



The Effectiveness of Somasi as A Means of Resolution of Civil Disputes: A Study of Practices at Al Haq Law and Firm

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Abstract: A legal notice (somasi) constitutes a significant instrument in civil law, serving as an initial mechanism to establish a state of default before a dispute proceeds to litigation. Within the framework of Indonesian positive law, particularly under Article 1238 of the Civil Code, somasi is not merely interpreted as a formal warning, but functions as a normative device that delineates the boundary between legal compliance and negligence. This study examines the effectiveness of somasi in resolving civil disputes and explores its practical implementation within Al Haq Law and Firm. The research applies a normative-empirical approach by combining statutory analysis with practical legal observations. Data were collected through a literature review supported by empirical insights and analyzed using a qualitative descriptive-analytical method. The findings indicate that somasi demonstrates a relatively high level of effectiveness in addressing simple civil disputes, particularly those related to breach of contract and debt obligations. Its effectiveness is attributed to its persuasive nature, procedural efficiency, and its capacity to facilitate dispute resolution without resorting to complex and time-consuming litigation processes. Nevertheless, the effectiveness of somasi is not absolute and is influenced by various factors, including the good faith of the parties, the quality of legal reasoning within the notice, and the bargaining positions of the parties involved. In certain circumstances, particularly when dealing with uncooperative parties or disputes that have escalated into more complex conflicts, somasi may lose its practical effectiveness. Therefore, somasi should be understood not merely as an administrative formality, but as a strategic legal instrument that integrates normative authority with persuasive approaches in achieving effective and equitable civil dispute resolution.

Keywords: Legal Notice, Breach of Contract, Legal Effectiveness, Civil Dispute, Non-Litigation

INTRODUCTION

As part of private law, civil law plays a central role in regulating legal relations between legal subjects related to civil rights and obligations. According to Sudikno Mertokusumo, civil law is the overall set of rules governing relationships between individuals in society,

emphasizing private interests. In practice, these relationships often give rise to conflict due to failure by one party to fulfill their obligations, known in doctrine as breach of contract. R. Subekti states that breach of contract occurs when a debtor fails to fulfill an obligation as agreed, either through failure to perform, late performance, or improper performance. This situation not only results in economic losses but also disrupts legal certainty and the sense of justice in civil relations. Therefore, an effective dispute resolution mechanism is needed, both through litigation and non-litigation.

One instrument that plays a significant role in the initial stages of civil dispute resolution is a summons. Within the framework of Indonesian positive law, a summons is a form of legal notice issued by a creditor to a debtor to require them to fulfill their obligations as agreed. Normatively, the legal basis for this is found in Article 1238 of the Civil Code, which states that a debtor is deemed to be in default after being given a warning via official letter or other similar mechanism, or based on the timeframe stipulated in the agreement. According to Abdulkadir Muhammad, a summons serves as a means to establish default status for the debtor while also providing an opportunity to fulfill their obligations before further legal consequences arise. This provision demonstrates the crucial role of a summons in establishing default.

From a doctrinal perspective, a summons serves not only as an evidentiary tool but also provides a final opportunity for the debtor to voluntarily fulfill their obligations. R. Subekti emphasized that a summons is, in principle, a requirement to place a debtor in default, except under certain circumstances stipulated by law. Similarly, Salim HS stated that a summons is a form of legal protection for creditors and a manifestation of the principle of good faith in the implementation of agreements. Thus, a summons has both a preventive and repressive function in resolving civil disputes.

As legal practice evolves, summons (solicitors) are increasingly used as part of out-of-court dispute resolution mechanisms. This aligns with the need for a faster, more efficient, and more economical resolution process than litigation. In this context, a summons can be understood as an initial step that opens up the opportunity for negotiation between the parties before the dispute escalates further. Richard L. Abel, from the perspective of the sociology of law, emphasizes that dispute resolution does not always have to go through the courts but can be conducted through informal mechanisms that are more adaptive to the parties' needs.

However, the effectiveness of summons (solicitors) remains a matter of debate. On the one hand, summons (solicitors) are considered capable of resolving disputes peacefully without a court process, in line with Roscoe Pound's view that law functions as a tool of social engineering to create order and balance in society. On the other hand, there are practices where summons (solicitors) are ignored, particularly by parties who lack good faith or do not feel legally bound.

This situation reflects the discrepancy between legal norms (*das sollen*) and practical reality (*das sein*). Soerjono Soekanto stated that legal effectiveness is determined by five main factors: legal substance, law enforcement officials, facilities, society, and legal culture. Furthermore, Lawrence M. Friedman emphasized that the success of a legal system is greatly influenced by its structure, substance, and legal culture. Therefore, the effectiveness of a legal summons is determined not only by its normative force but also by the surrounding social factors.

In legal practice at Al Haq Law and Firm, a legal summons is a frequently used instrument in handling civil disputes, particularly those related to breach of contract and debts. Its use is not only to fulfill legal formalities but also as a strategy to encourage non-litigation resolution. In some cases, a legal summons has proven effective as a means of legal pressure, encouraging debtors to fulfill their obligations. However, in other cases, a legal summons does not produce optimal results, resulting in disputes continuing to court proceedings.

Based on this description, it is clear that the legal summons has a complex character in civil law. While it has a strong normative basis, its effectiveness is highly dependent on empirical conditions. Therefore, a more in-depth study is needed regarding the effectiveness of summonses in civil dispute resolution practices, particularly in relation to efforts to achieve legal certainty, justice, and utility, as proposed by Gustav Radbruch.

METHOD

As legal practice evolves, summons (solicitors) are increasingly used as part of out-of-court dispute resolution mechanisms. This aligns with the need for a faster, more efficient, and more economical resolution process than litigation. In this context, a summons can be understood as an initial step that opens up the opportunity for negotiation between the parties before the dispute escalates further. Richard L. Abel, from the perspective of the sociology of law, emphasizes that dispute resolution does not always have to go through the courts but can be conducted through informal mechanisms that are more adaptive to the parties' needs.

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RESULTS AND DISCUSSION

The Normative Position of a Summons in Civil Law

In the Indonesian civil law system, a summons serves an important function as a prerequisite for declaring a debtor in default. Normatively, the existence of a summons is based on Article 1238 of the Civil Code, which requires prior warning before a debtor is deemed in default. This provision confirms that a summons is an integral part of the construction of a breach of contract. According to Abdulkadir Muhammad, this provision demonstrates that Indonesian civil law adopts a gradual approach to enforcing contractual obligations, whereby a debtor is not immediately deemed in default without prior notification.

From a doctrinal perspective, the existence of a summons reflects the precautionary principle in civil law, which provides debtors with the opportunity to fulfill their obligations

before incurring legal consequences. R. Subekti stated that a summons is generally necessary to place a debtor in default. This demonstrates that civil law not only emphasizes coercion but also opens up the opportunity for persuasive resolution in line with the principle of good faith. In line with this, Sudikno Mertokusumo emphasized that the law does not merely function as a coercive instrument, but also as a means to maintain a balance of interests between the parties.

Furthermore, a summons also serves as a legal communication tool between creditors and debtors. From this perspective, a summons serves not only as a formal warning but also as a means to open up dialogue and negotiation to achieve a peaceful dispute resolution. Richard L. Abel stated that many disputes are, in practice, resolved out of court through informal mechanisms that are more flexible and responsive to the needs of the parties. Thus, a summons can be positioned as an initial bridge to non-litigation resolution.

However, the provisions regarding summons in the Civil Code are still general and do not specify the procedures or forms in detail. This lack of technical regulations has the potential to create legal uncertainty in practice. Lawrence M. Friedman emphasized that the effectiveness of a legal system is determined not only by its substance but also by its structure and legal culture. In the context of legal notices, weaknesses in substance, such as a lack of technical regulations, can lead to differences in practice.

As a result, legal notices are often viewed as merely an administrative formality without regard to their legal substance. In some cases, legal notices are drafted in a standard manner without strong legal arguments, thus lacking effective legal force against debtors. Soerjono Soekanto stated that one factor influencing the effectiveness of the law is the level of public legal awareness. A lack of understanding of the function of legal notices can lead to this instrument not being utilized optimally.

Furthermore, the lack of standardized rules regarding the number, duration, or form of legal notices also creates variation in practice. Some legal practitioners use more than one legal notice as a form of legal escalation, while others suffice with a single notice. This difference indicates that the issuance of a legal notice is strongly influenced by the legal strategy employed by the parties, not solely by normative provisions.

On the other hand, there are certain circumstances where a issuance of a notice is unnecessary, for example, if the agreement stipulates a clear deadline for performance (fixed-term agreement), so that the debtor is automatically deemed to be in default after that time. This aligns with the exceptions recognized in civil law doctrine, as explained by R. Subekti, which states that a issuance of a notice is not always an absolute requirement in every case of default.

Thus, it can be concluded that normatively, the issuance of a notice holds an important and strategic position in Indonesian civil law. However, in practice, the effectiveness of a issuance depends heavily on the quality of its drafting, the good faith of the parties, and the surrounding socio-legal and cultural context. Therefore, strengthening both regulations and practice is necessary so that summonses are not merely a formality but truly function as an effective and meaningful dispute resolution instrument.

Empirical Effectiveness of Summons

In practice, the effectiveness of summonses is greatly influenced by the concrete circumstances surrounding the parties. At Al Haq Law and Firm, summonses are used as the initial step in resolving civil disputes, and in many cases have proven effective in encouraging settlements without going to court. This demonstrates that summonses function not only as a normative instrument but also as a practical legal strategy in dispute resolution.

This success is related to the flexible and efficient nature of summonses. Compared to litigation, summonses offer faster resolutions and relatively lower costs. Sutiyo stated that out-of-court dispute resolution has advantages in terms of time and cost efficiency, as well as

the ability to maintain good relations between the parties. Furthermore, Munir Fuady emphasized that non-litigation mechanisms are often more effective in civil disputes because they provide more space for negotiation and are less confrontational.

However, the success rate of a summons is highly dependent on various factors. One of these is the good faith of the parties, which is a fundamental principle in contract law. Sudikno Mertokusumo emphasized that without good faith, any legal instrument, including a summons, will struggle to achieve its objectives. Furthermore, the quality of the legal reasoning in a summons is also a determining factor. A summons that is clearly structured, systematic, and based on a strong legal basis tends to exert more effective legal pressure.

Furthermore, the bargaining position of each party also influences the effectiveness of a summons. In an unequal legal relationship, the party in a stronger position tends to ignore the summons. This demonstrates that the effectiveness of a summons is determined not only by normative aspects but also by the power dynamics within the legal relationship. Satjipto Rahardjo, from a progressive law perspective, states that law cannot be separated from the social reality surrounding it, so its validity is strongly influenced by existing social forces.

Conversely, if the party receiving the summons lacks good faith or the dispute has escalated into a complex conflict, the summons tends to lose its effectiveness. In such situations, the summons becomes merely an administrative step before the case proceeds to court. This situation aligns with R. Subekti's view that, in certain practices, a summons is not always effective in encouraging fulfillment if the debtor has no intention of fulfilling their obligations from the outset.

This phenomenon demonstrates that the effectiveness of a legal summons is not solely determined by legal norms, but is also influenced by sociological and psychological aspects. Lawrence M. Friedman emphasizes that the success of a legal system is influenced by the interaction between structure, substance, and legal culture. In the context of a legal summons, a societal legal culture that tends to avoid responsibility or low legal awareness can be a major obstacle to its effectiveness.

Furthermore, Soerjono Soekanto also stated that legal effectiveness is influenced by five factors: the law itself, law enforcement, the means, the community, and legal culture. Thus, the effectiveness of a legal summons is highly dependent on the legal culture that develops in society, including the level of compliance with contractual obligations and respect for peaceful dispute resolution mechanisms.

By considering these various factors, it is clear that a legal summons is a potentially effective instrument, but its success is not automatic. A combination of normative force, quality legal practice, and supportive social conditions are required for a legal summons to function optimally in resolving civil disputes.

Critical Analysis

Conceptually, a legal summons holds a strategic position in civil dispute resolution. However, in practice, summonses are often treated merely as a formal procedure without being utilized optimally. This situation indicates a deviation from the summons' original function as a preventive instrument that should be able to prevent dispute escalation. Satjipto Rahardjo emphasized that the law should not stop at the level of formality (law on the books), but must be realized in practice (law in action). Thus, treating summonses as a mere formality reflects a failure to actualize the law's substantive function.

From a progressive law perspective, law is not understood solely as written rules, but rather as a means to achieve substantive justice. Therefore, summonses should be utilized optimally as an effective dispute resolution instrument, not merely an administrative step. This approach requires the active role of legal practitioners in drafting summonses that are

argumentative, communicative, and solution-oriented, thus encouraging the parties to reach an agreement without the need to pursue the dispute in court.

Compared to mediation, summonses do have advantages in terms of speed and procedural simplicity. A summons can be issued directly without involving a third party, making it more time-efficient. However, on the other hand, a summons has limitations due to its non-binding nature. Unlike mediation, which results in a legally enforceable agreement, a summons serves only as a warning with no immediate consequences if ignored.

Within the framework of economic analysis of law, Richard Posner states that the effectiveness of a legal instrument can be measured by its ability to minimize social costs and increase efficiency. In this context, a summons can be viewed as a relatively efficient instrument because it can reduce dispute resolution costs and reduce the burden on the judiciary. However, this efficiency is only achieved if the summons is truly able to encourage dispute resolution, rather than simply serving as a formal step before litigation.

Furthermore, the effectiveness of a legal summons can also be analyzed through a sociological approach. Soerjono Soekanto stated that legal effectiveness is greatly influenced by public legal awareness. In this context, the low response to a legal summons is often due to a lack of understanding of the legal consequences that can arise from breach of contract. Furthermore, Lawrence M. Friedman emphasized that legal culture plays a crucial role in determining whether a legal instrument can operate effectively.

Therefore, concrete steps are needed to strengthen the function of a legal summons, both from a normative and practical perspective. From a normative perspective, clearer regulations are needed regarding the procedures, forms, and minimum standards for a legal summons to avoid legal ambiguity. Meanwhile, from a practical perspective, improvements are needed in the drafting of a legal summons, including the use of strong legal arguments, clear language, and a persuasive communication approach.

Furthermore, it is crucial to encourage the integration of a legal summons with other dispute resolution mechanisms, such as negotiation and mediation, so that the summons does not stand alone but becomes part of a comprehensive dispute resolution strategy. With this strengthening, it is hoped that summons will no longer be viewed as a formality, but rather as an effective instrument for achieving swift, efficient, and equitable resolution of civil disputes.

Case Studies of Summons Practice

1. Plantation Land Boundary Dispute Case in Berau Regency

In one case, the client authorized Al Haq Law and Firm to handle a dispute related to overlapping boundaries of the client's oil palm plantation in Gunung Tabur District, Berau Regency, where the client's neighbor claimed part of the client's land.

The initial step was to send a systematic written summons containing the legal basis, chronology, and clear demands. The summons also provided a specific deadline for the parties receiving the summons. The response demonstrated good faith, opening up space for mediation and negotiation, leading to a peaceful agreement without litigation. This demonstrates that summons can be effective when supported by appropriate legal strategies.

2. Dispute Case with a Business Entity in Berau Regency

Another case involved a dispute between an individual and a business entity regarding the right to use certain facilities. The dispute arose from a policy deemed detrimental to the client and contrary to civil law principles. To resolve the dispute, a summons was sent containing legal arguments emphasizing fairness and good faith (Subekti, 2005). This summons successfully opened communication between the parties.

The final result was a peace agreement that accommodated the interests of both parties, preventing the dispute from proceeding to court.

Analysis of the Two Cases

From these two cases, several important points can be drawn that demonstrate that the summons functions as normative pressure capable of encouraging a response from the opposing party. This pressure is not only formal but also has psychological implications, as the party receiving the summons faces potential legal consequences if they continue to neglect their obligations. Furthermore, the summons also opens up space for communication and negotiation between the parties, enabling a more flexible and adaptive dispute resolution that addresses each party's interests.

In practice, the role of an advocate is crucial to the success of a legal summons, particularly in developing strong, systematic, and persuasive legal reasoning. A legal summons formulated with a clear legal basis and communicative language tends to be more effective than one that is merely general and normative. Furthermore, the success of a legal summons is also influenced by the good faith of the parties and the balance of their bargaining positions in the legal relationship.

Furthermore, a legal summons can be understood as an initial instrument in a broader series of dispute resolution processes, including follow-up negotiations and mediation. In this context, a legal summons serves not only as a warning but also as a means to more clearly identify the subject matter of the dispute and clarify each party's legal position. This is crucial for preventing further escalation of the conflict and reducing the burden of litigation.

Ultimately, an amicable settlement is the most ideal outcome because it not only resolves the dispute efficiently in terms of time and cost, but also maintains good relations between the parties and avoids the negative impacts of a confrontational judicial process. Thus, empirically, a summons has a strategic function in civil dispute resolution, not only as a formal prerequisite but also as a substantive instrument capable of encouraging effective, efficient, and equitable dispute resolution.

CONCLUSION

A summons holds a crucial position in Indonesian civil law as the initial instrument for confirming a breach of contract. Normatively, its existence is supported by Article 1238 of the Civil Code, which provides a strong legal basis.

In practice, a summons has proven quite effective in resolving civil disputes, particularly in less complex cases. Its role is not only as a warning but also as a means to encourage negotiation and amicable settlement.

However, its effectiveness is not absolute, as it is influenced by various factors such as good faith, the quality of the legal argument, and the bargaining position of the parties. In certain circumstances, a summons is merely a formality before litigation.

Thus, a summons has a dualistic character: it is normatively strong but empirically conditional. Its success is largely determined by how the instrument is used in practice (Subekti, 2005).

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