Courts in Indonesia" *Constitutional Review* no 1(2021): 18.

annexed mediation, small claim court and electronic court system (e-court). The Indonesian authority focuses on these three reforms based on the World Bank parameters towards an effective judicial system.

Under the World Bank standard, the use of mediation or conciliation governed by a consolidated law of the applicable code of civil procedure as well as the availability of financial incentives for parties to attempt mediation or conciliation are considered as supports for an ideal to dispute resolution.⁸ Moreover, an electronic case management is also an important step towards efficiency. This made the Indonesian Supreme Court introduces the use of e-court. Sulaiman et al (2020) states that there is a steady increase of the use of the e-Court platform as provided by Supreme Court Regulation No. 1 of 2019 regarding Electronic Administration of Cases and Trials in Court (SCR 1/2019).⁹ In 2021, The World Bank reported that Indonesia made enforcing contract easier by introducing an electronic case management through e-Court.¹⁰ In terms of reducing the case load, under the Regulation Number 2 of 2015 and the renewed one, which is Regulation No 4. of 2019, the Supreme Court has launched a small claim court system to resolve dispute under IDR 500,000,000. There is a lack of research conducted to evaluate how court-annexed mediation, e-court and small claim court have significantly reduced the load of Indonesian courts.

This research aims at helping point out the way for much-needed changes. It will evaluate the current practices of litigation and provide recommendations for further improvement in order to maintain public confidence in the civil justice system. One way would be to further reform the judicial system to better support effective and efficient enforcement of civil and commercial claims. Several researches have been conducted in the field of civil justice reform and its role in supporting business. For example, Bahri (2020) found that institutionalizing mediation in the civil litigation has proven to empower and maximize the function of court as a dispute settlement body.¹¹ Another study was carried out by Purnamawati (2020) which examined how small claim court contribute to reduce court case load. The

8 The World Bank Group, *Doing Business 2020*, 23.

9 Debby Sulaiman, "Indonesia– A Civil Law Jurisdiction" in Kim M. Rooney (eds), "The Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution in the First Year" *IBANet 2021*, accessed on April 21, 2022, https://www.ibanet.org/global-impact-covid-19-pandemic-dispute-resolution#_ftn15.

10 The World Bank Group, *Doing Business 2020*, 24.

11 Idik Saeful Bahri, "Efisiensi Jalur Mediasi dalam Penyelesaian Sengketa Bisnis di Indonesia," *Universitas Gadjah Mada*, accessed on and available at January 5, 2023 https://www.researchgate.net/publication/339165756_Efisiensi_Jalur_Mediasi_dalam_Penyelesaian_Sengketa_Bisnis_di_Indonesia.

researcher found that in Selong District Court, small claim court has significantly help litigants to litigate their cases in a simple, speedy, and affordable manner.¹² Additionally, Rosady and Hayati (2021) conducted a study on the impact of e-court. The research found that e-court is an important step to provide transparency and accountability as well as to increase case management in court.¹³

The previous research studies focused on a way to improve efficiency of the court in civil litigation. Meanwhile, this research is different since it studies three ways to empower civil justice system by evaluating the implementation of court mediation, e-court and small claim court at the same time. Moreover, this research provides insights on how civil justice system can contribute in providing positive business climate in terms of contract law enforcement. The development of the economic sector must be supported by the development of the legal sector. Legal development focuses on the reforms to improve the substance, institutional structure and legal culture.¹⁴ Such insights were not presented in the previous studies. Based on the discussion above, this research aims at analyzing how civil justice reform in the adoption of court-annexed mediation, small claim court and e-court have improved the efficiency of contract law enforcement in Indonesia. It also aims at analyzing what steps the Indonesian judiciary can take to contribute to economic development through contract law enforcement.

Research Methods

To answer the problems, this research employs a normative method,¹⁵ by carrying out a library research to obtain secondary data¹⁶ that consist of primary legal materials¹⁷ and secondary legal materials.¹⁸ Primary legal materials include the Supreme Court Regulation No 1 of 2016 concerning Procedure of Court Mediation, the Supreme Court Regulation No 4 of 2019 concerning the Amendment of the

12 Erna Purnawati, "Penerapan Gugatan Sederhana (Small Claim Court) Dalam Penyelesaian Perkara Wanprestasi di Pengadilan Negeri Selong," *Jurnal Juridica*, no 1(2020): 39.

13 Raky Swarnabumi Rosady and Mulida Hayati, "Sistem E-Court Dalam Pelaksanaan Peradilan di Indonesia pada Masa Pandemi Covid-19," *Jurnal Ilmu Hukum Tambun Bungai* no2(2021)140-141.

14 Efa Laela Fakhriah, *Bukti Elektronik dalam Sistem Pembuktian Perdata* (Bandung: Refika Aditama, 2017), 1.

15 Soerjono Soekanto, *Penelitian Hukum Normatif, 8th Edition* (Depok: Raja Grafindo Persada 2004), 14.

16 Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press 1986, 51.

17 Soekanto, *Pengantar Penelitian Hukum*, 19.

18 Soekanto, *Pengantar Penelitian Hukum*, 19.

Supreme Court Regulation No 2 of 2015 concerning Small claim court, and the Supreme Court Regulation No 1 of 2019 concerning Administration of Case and Litigation process in Court Electronically. Secondary legal materials consist of books, journal articles and internet materials relevant to the topic. This research employs qualitative method, and the steps to analyze data are conducted based on the procedures as follows: data collection; data classification and conclusion.

Discussion

Relevancy between the Effectiveness of Civil Justice System and Economic Development

Sustainable economic development is defined as the investments in business, social, built, and natural environments that elevate prosperity for all, now, and into the future.¹⁹ Meanwhile, economic development was generally defined as the process whereby the real per capita income of a country increased over a long period of time.²⁰ It has a general goal to maximize the objective across all systems through a process of trade-offs to reduce poverty;²¹ likewise with the rule of law, which is the key institution for economic growth.²²

The role of judiciary plays a crucial role in economic development. A more efficient judiciary will further promote economic growth by enforcing contracts, securing property rights, and providing a healthier business environment.²³ In addition, the judiciary can incentivize entrepreneurship, has a positive effect on firms' outcomes, and has an effect on industries that rely heavily on contracting.²⁴ Economic development will be promoted by providing predictability and certainty with a transparent and stable legal regime.²⁵

In line with this, an ineffective judiciary will undermine the economic development. Many research show that in a country with a weak judiciary system,

19 Eli Dile, "Green Metrics: Common Measures of Sustainable Economic Development *International Economic Development Council 2017*, accessed: September 15, 2022. https://www.iedconline.org/clientuploads/Downloads/edrp/IEDC_Greenmetrics.pdf

20 Gerald M. Meier, *Leading Issues in Economic Development* (Oxford: Oxford University Press 1976), 6.

21 Edward B. Barbier, "The Concept of Sustainable Economic Development," *Environmental Conservation*. no 2 (1987) 109.

22 Manuel Ramos Maqueda, "The Role of Justice in Development", *Policy Research Working Paper* no 2(2021).

23 Maqueda, *The Role of Justice in Development*, 3.

24 Maqueda, *The Role of Justice in Development*, 3.

25 Giovanni Tartaglia Polcini, 'The Rule of Law as a Condition for Development Toward Sustainability' *The International Journal of Social Quality*. No.2 (2017) 122.

it is likely that the businesses will face difficulties. This can be seen from Brazil's experience, where the Financial Times highlighted the relationship between the judiciary and the development of the country. It is stated that the judiciary in Brazil is a dysfunctional judiciary, which can be seen from the problems in its national development.²⁶ In addition, there were indications of improvement in countries such as Eastern Europe and the former Soviet Union from 1992 to 1998, where financial markets experienced an increase when legal institutions in these countries became more effective.²⁷ Similarly, a research in India also points out a weak judiciary has a significant negative impact on economic development like poverty and agricultural output.²⁸ On the contrary, in a country with strong, modern, and efficient civil justice system, business tend to have good functioning markets where it relates to the increase of economic growth.²⁹

The business and commercial activities are the key success to economic development as they improve the quality of life in various fields, including education, society, economy, and politics.³⁰ In fact, the large number of business entities, be it domestic or foreign one, attest to the widespread acknowledgment of the missing piece (the gap between theory and practice) in litigation process. The missing piece includes complexity of court as well as time and costs incurred.³¹ If the gap is left without any step to improve, the consequences will likely to threat the access to justice for the community³² and hinder economic development.³³ It is, therefore, important to make effort to fill the gap and make the just, effective and credible civil litigation. This can be done through civil justice reform, which may be acknowledged as the reform in solving civil justice matters as the problem of cost, complexity and delay.³⁴

26 Kenneth W. Dam, 'The Judiciary and Economic Development', *John M. Olin Law & Economics Working Paper* no.287 (2006):2-3.

27 Dam, *The Judiciary and Economic Development*, 3 .

28 Wolfgang K. C. Köhling, 'The Economic Consequences of a Weak Judiciary: Insights from India', *Centre for Development Research*, no 1(2000): 4.

29 Alexander B. Cunha, 'Economic Growth, Markets, and the Rule of Law: Brief Considerations on the Brazilian Case' (2021) 18 *Brazilian Business Review* no 18(2021):207. DOI: <http://dx.doi.org/10.15728/bbr.2021.18.2.5>.

30 Emilio Abad-Segura. "Sustainable Economic Development in higher education institutions: A global analysis within the SDGs framework, *Journal of Cleaner Production* no 1(2021): 294.

31 Hazel Genn, *Judging Civil Justice* (Cambridge: Cambridge University Press, 2010), 53.

32 Genn, *Judging Civil Justice*, 15.

33 Genn, *Judging Civil Justice*, 17.

34 Genn, *Judging Civil Justice*, 12-13.

Indonesia has conducted civil justice reform by enacting e-court, introducing small claim courts, and making court mediation mandatory. E-court is a service for the public to register their cases online, get online court fee estimates, online payments, online summons, and electronic court proceedings.³⁵ Small Claim Settlement (also known as small claim court) is a procedure for examining a civil lawsuit with a material claim value of a maximum of IDR 500,000,000, which is settled with simple procedures and evidence.³⁶ Lastly, Court Mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator in court.³⁷ The reform that has been performed provides benefits such as: reduces the litigation cost; speeds up the litigation process; reduces court caseload; and increases public confidence in the judiciary.³⁸

As a part of the World Bank community, Indonesia needs to follow and comply with its standard. Such standards include indicators which has several points to be measured:³⁹ The table below presents indicator and what is measured by the World Bank to determine EoDB.

Table 1. Indicators Set and What is Measured by the World Bank

Indicator set	What is measured
Starting a Business	Procedures, time, cost, and paid-in minimum capital to start a limited liability company for men and women
Dealing with construction permits	Procedures, time, and cost to complete all formalities to build a warehouse and the quality control and safety mechanisms in the construction permitting system
Getting electricity	Procedures, time, and cost to get connected to the electrical grid; the reliability of the electricity supply; and the transparency of tariffs

35 The Supreme Court Regulation No 1 of 2019 concerning "E-Court".

36 The Supreme Court of Indonesia, the Supreme Court Regulation of Republic of Indonesia Number 2 of 2015 concerning Simple Lawsuit Settlement Procedures.

37 The Supreme Court Regulation of Republic of Indonesia Number 1 of 2016 concerning Mediation Procedure in Court.

38 Dewi Asimah, "Persidangan Elektronik sebagai Upaya Modernisasi Peradilan di Era *New Normal*" *Jurnal Hukum PERATUN* no. 1(2021): 37-38. <https://doi.org/10.25216/peratun.412021.31-44>.

39 The World Bank Group, *Doing Business 2020*, 19.

Registering property	Procedures, time, and cost to transfer a property and the quality of the land administration system for men and women
Getting credit	Movable collateral laws and credit information systems
Protecting minority investors	Minority shareholders' rights in related-party transactions and in corporate governance
Paying taxes	Payments, time, and total tax and contribution rate for a firm to comply with all tax regulations as well as post filing processes
Trading across borders	Time and cost to export the product of comparative advantage and to import auto parts
Enforcing contracts	Time and cost to resolve a commercial dispute and the quality of judicial processes for men and women
Resolving insolvency	Time, cost, outcome, and recovery rate for a commercial insolvency and the strength of the legal framework for insolvency
Employing workers	Flexibility in employment regulation
Contracting with the government	Procedures and time to participate in and win a work contract through public procurement and the public procurement regulatory framework

Source: The World Bank Group, Doing Business 2020

This paper focuses on how the Indonesian judiciary assists to create positive business climate by fulfilling indicator No. 9, which is Enforcing Contract. What are measured by the World Bank are time and cost to resolve a commercial dispute (in the form of breach of contract case) and the quality of judicial processes for men and women. This part provides an analysis whether Indonesian court is already able to resolve breach of contract case in timely and cost-affordable manner.

There is a need to resolve disputes quickly, cheaply and fairly. Ordinary civil procedural law mechanisms are often expensive, time-consuming, and complicated as they give burden to the businessmen. By providing efficient time and affordable cost, contract law enforcement will become an effective and efficient way for justice

seekers, including businessmen.⁴⁰ The enforcing contracts indicator measured the time and cost for resolving a commercial dispute through a local first-instance court. Litigation in Indonesian courts is costly, lengthy, and complex. The time required for litigation in Indonesia (Jakarta) is 390 days. On the other hand, the cost that comes out is 74% of claim value, where the best regulatory performance is held by Bhutan with a total of 0.1% of claim value. Then, the quality of the judiciary process in Indonesia (Jakarta) is 9 out of 18.⁴¹ These problems have led to the poor quality of the judicial process index. Some of the impacts of countries that have low-quality judicial enforcement are about how entrepreneurs, the main actors in economic development, can face competitive disadvantage and struggle in access to credit, alarmed at the risk of poor legal protection.⁴²

The problems associated with the Indonesian judiciary include the lengthy process, lack of consistency, excessive caseload and poor use of technology. As previously explained, the average court settlement takes up to 390 days– three times more than Singapore, which was 120 days.⁴³ In addition, the slow process of litigation in court gives the assumption that court service in Indonesia is still not optimal and requires high costs. The results of the court are impartial and tend to issue new problems instead.⁴⁴

Court costs comprise the cost of proceedings and registrar fees. The cost of proceedings includes operating costs, costs for serving summons, notification, execution of an attachment order, site inspection, oath taking, translator and execution. Registrar's fees encompass costs of duty, stamps and editing, registration fees, as well as fees for appeal and cassation. In addition to those fees, parties are responsible to pay their lawyer's fees, and other fees associated with producing evidences such as: expert, witness, documentary evidences and other forms of evidences.

40 Benny Riyanto, "Pemberdayaan Gugatan Sederhana Perkara Perdata Guna Mewujudkan Penyelenggaraan Peradilan Berdasarkan Asas Sederhana, Cepat, dan Biaya Ringan" *Masalah-Masalah Hukum* no 1(2019):103-104.

41 Riyanto, "Pemberdayaan Gugatan Sederhana Perkara Perdata Guna Mewujudkan Penyelenggaraan Peradilan Berdasarkan Asas Sederhana, Cepat, dan Biaya Ringan", 98.

42 Andrea Moro, "Credit Protection, Judicial Enforcement and Credit Access", *The European Journal of Finance* no:3(2018): 279-280. <https://doi.org/10.1080/1351847X.2016.1216871>.

43 Moro, Credit Protection, *Judicial Enforcement and Credit Access*, 279.

44 Dedi Putra, "A Modern Judicial System in Indonesia: Legal Breakthrough of E-Court and E-Legal Proceeding" *Jurnal Hukum dan Peradilan* no. 2(2020): 275-297.

According to the World Bank data in 2021, litigation cost in Indonesian court is 74% of the claim value. This is very high compared to other countries in East Asia and Pacific, which is only 47,2% of the claim value. In OECD high-income, the cost is 21.5% of the claim value. High cost of litigation is also caused by delay or lengthy litigation process. For business, what is spent on legal fees and other litigation expenses are considered as a loss because the costs are expenditure that will never be delivered to shareholders or reinvested to grow the business.

Since litigation in Indonesia still takes long time and costly, it can be said that the judiciary has not well-function in assisting the government to create positive business climate. A reasonable length of trials and reasonable cost of litigation are important characteristics of good judicial performance.

Civil Justice Reform and the Efficiency of Contract Law Enforcement in Indonesia

The Indonesian judiciary has implemented reforms in respect to court-mandatory mediation, small claim courts and electronic-court. Theoretically, if those reforms have been applied consistently, the problems of lengthy and costly proceedings could have been avoided. This section will analyze the implementation and the results of those reforms.

The quality of judicial processes index measures whether each economy has adopted a series of good practices in its court system in four areas: court structure and proceedings, case management, court automation and alternative dispute resolution. The Economy Profile in Indonesia (Jakarta) disclosed the result of each score in 2020. Court structure and proceedings received a score of 3.0 out of 5. One of the indicators is the availability of a court or division of a court dedicated to the hearing commercial cases, which Indonesia does not have. Furthermore, for case management, Indonesia received a score of 3.0 out of 6. Then, the score for court automation was 0.5 out of 4, with the factor showing a lack of use of electronic media for case purposes. Lastly, the score for alternative dispute resolution gets a score of 2.5 out of 3.⁴⁵ Under the World Bank standard, the use of mediation or conciliation governed by a consolidated law of the applicable code of civil procedure as well as the availability of financial incentives for parties to attempt mediation or conciliation are considered as supports for an ideal to dispute resolution.⁴⁶ Indonesia has adopted court mandatory mediation process. However, the success rate is still quite low. The Supreme Court reported that the

45 The World Bank Group, *Doing Business 2020*, 101-102.

46 The World Bank Group, *Doing Business 2020*, 124.

success rate of court-compulsory mediation is less than 15%. This is a very low rate compared to Singapore and the United States in which the success rate of court mediation is exceeding 90%.⁴⁷

Mediation in court is deemed to only fulfill the formalities required by the Supreme Court.⁴⁸ Therefore, as mediators, judges are not optimal in playing their role to mediate. In addition, there is a lack of understanding of mediation in the community and assumption that if one party wants to create peace, then this party will be considered defeated.⁴⁹ Litigants in Indonesia do not seem to have willingness to mediate once they register their case to court.

Moreover, an electronic case management is also one crucial step towards efficiency. The problems that are most worried by the public are the convoluted judicial process, including the length of case settlement, lack of access, and corruption.⁵⁰ With the use of technology, the performance of court services becomes more accurate, accountable and transparent. In addition to being more efficient, the use of electronic case management increases public confidence in judicial power.⁵¹ Considering the aforementioned drawbacks in Indonesian civil litigation system, further reforms for more effective and efficient civil litigation system are inevitable. It will improve the public's confidence towards the judiciary itself. However, it also creates a more conducive business climate, a necessary condition for sustainable economic growth.

It is useful to examine whether the civil justice reforms initiated by the Indonesian Supreme Court have met the World Bank standard and significantly boost contract law enforcement in the country. Firstly, it is about to what extent civil justice reform in the form of the adoption of court-annexed mediation, small claim court and e-court have accelerated and improved the efficiency of contract law enforcement in Indonesia. The success rate of mediation reached 1,187 out of 39,888 (2.98%) in the District Courts; while in the Religious Courts, it reached 8,964 from 62,464 (14.35%) in 2021.⁵² The low success rate is due to several

47 Muladi, "Korporasi Transnasional dan Pengaruhnya Terhadap Tindak Pidana Ekonomi Dalam Era Globalisasi," The paper was presented in Jakarta: Universitas Trisakti, June 20, 1996.

48 Candra Irawan, 'Problematika Penerapan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 dalam Penyelesaian Sengketa Perdata di Indonesia' *Jurnal Hukum Acara Perdata* no 2 (2015): 63.

49 Irawan, "Problematika Penerapan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2008 dalam Penyelesaian Sengketa Perdata di Indonesia", 63 .

50 Kukuh Santiadi, *Expanding Access to Justice through E-Court in Indonesia*, 84.

51 Santiadi, *Expanding Access to Justice through E-Court in Indonesia*.

52 The Supreme Court of Indonesia, *Ringkasan Eksekutif: Laporan Tahunan 2021*, (Jakarta:

factors, such as low motivation of mediators from judges,⁵³ lack of confidence of the mediation advocates,⁵⁴ lack of good faith from parties,⁵⁵ lack of understanding of all parties on the benefits of mediation,⁵⁶ and uncertified mediators (from judges).⁵⁷

Secondly, in regard to small claim court, the court has received 8,331 small claim lawsuit cases within the District Court (8,028 cases) and the Religious Courts (313 cases).⁵⁸ The ratio of settlement of small claim cases is 93.12%, with the punctuality in deciding cases (less than 25 days) is 91.36% in the District Court.⁵⁹ On the other hand, the ratio of settlement of small claim cases in Religious Courts has reached 96.49%, with punctuality (less than 25 days) of 80.46%.⁶⁰ While the success rate of small claim court is quite high, there are still some obstacles lingering this reform. Among the obstacles are: time given to settle the case is subjectively short,⁶¹ there is no rule on who has the authority to execute the decision of a small claim lawsuit,⁶² lack of awareness of the parties to choose a simple settlement,⁶³ qualification requirements for simple lawsuits that are quite strict,⁶⁴ and the lack of socialization of the Supreme Court Regulation in regards to small claim lawsuit.⁶⁵ Thirdly, in respect to e-court, in 2020, e-court users were 122,711, but the number decreased in 2021 to a total of 86,140.⁶⁶ However, not

MARI, 2021) 22.

53 Ajrina Yuka Ardhira, 'Itikad Baik dalam Proses Mediasi Perkara Perdata di Pengadilan' *Media Iuris* no. 2(2018): 208.

54 Ardhira, *Itikad Baik dalam Proses Mediasi Perkara Perdata di Pengadilan*, 208.

55 Netty Herawati, 'Implikasi Mediasi dalam Perkara Perdata di Pengadilan Negeri terhadap Asas Peradilan Sederhana, Cepat, dan Biaya Ringan' *Perspektif* no. 4(2011): 235.

56 Mariah S. M. Purba, 'Rekonstruksi PERMA No. 1 Tahun 2016 sebagai Alternatif Penyelesaian Sengketa di Pengadilan' *1 Jurnal Hukum Samudra Keadilan* no 13(2018):24-25.

57 Purba, *Rekonstruksi PERMA No. 1 Tahun 2016 sebagai Alternatif Penyelesaian Sengketa di Pengadilan*, 25.

58 Tim Pokja Laporan MARI, *Laporan Tahun 2021* (Mahkamah Agung, 2022):128.

59 Tim Pokja Laporan MARI, *Laporan Tahun 2021* (Mahkamah Agung, 2022): 104.

60 Tim Pokja Laporan MARI, *Laporan Tahun 2021* (Mahkamah Agung, 2022): 109.

61 Nevey Varida Ariani, "Gugatan Sederhana dalam Sistem Peradilan di Indonesia", *Jurnal Penelitian Hukum De Jure* no 3 (2018): 388.

62 Anita Afriana. "Menakar Penyelesaian Gugatan Sederhana di Indonesia" *Jurnal Bina Mulia Hukum* no 1(2019):66.

63 Bambang Sutiyoso, 'Implementasi PERMA No. 2 Tahun 2015 di Pengadilan Negeri Yogyakarta' *Jurnal Hukum Ius Quia Iustum* no.1(2019): 187.

64 Sutiyoso, *Implementasi PERMA No. 2 Tahun 2015 di Pengadilan Negeri Yogyakarta*, 189.

65 Sutiyoso, *Implementasi PERMA No. 2 Tahun 2015 di Pengadilan Negeri Yogyakarta*, 189.

66 Tim Pokja Laporan MARI, *Laporan Tahun 2021* (Mahkamah Agung, 2022):116.

all courts use e-court and rather use conventional procedures.⁶⁷ This is caused by the facts that there is no SOP or standard for e-court services,⁶⁸ not all human resources in the court understand e-court,⁶⁹ and internet access in Indonesia is not evenly distributed.⁷⁰ In addition, e-court can only be used if both parties give a consent to use it. The absent of such a consent will make the litigation process done in conventional face-to-face mechanism.

E-court provides ease for businessmen by simplifying the justice system and making the process faster; becoming a bridge for geographical constraints; reducing court costs such as summons fees, attendance at court to answer questions, prove and read decisions; and minimizing the possibility of ethical balance.⁷¹ The e-court breakthrough also succeeded in increasing Indonesia's EoDB from rank 91 to 72 in 2016.⁷² Despite of reforms that have been initiated, Indonesia's ranking in EoDB is still considered low (ranked 73 out of 190 countries in 2020)⁷³ due to several problems in civil justice system, especially in the dispute related to contract enforcement, which was scored 49.1/100 in 2020.⁷⁴ Therefore, it is safe to conclude that the civil justice reforms have not yet optimally increased the efficiency of contract law enforcement.

67 Desi Indah J, "Urgensi pembentukan E-Court sebagai Wujud Peradilan yang Berkembang," *Jurnal Lontar Merah* no.1(2020): 288.

68 Sonyendah Retnaningsih, "Pelaksanaan E-Court menurut PERMA Nomor 3 Tahun 2018 tentang Administrasi Perkara di Pengadilan Secara Elektronik dan E-Litigation Menurut PERMA Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik (Studi di Pengadilan Negeri di Indonesia)," *Jurnal Hukum & Pembangunan*. No.1(2020):139.

69 Retnaningsih, *Pelaksanaan E-Court menurut PERMA Nomor 3 Tahun 2018 tentang Administrasi Perkara di Pengadilan Secara Elektronik dan E-Litigation Menurut PERMA Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik (Studi di Pengadilan Negeri di Indonesia)*, 139.

70 Retnaningsih, *Pelaksanaan E-Court menurut PERMA Nomor 3 Tahun 2018 tentang Administrasi Perkara di Pengadilan Secara Elektronik dan E-Litigation Menurut PERMA Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik (Studi di Pengadilan Negeri di Indonesia)*, 142.

71 The Decision of Secretary of the Supreme Court Number 237A/SEK/SK/V/2020 concerning Supreme Court Strategic Plan 2020-2024 in Supreme Court of Indonesia, *Rencana Strategis Mahkamah Agung RI 2020-2024* (2020):26.

72 Supreme Court of Indonesia, *Rencana Strategis Mahkamah Agung RI 2020-2024*, 42.

73 Supreme Court of Indonesia, *Rencana Strategis Mahkamah Agung RI 2020-2024*, 4.

74 The World Bank Group, *Doing Business 2020*, 4.

Steps The Indonesian Judiciary Can Take to Contribute to Economic Development through the Contract Law Enforcement

In order to contribute to economic development, the Indonesian judiciary shall make civil justice system effective. The discussion above has shown that lengthy civil proceedings to resolve contract cases can be a drag on economic activity. To make civil justice effective, the trial must be conducted in speedy manner with affordable and reasonable costs. Moreover, the judiciary shall also be able to use technology to manage cases and litigation process. Lastly, the case load must be reduced to a number that is comparable with human resources in the judiciary. This section discusses how the judiciary can fulfill those elements so that it can be considered as effective to support the creation of favorable business climate.

Firstly, the litigation process shall be conducted in a speedy manner since *justice delayed is justice denied*. Reducing cost in litigation can be done through appropriate policies to increase efficiency in litigation. Good quality regulation, timely and effective implementation of policies can be used as instruments for reducing the average length of trials. Another way to speed up litigation process is procedural improvement by reducing administrative burdens since it can obstruct the quick and efficient trial. The waiting time from case registration to hearing should be shortened. In addition, the schedule of trial can also be done more frequently.

Secondly, the judiciary should optimize court-annexed mediation. Court-annexed mediation was introduced in 2003. Since then, the Supreme Court has made several changes with the newest one in the Supreme Court Regulation No 1 of 2016. Unfortunately, the updated regulation only added timeline and requirements for the principals to attend the mediation sessions. It does not touch the basic issue of court mediation namely: mediator-judge competency and the requirements for court to provide sufficient infrastructure. Extended mediation period will not help if judges still do not have skill and competency to mediate. Moreover, complicated contract cases possibly cannot be mediated within 60 days. Thus, court-mediation will still likely to reach low success rates. In advancing mediation in court, it is essential that judge, as mediators, effectively serve the specific needs of contracting parties as business community. This can be made possible by enriching the mediator training to cover legal issues in business and commercial activities.

Thirdly, the use of technology, in terms of e-court, should be extended not only for registration and submitting paper works, but also for case management. The court should apply differentiated case management in which different types

of cases need different types and levels of judicial management. Early judicial management should be used effectively. This is essentially a further shift of focus on a pre-trial phase in which judges can assist the disputing parties to settle the case in mediation.

Technology should also be used as the digital management of case files to monitor and control complex cases, including breach of contract in commercial disputes. Monitoring is important to answer the need for transparency and certainty, for ensuring an informed decision, and for guaranteeing just decision. Furthermore, court should employ electronic devices to improve the quality of the evidence brought to the courtroom, for example: videoconferencing equipment for virtual courtroom testimony and viewing depositions.

Lastly, small claim court mechanism should be made mandatory. This means all claims under Rp 500 million shall go to small claim court with single judge and simple procedure and should be resolved within 40 days. By doing so, judges in regular litigation process only focus on complex and large claims. This will certainly reduce the court case load, cut the litigation time and lighten-up judges' workload.

Reducing litigation time by implementing policy and procedural reform as well as optimizing court-mediation and the use of technology and mandatory small claim court are the steps that should be taken by Indonesian judiciary to be able to resolve contract law cases efficiently. This will likely to increase the position of Indonesia in EoDB and help the government to create positive business climate.

Conclusion

Despite the efforts that have been initiated, the Indonesian judiciary has not wholeheartedly implemented the reforms as indicated by the lack of technology used, the optional small claim court as well as lack of mediation skills and facilities. Consequently, litigation process is still lengthy, inefficient and costly. These hinder business parties to obtain justice for contract law cases they encounter and does not support business environment. Further procedural reforms need to be undertaken for a well-functioning judiciary since it is a crucial determinant of economic performance in a country. Hence, the Indonesian judiciary needs to cut the duration of trials, employ technologies in the case management, implement mandatory small-claim court and increase skills of judges as mediators. A well-functioning judiciary will certainly improve Indonesia's rank in EoDB.

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