

Letters of Demand in Civil Disputes: Comparative Jurisprudence Between Indonesia and Malaysia

Sonyendah Retnaningsih¹, Muhammad Rizqi Alfarizi Ramadhan^{2*}

¹Faculty of Law, University of Indonesia, Depok

²Faculty of Law, Universiti Malaya, Malaysia

sony.endah@ui.ac.id; ade.retno.1993@gmail.com; S2178493@siswa.um.edu.my;

muhammad.rizqi@stih-adhyaksa.ac.id

*Corresponding author

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Abstract : *A letter of demand (sommatie) is a formal interpellation addressing a party's non-performance. In Indonesia, a significant juridical paradox exists: while Article 1238 of the Civil Code mandates a formal warrant, Supreme Court Decision No. 117 K/SIP/1956 renders it discretionary, often resulting in premature litigation. Conversely, Malaysian jurisprudence formalizes the Letter of Demand (LOD) as a mandatory pre-action protocol and a material manifestation of bona fides. Utilizing a doctrinal and qualitative methodology, this study evaluates the functional role of these instruments within both jurisdictions. The results indicate that the discretionary nature of the Indonesian sommatie undermines judicial efficiency. To strengthen scholarly contribution, this study proposes a procedural harmonization model advocating for mandatory pre-action protocols in Indonesia. This paradigm shift reinterprets the sommatie as a vital Alternative Dispute Resolution (ADR) instrument rather than a mere procedural trigger, effectively filtering out unnecessary litigation and upholding the principle of swift, simple, and cost-effective justice.*

Keywords : *letter of demand; jurisprudence; juridical considerations.*

Abstrak : Somasi (sommatie) merupakan bentuk teguran resmi atas kelalaian pemenuhan prestasi. Di Indonesia, terdapat paradoks yuridis yang signifikan: meskipun Pasal 1238 KUHPerdara mensyaratkan somasi, Putusan Mahkamah Agung No. 117 K/SIP/1956 menjadikannya opsional, yang berdampak pada maraknya litigasi prematur. Sebaliknya, yurisprudensi Malaysia memformalkan Letter of Demand (LOD) sebagai protokol pra-litigasi wajib dan manifestasi nyata iktikad baik (bona fides). Dengan metode doktrinal-kualitatif, penelitian ini mengevaluasi peran fungsional kedua instrumen tersebut dalam yurisprudensi kedua negara. Temuan menunjukkan bahwa sifat diskresioner somasi di Indonesia menghambat efisiensi peradilan. Sebagai kontribusi kebaruan, studi ini mengusulkan model harmonisasi prosedural yang merekomendasikan penerapan protokol pra-litigasi



wajib di Indonesia. Pergeseran paradigma ini bertujuan mereinterpretasi somasi sebagai instrumen penting Alternatif Penyelesaian Sengketa (APS), bukan sekadar pemicu prosedural wanprestasi, guna menyaring litigasi yang tidak perlu serta mewujudkan asas peradilan yang cepat, sederhana, dan biaya ringan.

Kata kunci : Somasi, yurisprudensi, dan pertimbangan hukum.

Introduction

A letter of demand, or *sommatie* in the civil law tradition, is a formal interpellation from a creditor to a debtor, mandating fulfilment of an obligation within a specific timeframe.¹ Beyond its function as a procedural admonition, this instrument serves as a material manifestation of the plaintiff's bona fides (good faith) in seeking a non-litigious resolution before invoking the state's judicial power.² This is inherently aligned with the principle of "swift, simple, and cost-effective justice," a cornerstone of modern civil procedure in both Indonesia and Malaysia.³

In the Indonesian legal framework, the requirement for a warning letter is rooted in Article 1238 of the Civil Code (KUHPerdata), which stipulates that a debtor is declared in default through a formal warrant or similar deed.⁴ However, a significant juridical paradox exists within Indonesian jurisprudence. While the code suggests the necessity of a *sommatie*, landmark Supreme Court decisions, such as Decision No. 117 K/SIP/1956 and No. 852/K/Sip/1972, have consistently ruled that the filing of a lawsuit itself can be judicially equated with a formal demand, rendering a prior subpoena discretionary. This inconsistency often leads to "premature litigation," in which disputes are brought to court without exhausting amicable settlement efforts, thereby contributing to significant case backlogs in the Indonesian judiciary.⁵

In stark contrast, the Malaysian legal system, rooted in the Common Law tradition, has increasingly formalised the role of the Letter of Demand (LOD) through pre-action protocols.⁶ Under the Rules of Court 2012, specifically Order 34 Rule 2(1), Malaysian judges possess the discretion to assess pre-litigation efforts, including the issuance of an LOD, to determine the parties' conduct and potential cost orders. Furthermore, the Legal Profession Act 1976 underscores the issuance of an LOD as a legitimate legal action reserved for qualified advocates and solicitors, ensuring the integrity of the pre-litigation process. Unlike the discretionary nature of the LOD in Indonesia, the LOD in

¹ Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) [KUHPerdata], art. 1238.

² Mariam Darus Badruzaman, *Hukum Perikatan dalam KUH Perdata Buku Ketiga: Yurisprudensi, Doktrin Serta Penjelasan* (Deepublish Digital, 2023)

³ The Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, art. 2 para. (4).

⁴ Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) [KUHPerdata], art. 1238

⁵ Supreme Court of the Republic of Indonesia, Decision No. 117 K/Sip/1956; Supreme Court of the Republic of Indonesia, Decision No. 852/K/Sip/1972.

⁶ Sharul Mizan Ismail, Vinoshen A/L Raveentharan, and Daarshini A/P S. Murgan, "Procedures of Commencing a Civil Suit: A Comparative Analysis Between Malaysia and India," *Malaysian Journal of Law and Society* 31, no. 1 (2022): 138-148

Malaysia is treated as a material evidentiary tool that establishes a prima facie case of breach and reflects the principles of procedural fairness.⁷

Sociologically, Indonesian and Malaysian societies share profound similarities in social structure and legal culture, deeply rooted in the principles of deliberation, peace, and substantive justice.⁸ From the perspective of legal culture, both jurisdictions prioritise harmonious settlement over adversarial confrontation. Malaysia has a formalised and culturally integrated tradition of peaceful resolution known as Court-Annexed Mediation, which shares strong philosophical parallels with the deliberative consensus approach (*musyawarah untuk mufakat*) inherent in Indonesian customary law.⁹ Both legal systems emphasise the doctrine of good faith (*bona fides*) in civil relations. Consequently, they view the issuance of a letter of demand (LOD) not as an aggressive legal threat but as a crucial procedural mechanism to maintain the integrity of contractual relationships and to exhaust alternative dispute resolution avenues before resorting to litigation.¹⁰

Despite these shared sociological values, there is a clear procedural dichotomy in how these values are translated into civil law practice. Previous studies have largely focused on the internal mechanisms of each jurisdiction without exploring the potential for cross-border procedural harmonisation. This research gap is critical, as Indonesia seeks to modernise its civil procedure to improve judicial efficiency. Therefore, this study aims to evaluate the functional role of the letter of demand within the comparative jurisprudence of Indonesia and Malaysia. By analysing landmark rulings and legislative frameworks, this research proposes a procedural harmonisation model for Indonesia, advocating for the mandatory integration of pre-action protocols to foster alternative dispute resolution (ADR) and mitigate the burden of unnecessary litigation.

Methods

This comparative study of the Indonesian and Malaysian legal systems employs a normative-juridical, doctrinal approach.¹¹ This approach emphasises the study of primary legal materials, such as the Indonesian Civil Code, the Contracts Act 1950, the Legal Profession Act 1976, and the Rules of Court 2012 Malaysia, as well as secondary legal materials, such as scholarly journal articles, textbooks, and jurisprudence.¹² The analysis is conducted qualitatively by outlining legal principles and the application of the letter of demand within civil procedural law practice, as well as assessing the

⁷ Rules of Court 2012 [P.U. (A) 205/2012], Order 34, r. 2(1) (Malay.); Legal Profession Act 1976 [Act 166], s. 36(1)(a) (Malay.).

⁸ A. S. Wicaksono and S. Azam, "Comparative Analysis of Undue Influence as a Basis for Contract Annulment: Comparison Indonesia and Malaysia," *Arena Hukum* 18, no. 1 (2025): 15-30.

⁹ N. A. M. Amin, et al., "Court-Annexed Mediation as Civil Case Management: The Malaysian Model," *International Journal of Research and Innovation in Social Science* 9, no. 3 (2025): 208-216.

¹⁰ S. R. A. Rozaid and A. B. A. Hamid, "Good Faith in Contract Law: The Malaysian Perspective," *Journal of Malaysian and Comparative Law* 52, no. 1 (2025): 45-62.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2017): 58.

¹² Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia, 2012): 73.

similarities and differences in the position of the letter of demand between the Indonesian civil law system and the Malaysian hybrid common law system.¹³ This research also employs a literature review method, examining credible sources to strengthen the validity of the data and legal interpretation.

Result And Discussion

Regulation of the Letter of Demand in Civil Disputes According to the Civil Code

A letter of demand functions as a formal admonition, granting the potential defendant a remedial window to perform or cease a specific action as requested by the plaintiff. It serves as an effective mechanism for pre-litigatory settlement. It can be issued by an individual or collectively, either by a legal representative or the aggrieved party who is a potential plaintiff.¹⁴ If the warning is ignored, the aggrieved party may take further legal action, such as filing a lawsuit. The meaning of "letter of demand" is a reprimand. Somatie or legal notice is a warning to the prospective defendant. The purpose of a legal notice is to allow the warned party to fulfil the demands or cease the infringing actions before the dispute is taken to legal proceedings.¹⁵

According to Mariam Darus Badruzaman, a statement of default or letter of demand is a legal process in which the creditor informs, reprimands, and warns the debtor, at the latest by the time they are obliged to fulfil their obligations. If that time is exceeded, then the debtor is in default.¹⁶ A letter of demand is an official notification of an alleged violation or dissatisfaction and serves as an effective initial step in resolving civil disputes. By sending a letter of demand, the aggrieved party allows the other party to correct the mistake before proceeding to legal action. Consequently, the issuance of a letter of demand facilitates dispute de-escalation, promoting procedural efficiency by reducing time, effort, and judicial costs.¹⁷

The legal basis for a warning letter refers to the provisions of Article 1238 of the Civil Code, which states that:

"The debtor is declared in default by an order, or by a similar act, or based on the strength of the obligation itself, namely when this obligation results in the debtor being considered in default after the specified time has elapsed." The article indicates that a warning is necessary to alert the party deemed negligent or in breach of contract to the procedural prerequisites before the initiation of a litigious action.

¹³ H. F. Pratonggopati, R. Mantili, dan Efa Laela Fakhriah, "Kepastian Hukum dalam Penggabungan Dasar Gugatan Wanprestasi dan Perbuatan Melawan Hukum," *Acta Diurnal Jurnal Hukum Unpad*, Vol. 7, No. 1, (2023): 5

¹⁴ Kabupaten Aceh Timur, "Somasi: Pengertian, Dasar Hukum, Dan Cara Membuatnya," accessed October 20, 2025, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://jdih.acehtimurkab.go.id/dih/view/eb8ce64d-132c-430e-8774-347e29cca305](https://jdih.acehtimurkab.go.id/dih/view/eb8ce64d-132c-430e-8774-347e29cca305).

¹⁵ Jonaedi Efendi, *Kamus Istilah Hukum Populer*, (Jakarta: Prenadamedia Group, 2016): 372.

¹⁶ Mariam Darus Badruzaman, *Hukum Perikatan Dalam KUH Perdata Buku Ketiga Yurisprudensi, Doktrin Serta Penjelasan*, (Yogyakarta: Deepublish Digital, 2023): 23.

¹⁷ Daniel Fransisco Rossi dan Martono Anggusti, *Peranan Somasi Sebagai Upaya Penanganan Perkara Tender*, (2025): 703-708.

According to Article 1238 of the Civil Code, there are three (3) possible forms for a somatie:

1. Summons: a letter issued by a judge as a form of summons.
2. Similar deed: a deed made by a notary or an original deed with characteristics similar to exploitation or asset seizure;
3. Under its obligation, the agreement between the parties is made at the time of the contract; for instance, failure to perform within the prescribed timeframe is characterised as a breach of duty, automatically invoking the party's accountability.

Based on the provisions of Article 1238 of the Civil Code, the debtor's breach of obligation is bifurcated into two primary circumstances, comprising:¹⁸

1. Issuance of Official Letter of Demand

In the context of civil law, particularly in cases of default, the issuance of a letter of demand is one of the important conditions to declare that the debtor has committed negligence. A letter of demand, or official order/reprimand letter, is a written notice from the creditor to the debtor that serves as a reminder to fulfil their obligations under the agreement promptly. The existence of this warning serves as concrete evidence that the creditor has acted in good faith and has taken initial steps to resolve the dispute amicably before bringing the matter to formal legal proceedings. This warning letter has legal force because it can serve as evidence that the creditor has given the debtor a fair and reasonable opportunity to fulfil their obligations. The issuance of a letter of demand reflects the principle of prudence and the intention to avoid greater conflicts. Thus, if, after the given deadline, the debtor still fails to fulfil their obligations, the creditor has a strong basis to declare that a default has occurred. The issuance of a letter of demand (somasi in Indonesia) serves as a critical instrument in upholding procedural fairness; it ensures the debtor is explicitly apprised of their delinquent obligations, thereby providing a remedial window before the escalation of legal proceedings.

2. Binding Force of Clauses in Agreements (Independent Obligation Force)

Not all forms of default require a warning as a condition to declare negligence. In some agreements, the performance or obligation that must be fulfilled has clearly specified deadlines or due dates. In such conditions, if the debtor fails to fulfil their obligations within the agreed-upon timeframe, the act can automatically be classified as default. In other words, the debtor's negligence no longer requires an additional warning in the form of a formal notice, because the binding force of the obligation contained in the contract is sufficient as a legal basis. The clause that explicitly states the deadline in the contract creates a direct and binding responsibility. This is in accordance with the principle of *pacta sunt servanda*, which states that every agreement made in accordance with the law is binding as law for the parties who make it. Therefore, a violation of the time provisions in the agreement

¹⁸ Mustofa, Abib, and Triasih, *Penyelesaian Sengketa Wanprestasi*, 392-393.

constitutes a violation of the law itself. In practice, the strength of this obligation provides a solid foundation for creditors to take legal action immediately if performance is not fulfilled on time, without having to serve a legal notice.

In a fiduciary guaranty dispute, the creditor (fiduciary giver) issues a warning letter or summons to the debtor (fiduciary receiver) who has breached the agreement, to fulfil their obligations under the agreement. A warning letter or notice of default is given to the debtor a maximum of 3 (three) times for breaches of the agreement. The compensation the debtor must provide can be enforced if the debtor has been given notice or a letter of demand by the creditor, as stipulated in Article 1243 of the Civil Code. If there is a breach of contract or default, compensation can be claimed from the debtor after the debtor receives it from the creditor. The issuance of a letter of demand is a procedural necessity to formally apprise the fiduciary debtor of their outstanding liabilities, thereby compelling the fulfilment of debt obligations.¹⁹

The strategic utility of a letter of demand in civil encompasses:²⁰

1. Fulfilment of obligations

A letter of demand is issued to the party to be sued, requiring them to immediately fulfil their obligations. This can encourage voluntary fulfilment of obligations before the matter proceeds to legal proceedings.

2. Warning of actions

A letter of demand can also provide notice or an order to the party being sued to cease an action deemed to violate others' rights. This allows the aggrieved party to assert that the action is unacceptable and request its cessation.

3. Seeking Solutions

The letter of demand functions as a catalyst for alternative, compelling the defaulting party to propose remedial measures or cease specific conduct. This mechanism frequently initiates substantive negotiations, facilitating a mutually agreeable settlement without necessitating litigious escalation.

4. Alternative resolution

A letter of demand can serve as an alternative before the dispute is formally submitted to the court. In some cases, it can help reach an agreement and resolve the dispute more quickly and at a lower cost

¹⁹ Arifatul Uyun dan Abdul Mujih, "Penyelesaian Sengketa Jaminan Fidusia Dalam Praktek Gadai," *Al'Adl: Jurnal Hukum*, Vol. 14 No. 2, July (2022): 294-295.

²⁰ Info Hukum, "Pengertian Somasi, Dasar Hukum, Bentuk, Cara Dan Manfaatnya," accessed October 20, 2025 <https://fahum.umsu.ac.id/info/pengertian-somasi-dasar-hukum-bentuk-cara-dan-manfaatnya/>

compared to involving the formal judicial process. According to Richard Eddy, a letter of demand needs to be issued in cases where:²¹

- a. The creditor demands compensation from the debtor.
- b. The debtor mistakenly performed the obligation in good faith.
- c. The obligation was not fulfilled on time. Here, the debtor is actually still willing to fulfil the obligation, but is just late in doing so.

The structural validity of a letter of demand is contingent upon three essential components:²²

- 1) The subject matter of the demand
- 2) The basis of the demand, and
- 3) The time frame for fulfilling the demand.

While no formal constraints govern the drafting of a letter of demand, its effectiveness depends on the precise identification of the recipient, the legal grievances, and the specific remedial demands. The procedural steps for its formulation include:²³

- a) Write the letterhead of the institution, if using an agency.
- b) Clearly explain the identity of the intended defendant, whether an individual or an institution.
- c) Accurately write the points and the issues at hand, as well as the demands being made.
- d) Determine the further legal actions that will be taken against the prospective defendant if they fail to fulfil the demanded performance.
- e) Provide a clear signature and name. Sign and write your name clearly.

In a letter of demand, there are several items to consider, including:²⁴

- (1) Provide the background of the issue in the letter of demand

In the letter of demand, explain the problem and supporting facts that led you to send the warning letter to the prospective defendant. This fact is very important to convey. Because if the letter of demand is made solely based on opinion or conjecture, then the demand becomes very easy to refute.

- (2) A letter of demand shall state an order or reprimand

A letter of demand states an order or reprimand to the prospective defendant, for example, to fulfil their obligations in the agreement, request compensation, or terminate the agreement between both parties. This is very important because a letter that does not contain an order or reprimand is not a warning letter.

- (3) The request in the letter of demand must be clear.

²¹ Richard Eddy, *Aspek Legal Properti: Teori, Contoh, Dan Aplikasi*, (Yogyakarta: Penerbit Andi, 2010): 116.

²² *Ibid.*

²³ Jonaedi Efendi, *Kamus Istilah Hukum*.

²⁴ *Ibid.*

Every request we make in a letter of demand shall be based on the contents of the agreement and with valid reasons, so as not to cause problems in the future. This is very important to pay attention to, because it is not uncommon for the party sending the warning to be counter-sued in court.

(4) Provide room for negotiation.

In essence, a letter of demand is sent as a reminder to the negligent party to promptly fulfil their obligations under the agreement, not merely to file a lawsuit. For that reason, it would be advisable to open a negotiation space with the prospective defendant to resolve the issue effectively and efficiently, resulting in a win-win solution for both parties.

(5) Provide the background of the issue in the letter of demand.

In the letter of demand, explain the problem and supporting facts that led you to send the letter of demand to the prospective defendant. This fact is very important to convey. Because if the letter of demand is made solely based on opinion or conjecture, then the letter of demand becomes very easy to refute.

(6) The letter of demand shall state an order or reprimand.

The letter of demand must include a formal directive or admonition to the prospective defendant, such as a demand for contractual performance, a claim for damages, or a request to rescind the agreement. The inclusion of such an imperative is foundational; a notice lacking a remedial order fails to qualify as a legally binding letter of demand.

Post-delivery, the sender must secure proof of service or a delivery receipt to establish documentary evidence of the plaintiff's bona fides. This step confirms the exhaustion of non-litigious remedies, a procedural prerequisite before invoking judicial intervention.²⁵

The Position of the Letter of Demand in Civil Disputes According to Jurisprudence in Indonesia and Its Comparison with Malaysia

1. The Position of a Letter of Demand in Civil Disputes According to Jurisprudence in Indonesia

In Indonesian civil law, the legal standing of a letter of demand is anchored in Article 1248 of the Civil Code, which stipulates that a debtor is formally declared in default (in *verzuim*) through a letter of demand, an equivalent legal instrument, or by virtue of the inherent nature of the obligation.²⁶ A letter of demand has legal value as a formal requirement to declare default, because without a letter of demand, a lawsuit is considered premature and can be

²⁵ Bernadetha Aurelia Oktavira, "Somasi: Pengertian, dasar Hukum, Dan Cara Membuatnya", accessed October 20, 2025 <https://www.hukumonline.com/klinik/a/cara-membuat-somasi-1t616807e4d69a1/>.

²⁶ The Republic of Indonesia, Civil Code, Article 1248.

declared inadmissible (niet ontvankelijk verklaard).²⁷ In Supreme Court Decision No. 2759 K/Pdt/2008, the panel of judges emphasised that a letter of demand is a legal step that must be taken before a lawsuit is filed, because without a formal warning, it cannot be proven that the debtor is truly negligent.²⁸ The latest ruling from the Kudus District Court Number 59/Pdt.G/2023/PN Kds reinforces this principle.

In this instance, the plaintiff's issuance of a formal demand regarding payment delinquency was central to the judicial consideration.²⁹ The panel of judges ruled that such action demonstrated the principle of good faith (*bona fides*), establishing the letter as conclusive evidence of the defendant's default after the demand was ignored.³⁰ The judge also emphasised that the letter of demand is a valid requirement for filing a breach-of-contract lawsuit and serves as evidence that the plaintiff has made an effort to resolve the dispute amicably before filing the lawsuit.³¹ This decision aligns with the doctrine put forward by Mariam Darus Badruzaman, which holds that a letter of demand is a "bridge between contractual relations and legal proceedings," as it shifts the debtor's position from non-defaulting to defaulting in the eyes of the law.³²

Furthermore, in the Supreme Court of the Republic of Indonesia's Decision No. 281 K/Sip/1971 and Decision No. 3229 K/Pdt/2010, the judges held that a letter of demand constitutes evidence of a legally valid official communication between the parties and may serve as a basis for assessing good faith. Research by Mustofa, Abib, and Triasih (2025) in the Semarang Law Review also explains that a letter of demand plays an important role in strengthening the legal position of creditors, especially when used as a basis for mediation or litigation processes.³³

The legal principle of the Supreme Court of the Republic of Indonesia Decision Number 852 K/Sip/1972, adjudicated by the Supreme Court Justices Prof. R. Soebekti, S.H. (Chairman), accompanied by D.H. Lumbanradja, S.H., and Sti Widodojati Wiratmo Soekito, S.H., emphasises that a legal notice via a court bailiff is rendered superfluous when a peremptory deadline triggers an automatic default.³⁴ Likewise, the Supreme Court of the Republic of Indonesia Decision Number 117 K/Sip/1956, adjudicated by the Supreme Court Justices with Chief Justice Mr R. Wirjono Prodjodikoro, along with Associate Justices Sutan Kali Malikul Adil, S.H., and Mr M.H. Tirtaamidjaja, affirmed that a lawsuit notification to the defendant can be considered as a letter of demand or *Somasi*.³⁵

Given that these landmark jurisprudences serve as the authoritative reference for the judiciary, it is established that the Supreme Court of the Republic of

²⁷ Supreme Court of the Republic of Indonesia, Decision Number 2759 K/Pdt/2008.

²⁸ ———, Decision Number 1751 K/Pdt/2015.

²⁹ Pengadilan Negeri Kudus, Putusan Nomor 59/Pdt.G/2023/PN Kds.

³⁰ *Ibid.*

³¹ *Ibid.*

³² Badruzaman, *Hukum Perikatan*, 142.

³³ Mustofa, Abib, dan Triasih, *Penyelesaian Sengketa Wanprestasi*, 394.

³⁴ Adji Prakoso, "Yurisprudensi MA RI: Bentuk Somasi dan Kedudukannya dalam Gugatan Perdata", 2025, diterbitkan dalam MARI News, accessed October 28, 2025 <https://marinews.mahkamahagung.go.id/putusan/bentuk-somasi-dan-kedudukannya-dalam-gugatan-perdata-0ud>.

³⁵ *Ibid.*

Indonesia maintains a consistent stance: a letter of demand is not a formal prerequisite for filing a lawsuit. Consequently, the absence of such a notice does not render a claim premature or inadmissible (niet ontvankelijk verklaard). This is also in line with HIR and Rbg, the civil procedural laws in Indonesia, which similarly do not treat a letter of demand as a formal requirement for filing a lawsuit in Indonesia.

Therefore, while landmark jurisprudence such as the Supreme Court Decision Number 117 K/Sip/1956 establishes that a prior letter of demand is not an absolute formal prerequisite for filing a lawsuit, this study argues for a pressing need to reinterpret the concept of *sommatie* within modern Indonesian civil law.³⁶ Instead of viewing it narrowly through the lens of Article 1238 of the Civil Code, merely as a procedural trigger to declare a debtor in default, *sommatie* must be reinterpreted as a fundamental manifestation of the plaintiff's *bona fides* (good faith).³⁷ By shifting the paradigm from a dispensable procedural formality to an essential evidentiary tool,³⁸ the judiciary can better assess a party's genuine efforts to uphold contractual integrity and mitigate conflict, rather than unnecessarily burdening the court system.

2. The Position of the Letter of Demand in Civil Disputes According to Jurisprudence in Malaysia

In the Malaysian legal system, a subpoena, also known as a Letter of Demand (LOD), is a formal pre-litigation letter issued by a lawyer or attorney to the opposing party (debtor) to demand payment of a debt, fulfilment of a contract, or performance in the event of a breach, before the matter is brought to court.³⁹ This letter serves as a formal notice and is part of the pre-action protocol practice in Malaysian civil procedure law.⁴⁰ In the Malaysian legal system, LOD, or a letter of demand, is not explicitly regulated by a single law. Still, its legal standing is based on Section 36 (1) (a) of the Legal Profession Act 1976, which states that advocates or lawyers can issue a letter of demand or LOD as a legitimate legal action.⁴¹ This explains that the status of a letter of demand (LOD) is as evidence of formal communication (formal notice) and demonstrates good faith on the part of the plaintiff (creditor).⁴²

The Malaysian Bar Council, the Malaysian lawyers' organisation, through Ruling 14.03, stipulates that only legitimate law firms are authorised to issue LODs or letters of demand, not individuals or unauthorised lawyers or legal consultants. This provision affirms the integrity of the legal profession while

³⁶ Supreme Court of The Republic of Indonesia. Decision Number 117 K/Sip/1956

³⁷ The Republic of Indonesia. Kitab Undang-Undang Hukum Perdata. Staatsblad Tahun 1847 No. 23.

³⁸ Badruzaman, Mariam Darus. *Hukum Perikatan dalam KUH Perdata Buku Ketiga: Yurisprudensi, Doktrin Serta Penjelasan*. Deepublish Digital, 2023

³⁹ Wen Jie & Co., *Letter of Demand Malaysia*, 2023. Supreme Court of The Republic of Indonesia. Decision Number 117 K/Sip/1956.

⁴⁰ NSW Lam, "Malaysian Law: Letter of Deman Explained," NSW Lam Advocates, 2022, accessed October 28, 2025, <https://www.nswlam.com/blog/malaysian-law-letter-of-demand>.

⁴¹ Wen Jie & Co., "Letter of Demand Malaysia", 2023.

⁴² NSW Lam, *Malaysian Law: Letter of Deman Explained*, 2022.

simultaneously protecting the public from unlawful legal practices.⁴³ The Malaysian courts also consistently recognise the LOD, or letter of demand, as an important piece of evidence in efforts to resolve non-litigation disputes before the court process begins.⁴⁴

a. Legal Basis and Legislative Framework Underpinning the Letter of Demand

The position of a letter of demand (LoD) is not explicitly regulated in a single law. Still, its position is governed by various legislative regulations in Malaysia, such as the Contracts Act 1950, Sections 74-76, which emphasise the obligation of the party in breach to provide compensation upon notification of the breach.⁴⁵ Furthermore, the Evidence Act 1950, Sections 3, 63, and 90A, stipulates that written documents or electronic communications, including LODs, can be accepted as legal evidence in court to prove the existence of a breach and the good faith or lack thereof of the defendant (debtor).⁴⁶

The provisions of LOD are also regulated in the Defamation Act 1957, which stipulates that LOD or a letter of demand is a mandatory step before filing a lawsuit in defamation or slander cases in court, where the plaintiff must be able to prove that they have allowed the defendant to retract or correct their statement.⁴⁷ Lastly, the LOD or letter of demand is also regulated in the Rules of Court 2012 as the civil procedure law of Malaysia, specifically in Order 34 Rule 2(1), which provides the judge with the discretion to consider pre-litigation or pre-suit actions such as the LOD or letter of demand in assessing the efforts made by the plaintiff to resolve the matter amicably with the defendant before the case is brought to court.⁴⁸

b. Malaysian Jurisprudence Affirming the Position of Letter of Demand (LOD)

Several Malaysian court rulings have affirmed the role and position of the Letter of Demand (LOD) as an important piece of evidence in civil cases:

- 1) Case: Syarikat Perumahan Negara Berhad v. Lee Tian Hock [2009] 6 MLJ 759 (High Court, Kuala Lumpur)

The court emphasised that the Letter of Demand (LOD) signifies a valid formal communication between the creditor (plaintiff) and the debtor (defendant) before a lawsuit is filed in court. The judge also assessed that the existence of the LOD indicates the good faith of the creditor or

⁴³ The Federation of Malaysia, Legal Profession Act 1976, Section 36(1)(a), Attorney General's Chamber of Malaysia, accessed October 28, 2025, <https://www.agc.gov.my/>.

⁴⁴ Malaysian Bar Council, "Ruling 14.03: Not to Issue Letter of Demand Except Through Law Firm", 2025, accessed October 28, 2025, https://www.malaysianbar.org.my/bc_rulings/14.03_not_to_issue_letter_of_demand_except_through_law_firm.html#:~:text=An%20Advocate%20and%20Solicitor%20is,through%20his%20Fher%20law%20firm.

⁴⁴ JYKO Law, "Letter of Demand (LOD) in Malaysia – A Comprehensive Overview", JYKO Law Firm, 2023, accessed October 28, 2025, <https://jykolaw.com/letter-of-demand-lod-in-malaysia-a-comprehensive-overview/>.

⁴⁵ The Federation of Malaysia, Contract Act 1950, Section 74-76.

⁴⁶ _____, Evidence Act 1950, Section 3, 63, and 90A.

⁴⁷ _____, Defamation Act 1957.

⁴⁸ _____, Rules of Court 2012, Order 34 Rule 2(1).

plaintiff, that there has been a default by the debtor or defendant, and that the debtor has been negligent and shown a lack of good faith if they continue to ignore the Letter of Demand (LOD) submitted by the plaintiff (creditor). This also "proves the plaintiff's efforts to assert their rights peacefully before initiating legal action by filing a lawsuit in court."⁴⁹

- 2) Case: Lembaga Tabung Angkatan Tentera v. KCSB Konsortium Sdn Bhd [2016] 3 CLJ 481 (Court of Appeal)

The Court of Appeal emphasised that the defendant's failure to respond to the Letter of Demand (LOD) or a letter of demand can be interpreted as an implicit admission of breach of contract. In this case, the plaintiff used the Letter of Demand (LOD) as evidence to show that the defendant had a clear payment obligation under the applicable agreement, which the defendant had not fulfilled.⁵⁰

- 3) Case: Giga Shipping Sdn Bhd v. Yeo Ah Teck [2014] MLJU 832 (High Court Johor Bahru)

The High Court held that a letter of demand functions as prima facie evidence of a breach of contract, as it demonstrates an effort to resolve the matter without litigation and contains a demand for payment or performance before a lawsuit is filed in court.⁵¹

- 4) Case: Ng Hee Thong v. Public Bank Berhad [2017] MLJU 654 (Court of Appeal)

The Court of Appeal (Mahkamah Rayuan) decided that failing to respond to a Letter of Demand (LOD) can affect the court's (judges' panel) assessment of costs, with the judge being able to order the defendant to bear additional costs for failing to respond to the demand letter.⁵²

The above Malaysian jurisprudence consistently places the letter of demand as a non-coercive legal document, yet it holds strong probative value in assessing intent, obligation, and procedural fairness.

c. Role, Function, and Impact of the Letter of Demand (LOD) in Lawsuits and Evidence

Functionally, a letter of demand serves as a formal remedial opportunity, allowing the debtor to rectify non-performance (*wanprestasi*) and mitigate litigation as a pre-trial prerequisite.⁵³ Second, as valid legal evidence under the Evidence Act 1950, it can be submitted in court to show that the debtor has

⁴⁹ High Court Kuala Lumpur, The Federation of Malaysia, Syarikat Perumahan Negara Berhad v. Lee Tian Hock [2009] 6 MLJ 759.

⁵⁰ Court of Appeal, The Federation of Malaysia, Lembaga Tabung Angkatan Tentera v. KCSB Konsortium Sdn Bhd [2016] 3 CLJ 481.

⁵¹ High Court Johor Bahru, The Federation of Malaysia, Giga Shipping Sdn Bhd v. Yeo Ah Teck [2014] MLJU 832.

⁵² Court of Appeal, The Federation of Malaysia, Ng Hee Thong v. Public Bank Berhad [2017] MLJU 654

⁵³ The Federation of Malaysia, Rules of Court 2012, Order 38 Rule 14-19.

breached the contract or committed negligence.⁵⁴ Third, as an indicator of the plaintiff's good faith, which can influence the court's decision regarding the cost order.⁵⁵

In litigation practice, a Letter of Demand (LOD) is usually attached to the Statement of Claim or Supporting Affidavit. It serves as evidence that the plaintiff has made a good-faith effort to resolve the dispute before proceeding with legal action by filing a lawsuit.⁵⁶ If the defendant does not respond to the letter, it can be used as evidence of repudiation or refusal of obligation under Section 39 of the Contracts Act 1950.⁵⁷

Juridical Rationale for the Issuance of a Letter of Demand (LOD):

- a) To formally reprimand the party in breach of contract for violating the terms of the agreement, as a notice of breach before filing a lawsuit.
- b) To stop ongoing violations, such as in cases of defamation or trademark infringement.⁵⁸
- c) To document the good faith of the plaintiff or debtor before filing a lawsuit.⁵⁹
- d) To encourage the peaceful resolution of disputes, in accordance with the principle of Order 34 Rule 2(1) Rules of Court 2012.⁶⁰

Building on the principle of encouraging peaceful dispute resolution, the Letter of Demand must be recognised not merely as a precursor to litigation or a formal legal threat, but also as a critical instrument within alternative dispute resolution (ADR) mechanisms. In both the Indonesian and Malaysian contexts, the LOD serves as a structured catalyst for negotiation and mediation, echoing the customary values of *musyawarah* (deliberation) in Indonesia and *sulh* (amicable settlement) in Malaysia.⁶¹ By mandating a specific time frame for remedial action and opening a formal window for out-of-court settlements, the LOD directly supports the principles of swift, simple, and cost-effective justice, preventing unnecessary escalation of disputes before judicial intervention is invoked.

A valid Letter of Demand (LOD) usually contains: (a) the basis of the legal claim, (b) the amount to be paid or the action requested, (c) the deadline (usually 7-14 working days), and (d) a warning of the consequences if ignored.⁶²

⁵⁴ Fareez Law, "Letter of Demand (LOD) Malaysia Law – What we need to do?," 2024, accessed October 28, 2025, <https://fareezlaw.com/malaysia/debt-recovery-how-to-draft-letter-of-demand/>.

⁵⁵ The Federation of Malaysia, Evidence Act 1960, Section 90A.

⁵⁶ Yuki Hashimoto, dan Najad Zulkipli, "Debt Recovery in Malaysia Letter of Demand and the Available Court Proceeding", 2022, accessed October 28, 2025, https://oneasia.legal/en/wp-content/themes/standard_black/cmspro/img/EN_5-5-2021Debt-Recovery-Proceedings_sy.pdf.

⁵⁷ The Federation of Malaysia, *Contracts Act 1950, Section 39*.

⁵⁸ Ruleco Law, "Letter of Demand and Defamation Claims in Malaysia," Ruleco Legal, 2023, accessed October 28, 2025, <https://www.rulecolaw.com/post/letter-of-demand>.

⁵⁹ JYKO Law, Letter of Demand (LOD) in Malaysia.

⁶⁰ The Federation of Malaysia, Rules of Court 2012, Order 34 Rule 2(1).

⁶¹ Ahmad Arzlee Hassan, Mohd Suhaimi Mohd-Danuri, and Umi Kalsum Zolkafli, "Exploring Mediation Practices in the Malaysian Construction Industry: A Systematic Literature Review," *International Journal of Technology*, Vol. 16, No. 2, (2025): 433-447.

⁶² Fareez Law, Letter of Demand (LOD) Malaysia Law, 2024.

There is no strict legal limitation on the validity period of a Letter of Demand (LOD). Still, in practice, Malaysian legal standards set the response period at 7-14 (seven to fourteen) working days from the date of receipt of the Letter of Demand (LOD), as outlined in the Civil Litigation Guidelines by the Malaysian Bar Council.⁶³

If not responded to within that period, the plaintiff (creditor) can directly file a lawsuit in court, including proof of delivery and the content of the letter as exhibit evidence.⁶⁴ Some specific laws (such as the Defamation Act 1957) set stricter deadlines, for example, 14 (fourteen) days to request a retraction or apology before filing a lawsuit in court.⁶⁵

Response to the letter of demand and its legal options, for the party receiving the Letter of Demand (LOD), there are several recognised legal response options, such as:⁶⁶

(1) Acknowledging and paying, the defendant acknowledges the claim made by the plaintiff and fulfils their obligations as stipulated in the agreement or contract. The legal consequence is that the dispute is considered resolved without the need for litigation.

(2) Negotiating or proposing a settlement method, both parties make an agreement based on mediation or negotiation for the resolution of performance or obligations that have not been fulfilled. The legal consequence is that it can serve as the basis for a consent judgment (a court decision made based on an agreement between the parties and having permanent legal force without going through the usual trial process).

(3) Deny the contents of the letter (deny claim), reject the demand or claim made by the creditor or plaintiff based on a certain legal basis or fact. The consequence is that the creditor or plaintiff can continue the lawsuit in court.

(4) Ignoring, not responding at all. It can be inferred that the defendant or debtor lacks good faith, resulting in increased litigation costs and the imposition of litigation costs on the defendant or debtor. Neglecting the Letter of Demand (LOD) or letter of demand has serious legal consequences; the court may interpret the neglect as an implied admission that the defendant has breached the obligations in the agreement (wanprestasi/breach of contract), as emphasised in the case of *Lembaga Tabung Angkatan Tentera v. KCSB Konsortium Sdn Bhd* [2016] 3 CLJ 481.⁶⁷ Furthermore, neglecting it can increase the risk of a cost order being imposed, as it is considered a lack of cooperation, as in *Ng Hee Thong v. Public Bank Berhad* [2017] MLJU 654. Furthermore, based on the principle of procedural fairness, the neglect of a Letter of Demand (LOD) or letter of demand can worsen the defendant's

⁶³ Hashimoto, dan Zulkipli, *Debt Recovery in Malaysia*, 2022.

⁶⁴ The Federation of Malaysia, *Evidence Act 1950*, Section 90A.

⁶⁵ The Federation of Malaysia, *Defamation Act 1957*, Section 7.

⁶⁶ *Court of Appeal The Federation of Malaysia, Ng Hee Thong v. Public Bank Berhad* [2017] MLJU 654 (Court of Appeal).

⁶⁷ *Court of Appeal The Federation of Malaysia, Lembaga Tabung Angkatan Tentera v. KCSB Konsortium Sdn Bhd* [2016] 3 CLJ 481.

position in proving their case because it shows an absence of bona fide intention to settle.⁶⁸

To bridge the procedural dichotomy between Indonesia and Malaysia, this study proposes a procedural harmonisation model regarding letters of demand in civil dispute resolution. While Indonesian jurisprudence currently renders the *sommatie* discretionary, the introduction of a mandatory pre-action protocol, akin to Malaysia's statutorily regulated Letter of Demand (LOD), could significantly enhance judicial efficiency.⁶⁹ By legally standardising the issuance of a formal demand as a strict prerequisite before filing a lawsuit, the Indonesian civil justice system could effectively filter out premature litigation.⁷⁰ This harmonisation would align the procedural approach with the broader ASEAN legal culture, which heavily emphasises amicable settlement and procedural fairness before state intervention.

Conclusion

The comparative analysis between Indonesia and Malaysia underscores that the letter of demand is far more than a procedural precursor to litigation; it is a substantive materialisation of legal ethics and contractual integrity. This study crystallises the finding that while Indonesia's current judicial stance, rooted in historical jurisprudence, regards the *sommatie* as a discretionary administrative step, this approach inadvertently encourages premature litigation and burdens the judicial system. In contrast, the Malaysian model demonstrates that a mandatory pre-action protocol serves as a vital gatekeeper for judicial efficiency and a clear indicator of a party's bona fides.

Consequently, this study advocates for a fundamental paradigm shift in Indonesian civil procedure. Instead of viewing the *sommatie* narrowly through the lens of Article 1238 of the Civil Code as a mere trigger for default, it must be reinterpreted as a mandatory instrument of good faith. By legally standardising this pre-litigation step akin to the Malaysian system, the Indonesian judiciary can better uphold the constitutional principle of swift, simple, and cost-effective justice. This harmonisation would ensure that the court remains a forum of last resort, effectively filtering out disputes that can be resolved through the customary values of *musyawarah* and alternative dispute resolution (ADR).

Recommendation

Based on the comparative analysis and the proposed procedural harmonisation model, this study offers several key recommendations to

⁶⁸ High Court Kuala Lumpur, *The Federation of Malaysia, Syarikat Perumahan Negara Berhad v. Lee Tian Hock* [2009] 6 MLJ 759. juncto High Court Johor Bahru, *The Federation of Malaysia, Giga Shipping Sdn Bhd v. Yeo Ah Teck* [2014] MLJU 832. Rules of Court 2012

⁶⁹ The Federation of Malaysia, Rules of Court 2012.

⁷⁰ Sharul Mizan Ismail, Vinoshen A/L Raveentharan, and Daarshini A/P S. Murgan, "Procedures of Commencing a Civil Suit: A Comparative Analysis Between Malaysia and India," *Malaysian Journal of Law and Society*, Vol. 31, No. 1 (2022): 138-148.

optimise civil dispute resolution in Indonesia. Primarily, Indonesian lawmakers should consider incorporating a mandatory "pre-action protocol" into future civil procedure frameworks, legally standardising the letter of demand as a strict prerequisite before filing a lawsuit to reduce court backlogs and filter out premature litigation significantly. Concurrently, the judiciary is encouraged to reinterpret the *sommatie* beyond its traditional function under Article 1238 of the Civil Code, actively weighing the issuance of a formal demand as a primary indicator of a party's bona fides (good faith) and their genuine effort to resolve disputes amicably. Furthermore, legal practitioners should maximise the utility of demand letters not merely as formal legal threats, but as structured catalysts for Alternative Dispute Resolution (ADR) and negotiation (*musyawarah*).

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