

# SMALL CLAIM COURT ADJUDICATION WHEN THE CLAIMANT IS ABSENT FROM THE COURT PROCESS (CIVIL CASE NO. 4 / PDT.G.S / 2018.PN.PLK)

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**Abstract:** Responding to the many problems that occur during dispute resolution through a court claim, The Supreme Court then issued a Supreme Court Regulation No. 2 of 2015 Concerning Small Claim Court Procedure. However, this regulation is not considered to be a smart solution for resolving all dispute resolution issues through the court. There are several things that become obstacles when people choose to use a small claim court. One of them is the absenteeism of the principal in which the claimant is a legal person. The principal referred to is the Board of Directors which is a Company Organ, representing the company both inside and outside the court. Starting in the Civil case No.4 / PDT.G.S / 2018 / PN / PLK, in the trial of Bank Rakyat Indonesia (BRI) as a claimant did not present the Directors as representatives of the legal person required by Article 4 paragraph (4) PERMA No.2 of 2015. However, BRI only presents its attorney in court. Furthermore according to the provisions in Article 13 paragraph (1) it is stated that if the claimant is absent on the first trial day without a valid reason, the claim will be declared null and void. However, the facts of the trial stated differently, the judge responsible for the case continued the trial. This needs to be studied further on how the analysis of judges considerations that contradicts PERMA No.2 2015 and how the legal consequences if the claimant is not present in a small claim court refers to the Civil case No.4 / PDT.G.S / 2018 / PN.PLK.

**Key Words:** Court Resolution, Small Claim, Absent.

## 1. INTRODUCTION:

An act of defending rights according to the law is called a claim.[1] The litigation party can file a claim to the competent court. The letter of claim must be properly paid attention to by the Claimant that the claim must be filed appropriately to the competent court body to adjudicate the case. Adjudication of civil cases in court can be resolved by providing legal representations. This attorney is an agreement by which someone gives power to someone else, who receives it, for and on behalf of carrying out an affair.[2] Adjudication of civil cases as regulated in the Indonesian HIR Regulations, RBg Procedure Law Regulations, and other regulations for all types of civil cases only recognize one type of procedural law, namely ordinary civil procedural law. As a result, evidence of the case that should be simple but must be resolved by ordinary civil procedural law. Though the number of civil cases that go to court is very large.[3] From the number of cases decided from 2017-2018, as many as 16,747 cases, as many as 15,149 cases (91.96%) were successfully decided by The Supreme Court in less than 3 months after the case file was received by the Chairperson of the Assembly. The percentage of cases decided less than 3 months in 2017 increased by 11.21% compared to 2016, which amounted to 80.75%. Judging from the number of cases that entered in 2008 there were 4864 cases, in 2009 there were 4974 cases, in 2010 there were 5399 cases, in 2011 there were 5016, in 2012 there were 5430 cases, in 2013 there were 4754, in 2014 there were 4811, in 2014 in 2015 there were 5250.

Adjudication through court which is not satisfactory by incurring large costs and long time so that people tend to surrender and accept the form of Adjudication even though the Adjudication is unfair, if the disputed value is not so great. The Supreme Court answers the matters needed for the smooth running of the judiciary, especially regarding the simple Adjudication of civil cases. Until the birth of PERMA No. 2 of 2015 compiled for 10 (ten) months with the support of the Australia Indonesia Partnership for Justice (AIPJ).[4] Supreme Court Regulation No. 2 of 2015 Concerning Procedures for Settling Simple Claims cuts procedures for Civil Procedures. Limiting the time to settle a civil case and carrying out a simple process (small claim court). The small claim case that was carried out in the District Court of Palangkaraya IA class of the Claimant is a legal person, thus certainly who can represent a case is the founder of a legal person or the holders of power in a legal person that can continue the trial, but in Supreme Court Regulation No. 2 of 2015 Concerning Procedures for a small claim court is not explained with certainty who can settle a simple claim in court. Adjudication of a small claim in case No. 4 / PDT.G.S / 2018.PN. PLK is known that those who attend the trial process are the attorney of the legal person. Here it is not clear whether in the permits allowed that attorney in

a legal person can attend the trial process. Whereas a legal representative working within a legal person can also be categorized as a legal representative if he shows evidence of his legal representative representing a legal person.

Provisions in Article 98 paragraph (1) of limited company law which states that the Board of Directors is the Company's organ that represents the company both inside and outside the court. In exercising its authority as a corporate organ, the Article 103 of the Limited Liability Company Law has given additional authority to the Directors to give written authorization to their employees or other people who can act for and on behalf of the company in carrying out certain legal actions. The granting of attorney is regulated in Article 1792 of the Civil Code. The granting of power is an agreement by which a person gives power to another person, who receives it, to carry out an affair in his name. Observing the provisions of Article 1792 of the Civil Code Jo. Article 103 of the Limited Liability Company Law, an important question arises, namely whether the employees of the company which have the power of attorney from the Board of Directors, can act for and on behalf of the company for litigation in court. This is the problem that arises in this case. The above problem is contradictory to Article 4 paragraph (4) of The Supreme Court Regulation Number 2 of 2015 concerning Procedures for Implementing a Small Claim Court which requires the Claimant and defendant to be present directly at every hearing. Whereas if the litigant is a legal person it is not really explained in The Supreme Court Regulation No. 2 of 2015 who can attend the proceedings or can the attorney attend the proceedings. Considering the presence of the Claimant or the defendant is intended to facilitate The Judge in seeking peace between the two parties. The obligation of the parties present directly to the trial is intended to broaden people's access to justice.

### 1.1. CONCEPTUAL FRAMEWORK:

- A claim is an effort or action to claim rights or force another party to carry out its duties or obligations, to recover the loss suffered by the Claimant through a court decision.[5] The Claimants or Defendants were summoned to attend the hearing. In judicial practice, the position as Claimant or Defendant can be represented by a Proxy. [6]
- Debtor is a party that owes to another party, usually by receiving something from the creditor that the debtor promised to repay in the future.
- Credit is the provision of money or bills which can be equaled, based on a loan agreement between the bank and another party that requires the borrower to repay the debt after a certain amount of time with interest
- A simple claim or Small Claim Court is a procedure for examining a trial against a civil claim with a material claim amounting to a maximum of Rp 200,000,000.00 which is settled by a simple procedure and evidence. [7]

### 1.2 THEORITICAL FRAMEWORK

#### 1.2.1 Law Enforcement Theory

According to Lawrence Meir Friedman to enforce the law there are 3 (three) elements involved in the legal system, namely: [8]

- a) *Legal substance*, is the rules, norms, and patterns of real human behavior within the system. Substance also means products produced by people who are in the legal system, covering the decisions they issue, the new rules they draft. Substance also covers living law and not only the rules that exist in the law book.
- b) *Legal Structure*, is the framework or frame, the part that persists, the part that gives a kind of shape and boundary to the whole. If we talk about the structure of the Indonesian legal system, it includes the structure of law enforcement institutions such as the police, prosecutors, courts, lawyers, and correctional institutions.
- c) *Legal Culture*, is human attitude towards law (trust). Values, thoughts and expectations. Legal culture is also an atmosphere of social thought and social forces that determine how law is used, avoided, or abused, so legal culture is more or less decisive in the legal process.

Sudikno Mertokusumo believes that in upholding the law there are three elements that must always be considered, namely: [9]

- a) *Legal Certainty (Rechtssicherheit)*, is a legal protection against arbitrary actions, which means that someone will be able to obtain something that is expected under certain circumstances.
- b) *Benefit (Zweckmassigkeit)*, the community expects benefits in the implementation or enforcement of the law.
- c) *Justice (Gerechtigkeit)*, the community is very interested in implementing law enforcement, to get a sense of justice.

#### 1.2.2 Legal Certainty Theory

According to Sudikno Mertokusumo, Legal Certainty is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and that decisions can be implemented. [10] Legal certainty is closely related to justice, but law is not similar with justice. The law is general, binding on everyone, generalizing. Justice is subjective, individualistic, and not generalized. Legal certainty is the implementation of law in accordance with its readings, so that the community can ensure that the law is implemented. The creation of legal certainty in

legislation requires requirements regarding the internal structure of the legal norms themselves. [11] The theory of legal certainty contains two meanings, namely: [12]

- a. There are general rules that make individuals aware of what is and is not allowed to be done;
- b. Legal certainty for individuals from governmental authority because with the existence of general legal rules, individuals can know what may be charged or done by the State against individuals.

## 2. LITERATURE REVIEW:

### 2.1 Claim in Civil Procedure Law

Civil Procedural Law is a legal regulation that determines how to guarantee / enforce the implementation of material civil law. That the Civil Procedure Code is a law that regulates how to submit claims for rights, accept and decide and implement the decisions. [13] A claim is the act of defending rights according to law. An attempt or action to claim rights or force other parties to carry out their duties or obligations, to recover the loss suffered by the Claimant through a court decision. [14] Prof. Sudikno Mertokusumo, used the term claim, in the form of a civil claim (*burgerlijke vordering*) concerning rights which contained disputes with other parties. Likewise with Prof. R. Subekti, the name of the claim is used in the claim letter. [15] Claims of rights as described above as actions aimed at obtaining legal protection provided by the court to prevent *eigenrichting*, there are two kinds, namely claims for rights that contain disputes, called claims, where there are at least two parties and claims for rights that do not contain disputes that called petition, where there is only one party. [16] The authority of the court to settle cases between the parties to the dispute, is called *jurisdiction contentiosa* and the claim is in the form of a *contentiosa claims* or also called *contentious*. Thus, jurisdiction and *contentiosa claims* are different or contradictory to the *ex-parte* voluntary jurisdiction, that is, the problems submitted for court Adjudication do not contain disputes (undisputed matters), but solely in the interest of the applicant. [17] *Contentiosa claims* is a claim that contains a dispute between two or more parties. Issues raised and requested to be resolved in a claim are disputes or disputes between the parties. [18] *Contentiosa claims* is what is meant by civil claims in practice. The term used is a civil claims or just a claim. [19]

### 2.2 Procedure for Filing a Claim in Civil Procedure Law

If the Claimant submits a claim letter to the head of the competent district court, three things need to be considered and contained in the claim letter, namely: [20]

- A complete description of the parties involved, namely name, age, address, occupation, and religion (identity of the parties).
- Basic claim (*fundamentum petendi*) which contains a description of events or events (*factual grounds*) and a description of the law, namely the existence of rights in legal relations that form the legal basis of the claim (*legal grounds*)
- The claim requested by the Claimant to be decided by the court (*petitum*). Demands can be broken down into two types, namely primary claim which is the main claim and subsidiary claim which is a substitute claim if the basic claim is rejected by the court.

Article 118 H.I.R states that a claim must be filed to the District Court. The claim letter can be signed by: [21]

- The Claimant or the Claimants themselves;
- The Claimant's attorney, is a person who has been given special power by the Claimant or the Claimants to make and sign the claim, and
- Judge, if the Claimant or Claimants are illiterate.

The parties to the dispute include: [22]

- Those who file for dispute resolution are referred to and act as Claimants.
- Those drawn as opponents in the Adjudication are referred to and domiciled.

Civil claim take two forms, including: [23]

a. *Oral Form (Unwritten Form)*. This claim if the Claimant cannot read and write. In other words, the Claimant is illiterate. In Article 120 HIR, it is only called illiteracy. Submission or submission of a claim orally, submitted by the Claimant himself. Must not be represented by a proxy or attorney he has appointed.

b. *Written Form*. The most preferred claim is a written suit. The civil claim must be submitted to the PN with a request letter signed by the Claimant or his attorney. The claim letter was made and signed by the Claimant himself. The ability of the Claimant to make, sign, and file a claim to the PN itself is that HIR and RBG do not adhere to the *Verplichte Procureur Stelling* system, which requires that the Claimant must authorize the attorney or advocate to represent him.

Posita or the argument of a claim is the basis for the examination and Adjudication of cases. The examination must not deviate from the argument of the claim. Posita in practice covers things including: [24]

- Case Object, which is the object that is being sued in this case must be described clearly and in detail.
- Legal facts, are a description of the emergence of a dispute.
- The Defendant's qualification is a description of the actions taken by the defendant. This qualification is an important qualification which aims to ensure that the actions carried out by the defendant cannot be separated from the claim.
- Description of Losses, is a description of the losses suffered from the actions of the defendant.
- The relationship between posita and petitum, is a description of matters not stated in the posita cannot be requested in petitum.

If on the day of the hearing that has been determined to try the case, the Claimant is absent and not present and no other person comes on the Claimant's name and order, it turns out that he has been properly summoned, then: [25]

- The district court may, before making a decision, order that the Claimant be called again the second time on another hearing day (Article 126 of the Indonesian Parliament).
- The claim is considered void (*voor vervallen gehouden*). It is possible that on the day of the trial the defendant had not arrived nor sent his representative to appear before the court, even though the bailiff had properly summoned him. If the defendant does not come after being properly summoned, then the claim is granted by a ruling out of attendance or *verstek*, except if the claim is against the right or unreasonable.

Decisions are by their very nature three types of decisions, namely: [26]

- Constitutional verdict or decision of regulation is a decision that sets about something or a decision that gives rise to a new legal situation.
- Declaratory Decision is a decision that is explaining or giving a statement about something. The Judge's ruling declared a situation as a legal condition.
- Decision Condemnatoir is a decision which contains the punishment or punish. Decisions that punish the defendant to pay a sum of money to the Claimant, to hand over an item or vacate a parcel, prohibit the defendant from doing anything, and so forth.

A judge's decision has three kinds of power, namely: [27]

- Strength to be able to be forced with the help of public forces against those who do not obey it voluntarily. This power is called the executive power.
- The Judge's decision as a document is an authentic deed in terms of proving that there has been a case between the parties mentioned in the decision.
- Attached to a judge's decision that has obtained permanent legal force is the power to "fend off" a new claim regarding the same thing, which is based on the principle of "ne bis in idem" which means that no verdict should be made again in the same case .

In the final decision of a case can be: [28]

- *Niet Onvankelijk Verklaart*, means that it cannot be accepted, namely the Court's decision which states that the Claimant's claim cannot be accepted.
- Has no authority to adjudicate concerning absolute competence or relative competence.
- The claim is granted.
- The claim is rejected

### 2.3 Small Claim Court

A Small Claim Court is an examination procedure for a civil suit with a material claim amounting to a maximum of Rp 200,000,000.00, which is settled by a simple procedure and evidence. [29] Cases that can be resolved through the Adjudication of a small claim are for breach of contract and / or Unlawful Acts (PMH) [30]. Requirements for filing a small claim: [31]

- a. The Claimant is an individual or Legal person
- b. There is a legal relationship which is the basis of the dispute with the Defendant
- c. Defendant is in the same domicile / legal area as the Claimant
- d. The dispute is not related to land rights or other cases specifically regulated in legislation, such as business competition, consumer disputes and industrial relations disputes.
- e. The value of the claim you file for the loss is a maximum of Rp. 200,000,000.00.

### 3. METHOD:

This research is an *empirical juridical* type of research which is then conducted by collecting primary and secondary data obtained through interview techniques and document studies. In this empirical study, the approach used is a *case approach*. This approach is carried out by examining cases related to the legal issues that occur. The cases examined are cases that have received a court decision of permanent legal force.

### 4. DISCUSSION:

Adjudication of cases in the Class I A Court of Palangka Raya in case No. 4 / PDT.G.S / 2018.PN. PLK. regarding breach of contract. PT. BANK RAKYAT INDONESIA (PERSERO), Tbk, in this case represented by Dedy Sudiana Position of Branch Manager of PT. Bank Rakyat Indonesia (Persero) Tbk Palangkaraya, in this case acting in his position representing the Directors based on Power of Attorney No. 15 dated May 20, 2015 made before Emi Susilowati, SH, Notary in the City of Jakarta. In this case authorizing to DEWA NGAKAN MADE A.P, S.H., M FIRDAUS IBRAHIM, GINA NAUFISA S.H., M.H., DODIK RUDIANTO, ANI HAPSARI, OKTORIO SETIAWAN, FRANSIUS, and M. RAMADHANI . They are employees of PT. Bank Rakyat Indonesia (Persero), Tbk. as The Claimant attended his attorney named Fransius, Mantri Unit of PT. Bank Rakyat Indonesia (Persero), Tbk RTA MILONO Palangka Raya Branch Office dated July 19, 2018. The First Defendant was named Muhammad Aripin, and The Second Defendant was named Siti Naimah, present himself without legal counsel.

All Defendants entered into a written debt agreement by receiving money as a loan / credit Kupedes from the Claimant in the amount of Rp. 75,000,000. The principal of the loan is Rp. 80,758,376 shall be paid in installments for 36 (thirty six) months until the date of payment / maturity on May 8, 2018. To guarantee the loans all defendants provided collateral in the form of land and / or building with evidence of ownership of Land Declaration (SPT) Number 594/138/2675 / PEM-X / 2 in the name of MUHAMMAD ARIPIN that is kept by the Claimant until the loan is repaid. If the loan is not paid within the stipulated time, the Claimant has the right to sell all collateral, either under the hand or publicly, for and on behalf of the Claimant's request, and the Obligation / all defendants and the collateral owner declare that they will surrender / vacate land for the house / building. If all defendants or the owner of the collateral do not carry out, then at the expense of the Obligation / all Defendants the Claimant with the assistance of the authorized can carry it out. All defendants were unable to pay the loan installments as promised until maturity. The Claimant has visited the domicile three times to notify him to fulfill his obligations immediately and has given a warning letter three times. But all defendants still cannot fulfill their obligations. Therefore, all Defendants are declared to have performed breach of contract.

Based on the trial proceedings the Claimant did not attend the hearing but was only attended by his attorney and the Defendant who attended the hearing. This was known by The Judges and The Judge who tried the small claim case took the policy by ordering to continue the trial. Whereas in The Supreme Court Regulation No. 2 of 2015 Concerning Small Claim Court Procedure in Article 4 paragraph (4) states "Claimants and Defendants are required to attend directly each trial with or without their legal counsel". Small claim case conducted in the District Court of Palangka Raya Class IA, the Claimant is a legal person, thus certainly who can represent a case is the founder of a Legal person or the holders of power in a legal person that can continue the trial, however in The Supreme Court Regulation No. 2 of 2015 Concerning Small Claim Court Procedure it is not clearly explained who can settle a small claim in court.

### 5. ANALYSIS :

#### 5.1 Legal Certainty from Judge's Policy Contrary to PERMA Number 2 of 2015 Concerning Simple Procedure for Small Claim Courts

Based on the theory put forward by Sudikno Mertokusumo in upholding the law there must be three elements namely legal certainty, expediency, justice. [32] Legal certainty, according to him, is an arbitrary protection which means that someone will be able to obtain something that is expected under certain circumstances. [33] In the process of small claim No. 4 / PDT.G.S/ 2018 / PN.PLK conducted by a judge, the Adjudication of the case did not raise objections to the actions of The Judge who continued the trial. It is not explained in The Supreme Court Regulation No. 2 of 2015 Concerning Small Claim Court Procedure on who can represent a legal person at trial. However, with a previous ruling by a judge who had heard a similar case so that this gets a legal certainty. Based on the cases that entered the District Court of Class I A Palangka Raya when viewed from the usual claim case since 2017 there have been 215 cases entered and 170 cases dropped out so that there are 45 cases that have not been resolved. In 2018 a total of 213 claims were entered and 161 cases had been broken up and there were 52 remaining cases. In 2019, there were 143 cases entered and those that had broken up were 143 cases and there were 63 cases left. Simple cases in 2017 that entered as many as 15 cases that have been broken as many as 15 cases. In 2018 there were 18 cases that were interrupted as many as 18 cases. In 2019 there were 16 cases that were decided as many as 15 cases with 1 case remaining, but those concerning Bank Rakyat Indonesia were 12 cases. Here it is clear that the most cases are concerning Bank Rakyat Indonesia. In settling a small claims in civil case No. 4 / PDT.G.S/ 2018 / PN.PLK it can be said to have benefited from

the implementation of the trial. So that the benefits expressed by Sudikno Mertokusumo are certainly in line with what has been decided by The Judge to continue the trial. As well as obtaining a fairness of the court case decision No. 4 / PDT.G.S/ 2018 / PN.PLK.

## 5.2 Legal Result of the Absence of Claimants in Settling Civil Cases No. 4 / PDT.G.S / 2018.PN.PLK

In The Supreme Court Regulation Number 2 Of 2015 Concerning Small Claim Court Procedure, Article 13 reads:

- In the event that the Claimant is absent on the first trial day without a valid reason, the claim is declared null and void.
- In the event that the Defendant is absent on the day of the first trial, the second summons is called accordingly.
- In the event that the Defendant is absent on the second trial day, The Judge decides the case.
- In the event that the Defendant is present on the first hearing day and on the following day the hearing is absent without a valid reason, the claim is examined and decided by contradictory.
- With respect to the decision referred to in paragraph (3), the defendant may submit an objection.

From this article it is explained that the Claimant was absent on the first trial day without a valid reason, so the claim was declared null and void. Conversely, if the Defendant is not present on the day of the first trial, the Court will make a second summons. If the Defendant's second summons was also absent, The Judge decided the case. In essence, the ruling is the same as the ruling Verstek, but there is no *verzet* legal remedies. With respect to this decision, the defendant may submit an objection. If the defendant is present on the day of the first trial, but is not present at the next hearing without a valid reason, then the claim is examined and decided on contradictory basis. Legal consequences of the absence of the Claimant in a civil case No. 4 / PDT.G.S / 2018 / PN.PLK that is unable to continue the trial because it failed according to article 13 paragraph (1). If on the appointed day the Claimant does not attend and has been properly summoned, the claim is declared null and the Claimant is sentenced to pay the court fee, but the Claimant has the right to file the claim again after the Claimant has previously paid the fee. Based on the author's interview with the Public Relations of the First Class District Court of Palangka Raya as The Judge of the First Class District Court of Palangka Raya. The reason for The Judge to continue the trial was because The Supreme Court gave an opportunity for employees of Bank Rakyat Indonesia to represent the trial process in the process of settling a simple claim. So that the trial can be continued and can be settled according to The Supreme Court Regulation No. 2 of 2015. There are no other bank cases that can file a simple claim other than Bank Rakyat Indonesia. Another reason for permitting an attorney from a Legal Person is, because there are many cases of arrears in credit payments made by customers to Bank Rakyat Indonesia so that the Legal Person is allowed to submit a Small Claim Adjudication Process. So that the Legal Person which submits the trial process can be represented by its attorney as an employee of that legal person. Because if the directors present in the trial process regarding the arrears are so much by the customer, the work process conducted by the directors will be hampered.

Based on the author's interview with *Humas* in District Court Class IA Palangka Raya. Judge's consideration of the trial is only attended by the Claimant's Attorney without the Claimant's attendance, if for a clear reason and The Judges consider a speedy trial and a small fee from a small claim as well as for speeding up the Adjudication of a small claim case then according to The Judge such matter does not make the verdict null and void. Moreover, there has been a previous decision made by another judge who conducted a trial regarding a small claim that took place between Bank Rakyat Indonesia and its debtor so that The Judge saw that if the previous decision had manifested a sense of justice, there was no reason for the panel of judges to decide otherwise than the former.

Judge who hears civil case No. 4 / PDT. GS / 2018 / PN.PLK continued to proceed with the trial without stopping the trial because it fell due to several considerations. The first consideration, The Judge saw from the previous trial process, the trial continued even though the attending was the power of attorney itself. The second consideration, because The Supreme Court allows Bank Rakyat Indonesia to authorize employees, especially employees or proxies who work in a Legal person. The third consideration is that cases that are filed continue to occur and are the same type, namely cases concerning loan defaults, which makes it difficult for directors to continue to settle cases in court, which makes the work they run obstructed. In the case implementation No. 4 / PDT.G.S / 2018 / PN.PLK contrary to The Supreme Court Regulation No. 2 of 2015 due to the legal consequences of the Claimant's absence in a civil case that is unable to continue the trial because it fell according to article 13 paragraph ( 1). If on the appointed day the Claimant does not attend and has been properly summoned, the claim is declared null and void.

Based on the theory of legal certainty put forward by Gustav Radbruch, it states that "something that is created must have a goal or purpose".[34] So, the law is also made to have a purpose, this goal is a value to be realized by humans, the main legal goals are three, namely: Justice for Balance , Certainty for determination, expediency for happiness. [35] To realize the goals and objectives of The Supreme Court Regulation No. 2 of 2015 with a small claim, faster, lower cost adjudication procedure. Of course the theory of Gustav Radbruch does not conflict with the completion

of the trial by The Judge who continues the trial even though the Claimant does not attend directly in the trial process. Although, the obligation of the parties to attend the hearing is intended to broaden people's access to justice, but in the trial process the parties did not object to The Judge's decision to continue the trial. That way it can be said the parties certainly have obtained a justice. By continuing the trial, the community will get a benefit in the conduct of the trial or law enforcement.

## 6. CONCLUSION:

- The absence of the Claimant in the Civil case No.4 / PDT.G.S / 2018 / PN.PLK is in conflict with The Supreme Court Regulation No. 2 of 2015 Concerning Small Claim Court Procedure. The Judge made a policy to continue the trial because he saw from the policies of the previous judges, who still allowed to continue the trial even though it was attended by a Legal person. The implementation of the trial of The Judge's decision that continues the trial process based on a number of considerations will naturally obtain a certainty of law, usefulness, and justice for the parties, this means in accordance with the theory of law enforcement put forward by Sudikno Mertokusumo.
- Legal consequences of the absence of the Claimant in civil case No.4 / PDT G.S / 2018 / PN.PLK that is unable to continue the trial because it failed according to article 13 paragraph (1). Judge's consideration to continue the trial at the First Class District Court of Palangka Raya, although the attorney from Bank Rakyat Indonesia was present, where the trial must be attended by the principle of Legal person namely the board of directors of Bank Rakyat Indonesia with the following considerations:
  - a. The Judge sees that from the previous trial process, the trial will continue even if the attending party is the attorney of the Legal person itself.
  - b. There is an agreement between The Supreme Court and Bank Rakyat Indonesia that allows legal entities to authorize their employees, especially legal staff who work in a legal person.
  - c. Cases that are brought up continue to occur and the same type of cases are those concerning credit defaults, which makes it difficult for the director to continue to resolve cases in court, which makes his work obstructed.
  - d. Implementation of judicial proceedings is fast and the costs are low from a small claim.
  - e. The reason for speeding up the Adjudication of a small claim.
  - f. Such matter does not make the decision null and void or can be canceled.

## 7. SUGGESTION:

- In settling a small claim, it must be in accordance with Supreme Court Regulation No 2 of 2015 Concerning Small Claim Court Procedure.
- Should be in the process of settling a small claim in the Claimant's Court and the defendant is obliged to attend directly each trial with or without a legal representative.

## REFERENCES:

1. Bambang Sugeng dan Sujayadi, 2012, *Pengantar Hukum Acara Perdata dan Contoh Dokumen Litigasi*, Kencana, Jakarta, page 2.
2. Darwan Prinst, 2002, *Strategi Menyusun Dan Menangani Gugatan Perdata*, PT Citra Aditya Bakti, Bandung, page. 1.
3. Direktorat Jenderal Badan Peradilan Umum Mahkamah Agung Republik Indonesia, 2015, *Bimbingan Teknis Penyelesaian Perkara Gugatan Sederhana*, page 1
4. Fernando M Manulang, 2007, *Hukum Dalam Kepastian*, Prakarsa, Bandung, page 95
5. Lawrence M. Friedman (terjemahan dari Yusuf Efendi), 2009, *Sistem Hukum Perspektif Ilmu Sosial*, Nusa Media, Jakarta, page 8.
6. M. Yahya Harahap, 2015, *Hukum Acara Perdata*, Sinar Grafika, Jakarta, page. 1
7. Mahkamah Agung Republik Indonesia, 2015, *Buku Saku Gugatan Sederhana*, page 10.
8. Muhammad Erwin, 2011, *Filsafat Hukum: Refleksi krisis terhadap hukum*, page 123
9. Sudikno Mertokusumo, 2010, *Mengenal Hukum Suatu Pengantar*, Cahaya Atma Pustaka, Yogyakarta, page 207.
10. Sudikno Mertokusumo, 1993, *Hukum Acara Perdata*, Liberty, Yogyakarta, page 3.
11. Subekti, 1989, *Hukum Acara Perdata*, Binacipta, Bandung, page 30.
12. Soepomo, 2000, *Hukum Acara Perdata Pengadilan Negeri*, Pradanya Paramita, Jakarta, page 33.