



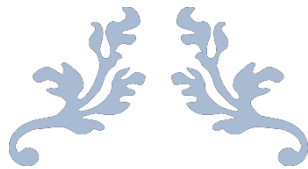
# SMALL CLAIMS

## TATA CARA PENYELESAIAN GUGATAN SEDERHANA (*Small Claims Court*)

**Peraturan Mahkamah Agung Nomor 2 Tahun 2015**

Eddy Marek Leks dan Erinda Resti Goesyen

*Leks & Co*  
lawyers



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**Tata Cara Penyelesaian Gugatan Sederhana**  
***(Small Claims Court)***

Peraturan Mahkamah Agung Nomor 2 Tahun 2015

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# **Tata Cara Penyelesaian Gugatan Sederhana (*Small Claims Court*)**

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## KATA PENGANTAR

Gugatan sederhana sudah dikenal di berbagai negara sejak beberapa waktu lalu. Indonesia bisa dibilang agak terlambat mengeluarkan aturan tersebut. Umumnya, landasan hukum suatu gugatan sederhana dibuat dengan suatu undang-undang, bukan dengan peraturan setingkat lembaga tinggi negara. Dengan demikian, legitimasi hukum prosedur gugatan sederhana menjadi lebih jelas dan kokoh.

Gugatan sederhana, meski belum tentu cocok untuk semua pihak, akan sangat bermanfaat bagi upaya pemerintah untuk mendorong usaha mikro, kecil, dan menengah di Indonesia. Banyak individu, termasuk pelaku usaha kecil, yang tidak mengajukan klaim ke pengadilan mengingat prosedur yang perlu ditempuh pada pengadilan dengan hukum acara biasa. Dengan demikian, waktu, energi, dan biaya yang perlu dikeluarkan atau dialokasikan menyebabkan suatu rencana pengajuan klaim/gugatan menjadi tidak efisien.

Gugatan sederhana juga bermanfaat untuk pengusaha di bidang tertentu, khususnya yang bergerak di bidang jasa, yang melibatkan nilai yang tidak begitu besar (tidak lebih dari Rp 200 juta). Sepanjang pengusaha tersebut, atau pihak yang mewakili perusahaan tersebut dapat menyempatkan waktu hadir di persidangan gugatan sederhana (*small claims court*), maka prosedur ini tentu bermanfaat untuk diikuti.

3 Oktober 2017

Eddy Marek Leks

## PENYELESAIAN GUGATAN SEDERHANA

Dalam menyelenggarakan peradilan yang sederhana, cepat, dan biaya ringan, maka Mahkamah Agung menerbitkan Peraturan Mahkamah Agung No. 2 Tahun 2015 tentang Tata Cara Penyelesaian Gugatan Sederhana (“**Perma**”). Penyelesaian gugatan sederhana dilaksanakan dengan tata cara pemeriksaan sengketa pada persidangan umum terhadap gugatan perdata terhadap perkara wanprestasi dan/atau perbuatan melawan hukum dengan nilai gugatan materil tidak melebihi Rp200.000.000,00 yang mana hanya memakan waktu selama 25 hari kerja sejak sidang pertama dilaksanakan.

Hakim yang memeriksa dan memutus merupakan hakim tunggal yang ditunjuk oleh Ketua Pengadilan. Adapun, dikecualikan dari gugatan sederhana, ialah perkara (i) yang penyelesaiannya dilakukan melalui pengadilan khusus; (ii) perkara mengenai sengketa hak atas tanah; dan (iii) keadaan dimana tempat tinggal tergugat tidak diketahui. Syarat agar dapat menyelesaikan perkara melalui gugatan sederhana, sebagai berikut:

1. Para pihak yakni penggugat dan tergugat tidak boleh lebih dari satu, kecuali memiliki kepentingan hukum yang sama;
2. Penggugat dan tergugat harus berdomisili di daerah hukum Pengadilan yang sama; dan
3. Penggugat dan tergugat wajib menghadiri secara langsung setiap persidangan dengan atau tanpa didampingi kuasa hukum.

Tahap penyelesaian gugatan sederhana, ialah sebagai berikut:

1. Pendaftaran: penggugat mendaftarkan gugatannya dengan mengisi blanko yang disediakan kepaniteraan pengadilan;
2. Pemeriksaan kelengkapan gugatan sederhana: panitera melakukan pemeriksaan syarat pendaftaran gugatan yang mana apabila tidak memenuhi syarat akan dikembalikan;
3. Penetapan hakim dan penunjukan panitera pengganti: ketua pengadilan menetapkan hakim untuk memeriksa gugatan sederhana dan panitera menunjuk panitera pengganti untuk membantu hakim;
4. Pemeriksaan pendahuluan: hakim memeriksa materi gugatan sederhana yang mana apabila hakim menilai bahwa gugatan tidak termasuk dalam gugatan sederhana maka hakim akan mengeluarkan penetapan gugatan bukan gugatan sederhana dan mencoret gugatan tersebut dari register perkara;
5. Penetapan hari sidang dan pemanggilan para pihak: setelah ditetapkan gugatan penggugat ialah gugatan sederhana maka hakim menetapkan hari sidang pertama dan memanggil para pihak;
6. Pemeriksaan sidang pertama dan perdamaian: hakim mengupayakan perdamaian dengan tetap memperhatikan jangka waktu penyelesaian gugatan sederhana selama 25 hari. Apabila tercapai perdamaian, hakim membuat putusan akta perdamaian yang mengikat para pihak. Apabila

tidak tercapai perdamaian, maka persidangan dilanjutkan dengan pembacaan surat gugatan dan jawaban tergugat;

7. Pembuktian: gugatan yang diakui dan/atau tidak dibantah, tidak perlu dilakukan pembuktian. Apabila gugatan dibantah oleh tergugat, maka hakim melakukan pemeriksaan pembuktian berdasarkan hukum acara perdata yaitu terdiri dari; (i) bukti surat/tulisan; (ii) bukti saksi; (iii) persangkaan; dan/atau (iv) sumpah; dan
8. Putusan: hakim membacakan putusan dalam sidang terbuka untuk umum dan memberitahukan hak para pihak untuk mengajukan keberatan.

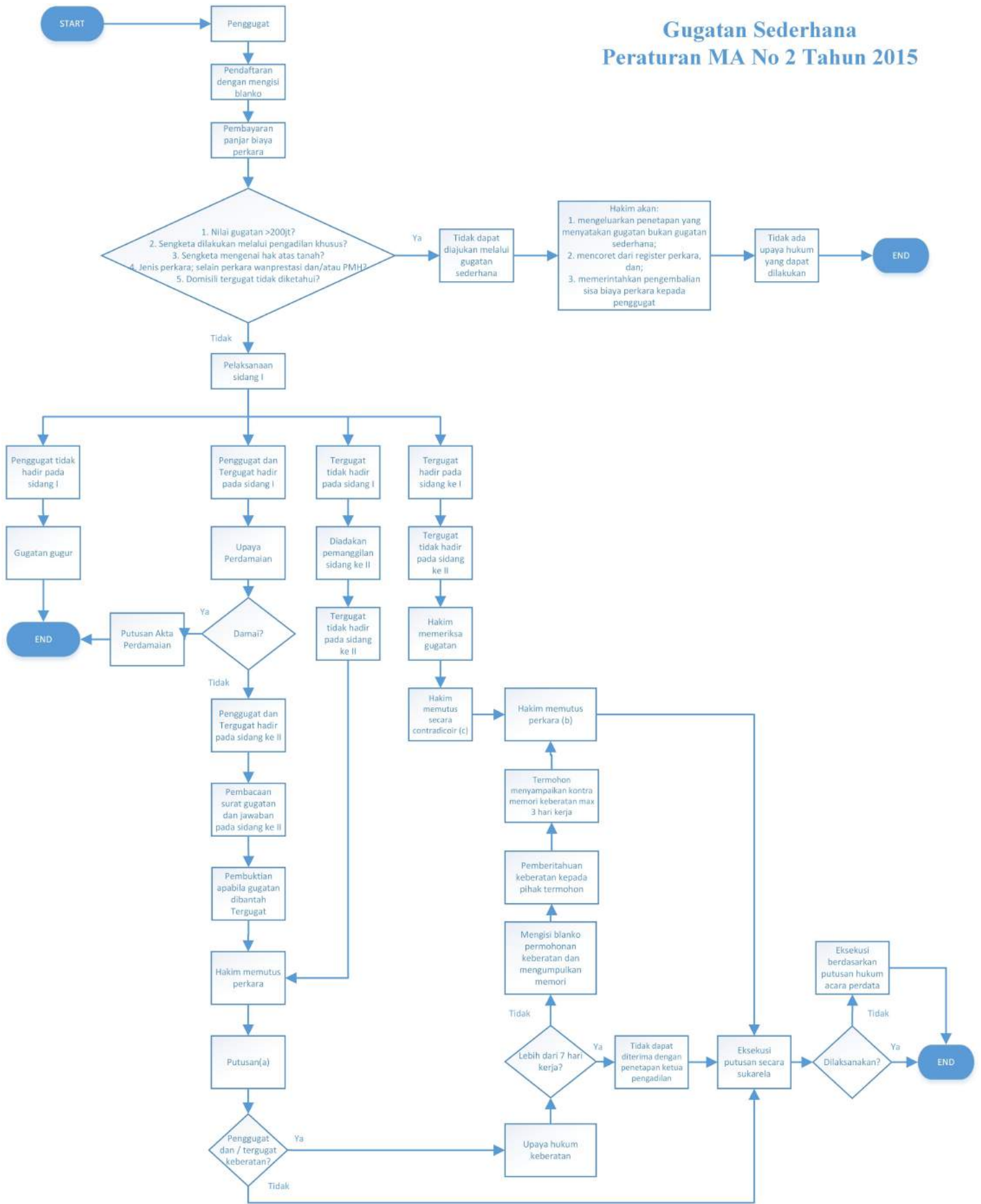
Upaya hukum yang dapat dilakukan dalam gugatan sederhana ini adalah keberatan yang diajukan paling lambat 7 hari kerja setelah putusan diucapkan atau setelah pemberitahuan putusan, yang mana setelah diputus atas permohonan keberatan tersebut tidak dapat dilakukan upaya hukum.

Putusan yang sudah berkekuatan hukum tetap dilaksanakan secara sukarela. Jika hal tersebut tidak dipatuhi oleh pihak yang kalah, maka putusan dilaksanakan berdasarkan ketentuan hukum acara perdata yang berlaku. Ketentuan hukum acara perdata tetap berlaku sepanjang tidak diatur secara khusus di dalam Perma ini.

Gugatan sederhana adalah sarana efektif dan efisien untuk perkara wanprestasi dan/atau perbuatan melawan hukum yang nilainya tidak lebih dari Rp 200 juta, sepanjang penggugat dan tergugat dapat hadir secara langsung di dalam setiap persidangan dan domisili hukum berada pada pengadilan yang sama. Perkara gugatan sederhana meliputi antara lain, perkara utang piutang, sewa menyewa antara pemberi sewa dan penyewa, jasa konstruksi antara penyedia jasa dan pengguna jasa, biaya pengelolaan, dana cadangan, asuransi kegagalan bangunan yang tidak dibayar antara P3SRS/badan pengelola dan penghuni/pemilik, dan lainnya.

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# Gugatan Sederhana Peraturan MA No 2 Tahun 2015



Note:  
 (a) Putusan harus diucapkan tidak lebih dari 25 hari kerja sejak sidang pertama dilakukan  
 (b) Paling lambat 7 hari kerja setelah penetapan majelis hakim  
 (c) Pemeriksaan gugatan dengan acara biasa



## Our Partners



**EDDY LEKS** is the founder and managing partner of Leks&Co. With a legal career in mind, he started his experience in the practice areas of general corporate/commercial and commercial dispute resolution. Afterwards, he joined Hadiputranto, Hadinoto & Partners (HHP), an affiliated law office of Baker & McKenzie. There he worked in the capital market, general corporate/commercial, taxation, foreign investment and customs division. He left HHP to join PT Lippo Karawaci Tbk, one of the largest property and real estate development and investment companies in Indonesia, where he rose to become a legal senior manager. His main responsibilities were to manage the company's general corporate/commercial issues, build-operate-transfer projects and acquisition of shares and assets for property projects. He was one of the company's youngest legal managers when he joined.

Eddy Leks specializes in real estate law, mergers acquisition and commercial dispute resolution. His writings have been published in many prominent publications locally and internationally, such as *Forbes Indonesia*, *Property&Bank*, *Kontan*, *LAWASIA Journal*, the International Bar Association Real Estate Newsletter, *Jurnal Hukum Bisnis*, *The Institutional Real Estate Letter – Asia Pasific*, and Indonesian chapter of *The Real Estate Review*, published by Law Business Research. He is also invited to speak at many events, locally and internationally, on real estate law, foreign investment, bankruptcy, lease agreement, and other law matters. He was involved as Chairman of Analysis and Evaluation of Laws on Public Housing, a program by National Legal Development Body, to provide input and report to be used by the government of Indonesia to rectify conflicting regulations and to facilitate housings for the low-income communities.

Eddy Leks is recommended by asialaw Profiles, Legal 500, Chambers and Partners in the field of real estate in Indonesia. He is also recommended on corporate and M&A by asialaw Profiles and Legal 500. The latter also recommends him on commercial dispute resolution. He was nominated as one of the finalist to receive BMW Award Managing Partner of the Year by ALB Indonesia Law Awards 2015. Further, he is also awarded as asialaw Leading Lawyer and Euromoney Expert Guides in the field of construction and real estate. He is identified as the first and the only Indonesian lawyer by Who's Who Legal 2014 in the field of real estate. Further, he is also awarded as mergers and acquisition lawyer of the year by Finance Monthly Global Awards 2014.

Eddy holds a certificate in international trade and finance (CITF). In additions, he holds two postgraduate degrees as masters of law from Universitas Gadjah Mada and University of London with a specialization on International Dispute Resolution.



**IVOR IGNASIO PASARIBU** is the partner of Leks&Co Law Firm. He graduated from the University of Atma Jaya Jakarta, Faculty of Law. He is recommended by Asialaw Profiles in the field of real estate, and Legal 500 in the field of merger and acquisition. He involves in a wide range of commercial litigation and arbitration, including civil litigation, fraud related to business transactions, commercial disputes, and bankruptcy related litigation. He also undertakes a broad range of real estate and property related transactions, as well general

corporate matters in Leks&Co.

Having a keen interest in intellectual property matters, he also focuses on intellectual property works and licensed as an Intellectual Property Consultant. Apart from his activities in the office, he taught as a visiting lecturer at Pelita Harapan University.

### **Counsel**



**IVAN ARI** has been practicing as a lawyer for more than 10 years. He began his law career by handling a wide range of cases in litigation, civil and/or criminal law. He initially joined Atma Nagara & Partners on his first professional lawyer as an associate where his main role was to resolve legal cases in the areas of criminal law, civil law, and corporate law.

He afterwards joined Hermanus Winarto & Rekan. Not long after that, he joined Leks&Co for more than 4 years. His responsibility is on commercial dispute resolution, including disputes on condominium association formation, land ownership, breach of contract. He was also involved on a criminal defense investigation. During his term in Leks&Co, he was also involved on several corporate matters, such as giving a legal opinion, writing and teaching on real estate law and business-related laws, and performing legal audit.

While still running his own practice, he rejoins Leks&Co assisting the firm as Counsel on any commercial dispute cases that the firm has from time to time.



**MARTHINE PANTOUW** has been practicing law since she graduated from Faculty of Law University of Indonesia in 2002. She started the first 7 (seven) years of her career working in Dermawan Nugroho & Co (later became DNC Law Firm), one of Indonesia's most leading firms where she handled many projects which include corporate commercial, litigations and disputes resolutions, as well as IPR enforcement. As a junior lawyer in the firm, she was entrusted to handle high profile litigation cases (some of them were named the biggest cases of the year by [hukumonline.com](http://hukumonline.com)). After completing her Dual Degree Master of Laws (LL.M) from New York University and National University of Singapore, she joined PT Lippo Karawaci Tbk, one of the leading property companies in Indonesia as Head of Litigation where she is in charge in solving disputes within the company's three main business units: project and development, healthcare, hospitality and leisure. While in hospitality and leisure unit which known as Aryaduta Group, she is the key role for any legal matters arising within the unit including but not limited to general corporate matters as well as any dispute resolution and intellectual property issues. Prior to returning back to private practice, she was entrusted as Senior Corporate Counsel for South East Asia in Schneider Electric, one of the biggest energy management multi-national companies where she was in charge mostly in its manufacturing sector, foreign investment, IPR enforcement, construction-related contracts as well as mergers and acquisition. Currently, returning back to private practice, she has been advising and assisting many multi-national and local companies as well as technology start-ups in foreign investment, litigation and arbitration, mergers and acquisition and other commercial matters. In her free time, she is assisting some orphanages in legal matters pro bono.