

Claims through Citizen Lawsuits for the Public Interest in Indonesia

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Citizen Lawsuit is one of dispute settlement mechanisms adopted by Anglo Saxon states and it begins to develop in Indonesia. Claims of citizens are filed in the name of general public interest without any condition, so that everyone is able to take initiative to file a lawsuit through a group representative and it is not necessary by an individual who suffers a direct loss. Citizen lawsuit is mechanism for citizens claiming government responsibility for negligence in fulfilling their rights and the negligence can be categorized as unlawful acts. With this mechanism, the interests of several or groups of people can be fought at once in a single lawsuit; this shortens resolution of the problem and in accordance with principles of administering a simple, fast and low cost justice. Indonesian judiciary, especially General Judicial Environment has authority to adjudicate all civil cases and the judge must not refuse to try a case by reason that there is no law for it. Therefore, lawsuit filed by a group representative in the name of general public must be taken to the court by District Court. Regulation of Supreme Court, Number 1 of 2002 concerning procedure of group representation lawsuit only regulates group representation in general; it does not distinguish between class action mechanism and Actio popularis (citizen lawsuit). Incompleteness of the procedural law results in unclear mechanisms and objective measures in determining a legal standing and position of group representatives in citizen lawsuit, which in turn can erode justice and legal certainty.

Key words: *Citizen Lawsuit, legal standing.*

Background

Group representation lawsuit or class action or representative action is built from tradition of common law system. The mechanism developed and it was adopted by several countries including Indonesia. The mechanism of group representation lawsuit is believed to be able to settle disputes in sphere of public dimension by involving many parties sharing legal conditions, legal interests and demands. One party or some of them can act on behalf of themselves and also, on behalf of groups they represent.

Characteristics of a new group can be distinguished from traditional organizations, such as joint stock company is not based on partnerships and friendly society is not religious or workers brotherhood groups. Both social institutions, Joint Stock Company and friendly society are born out of economic and social order due to the emergence of industrial capitalism.

Stephen C. Yeazell, as quoted by Hari Purwadi¹, stated that friendly society can be described as a group of skilled workers (skilled hand-workers such as masons, carpenters) to assist through voluntary effort for, at least, regarding an ideal of communal responsibility to people who in troubles through provision of small insurance for sick or died. This social institution is considered to be able to solve problems lower class in industrial economy. Joint stock company, this kind of organization is socioeconomically traced back to the form of a joint venture requiring additional capital from other investors, which then divides profits and losses according to portions based on contribution of each shareholders to the venture company.

Application of the two groups faces challenge in technical realm of litigation. The first problem, when a justice system recognizes a litigation entity such as a group that does not join, so that the court moves outside of the existence of the actual social group as a predicate for collective settlement. Second, difficulty may arise when a group recognizes itself as an entity, what theory is justifying that the group represented by a special representation?

Representation theory that is implicitly used is "a representative" obtains approval (consent) from the represented. However, the theory allows representation only from social organization group by means of communication; different theories are used in order to go beyond a specific social organization. This theory forms the basis for claim by group representation allowing active litigation to represent the interests of represented people in processes of fighting for their interests. So that a representative is not only representing a group, but also the interests. Theory of agreement and theory of interests are bases for representation in a group representation lawsuit.

Group representation lawsuit can provide advantage for both parties and judicial system by reducing the number of cases that must be heard than when suits with a common interest are

¹ Hari Purwadi, 2007, *Gugatan Kelompok (Class Action) di Indonesia, Transplantasi dari Tradisi Common Law ke Suprasistem Budaya Masyarakat Indonesia*, KITA Press, Surabaya, p. 94-97.

filed individually. Assessment on similarity of interests, facts or legal basis, and demands has not been clearly regulated, so that it often generates multiple interpretations in technical level at the hearing.

Discussion

In Indonesia, procedure of civil law is generally regulated in HIR and RBG that are not familiar with mechanism of group representation lawsuit yet. However, along with the need for simple, quick and low-cost dispute resolution, the Supreme Court has issued a regulation regarding the lawsuit of group representatives through the Supreme Court Regulation (PERMA) number 2 of 2002 concerning Group Representative Claims (hereinafter abbreviated PERMA of Group Representation Lawsuit). The Supreme Court Regulation on Group Representation Lawsuit does not differentiate between a citizen lawsuit and a Class Action.

Citizen lawsuit is a mechanism for citizens who file lawsuits through the court against the State administrators for their negligence in fulfilling the rights of citizens, which are categorized as unlawful acts. So that, citizen lawsuit is included in general court competence in category of civil case. The main thing distinguishing it from Class Action is the claim, namely claim of citizen lawsuit is not about compensation as in the case of Class Action, claimant only requests that the State issues a regulatory policy (*regeling*)² in order to stop errors that have occurred with the hope that they will not recur. Class Action Lawsuit contains claims through a court process filed by one or several people acting as group representatives. It is not necessary to individually mention identities of group members it represents on the condition that the group can be defined by a specific identification.³

Capability of suing State Administrators to issue regulations is also regulated in Act Number 30 of 2014 concerning Government Administration. The law expands authority of the State Administrative Court, where actual actions of the State Administration are the authority of the State Administrative Court. These two regulations seem to cause overlap with authority to adjudicate the conduct of a State Administrator.

Factual Action is a real or physical action carried out by the State Administration. This action is not only limited to active actions, but also passive actions in the case of ignoring something.⁴ However, object of factual action under authority of the State Administrative Court is limited to issuance or non-issuance of decisions (*beschikking*), while object claimed in Citizen Lawsuit

² Susanti Adi Nugroho, 2010, *Class Action dan Perandingannya dengan Negara Lain*, 1st Edition, Kencana, Jakarta, p. 384-385.

³ Yahya Harahap, 2008, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, 8th edition, Sinar Grafika, Jakarta, p.139.

⁴ Article 1 number 8 Jo Article 87 of Act No. 30/2014 on Governmental Administration.

is regulatory (*regeling*). Thus, principally there is no overlap between authorities of District Court in adjudicating Citizen Lawsuit cases with authority of the State Administrative Court.

Every citizen has the right to sue (in a civil law environment) anyone who violates the Law even the State; it is what is known as Citizen Lawsuit. State officials who are deemed to have failed in carrying out their obligations in implementing the law to the detriment of citizens.⁵ An example of Citizen Lawsuit case that was granted by the court was one over implementation of the National Examination. Several citizens sued Government for policy of national examination for primary and secondary students that was considered to violate human rights because unequal quality of education among schools in Indonesia. District Court of Central Jakarta with Decision Number 228/Pdt.G/2006/ PN.Jkt. Pst. acceded the lawsuit by stating that Government has been negligent in providing fulfillment and protection of Human Rights especially the rights of children with the implementation of National Examination. The court also ordered Government to improve quality of teachers, to provide school facilities and infrastructure and to provide access to information in all regions before implementation of the national exam. There is no demand for material compensation in the lawsuit, but rather a policy in order to fulfill the rights of citizens in the field of education.

Class Action and citizen lawsuit have both similar and different characters, thus examination mechanism at proceeding is carried out in similar way. Some of the similarities are:⁶

- Party entitled to file a case in citizen lawsuit is every citizen as a member of a community. No matter he did or did not experience a direct loss concerning dispute he files. Conversely, Class Action requires that plaintiffs are necessary to become members of the interest party or directly harmed according to the object of dispute he files. PERMA of Group Representation Lawsuit does not accommodate this opinion, because in Article 1 letter b of the regulation still requires group representatives are ones with similar loss as other members of the group. Therefore, claim of Citizen Lawsuit must still be filed by claimant with a direct interest or had suffered a direct loss because of the case.
- Claim of Citizen Lawsuit is about general public interests considered to be the interests of all members of community, whereas Class Action is claiming a shared interests based on similarity of facts, laws and losses suffered by each group member.
- Subject of Citizen Lawsuit is State Administrator or Government. Therefore, claim of Citizen lawsuit is about a better service or protection for general public and it does not strive for material compensation. Instead, Class Action lawsuit claims material damages, although other actions can be demanded, such as restoration of damaged environment. PERMA of Group Representation Lawsuit does not regulate who can be a defendant.

⁵ Hermawanto, 2008, *Panduan Bantuan Hukum di Indonesia*, Aussaid, YLBHI, PSHK dan IALDF, Jakarta, p. 500.

⁶ Susanti Adi Nugroho, *Op. Cit.* p. 395-396.

Principally, Class Action can be filed against anyone who is considered to have acted unlawfully, either public or private party. However, claim of Citizen Lawsuit is improvement of public service, so that it sues government only.

Dhabi K. Gumayra, as quoted by Abdul Fatah,⁷ outlines some of different characters between Citizen Lawsuit and other civil cases, so that a special regulated legal proceeding is necessary.

	Usual Civil Case	Class Action	Legal Standing	Citizen Lawsuit
Philosophy	Individualistic	Incredulity to Individualistic	NGO as Guardian	An individual is able to represent interests of general public
Term	Civil suit	Group Representation Lawsuit	NGO Standing	Citizen Lawsuit
Interest relationship	Direct interest (Real and tangible)	Direct interest (Real and tangible)	No direct interest (real and tangible)	No direct interest (real and tangible)
Claim	Material compensation and specific action	Material compensation and specific action	Specific action and <i>out of pocket expenses</i>	Specific action, implementation of legal obligation
Subject	Directly harmed person	<i>Class Representative, Class Members</i>	Qualified organization	Citizen individually
Notification	Unnecessary	Notification from <i>Class Representative</i> to <i>Class Members</i>	Unnecessary	Notification from plaintiff to defendant

Normatively, Indonesia has no rule that specifically regulates Citizen Lawsuit yet. On the other hand, Citizen Lawsuit mechanism begins to be popular because of the need to resolve public disputes quickly. This shows some legitimacy from the judiciary, in this case, the General Court under the auspices of the Supreme Court, and there had been a Citizen Lawsuit case was granted and this has become a referential jurisprudence.

⁷ Abdul Fatah, *Gugatan Warga Negara Sebagai Mekanisme Pemenuhan Hak Asasi Manusia dan Hak Konstitusional warga Negara*, Jurnal Yuridika, Volume 28 No. 3, September–Desember 2013, p. 299. Accessed from <https://e-journal.unair.ac.id/YDK/article/view/347>, 18 September 2019.

In fact, citizen lawsuit requires different procedural law than Class Action's one. The judge adheres firmly to the principle of not refusing to hear a case on the grounds that there is no law or the law is unclear. Alternatively, the judge must also explore living values of community, so as to understand the absence of procedural law. In the absence of procedural law, citizen lawsuit is examined based on PERMA of Group Representation Lawsuit that does not fully comply with character of citizen lawsuit. Consequently, citizens as plaintiffs experience confusion in preparing their claims and accordingly, the judges mistakenly examine and decide citizen lawsuit cases because they are treated like Class Action claims.

A Citizen Lawsuit case had been examined at the Court of Central Jakarta Number: 87/Pdt.G/2014/PN.Jkt.Pst. This case was motivated by transfer of clean water management. The plaintiff as a resident of DKI Jakarta filed a Citizen Lawsuit due to the transfer of clean water management from PT. PDAM DKI Jakarta (Local government-owned Utility Corporation) to private sector. The plaintiff filed a lawsuit with Defendant 1: Governor of DKI Jakarta, Defendant 2: PT. PDAM DKI Jakarta, Defendant 3: Provincial Parliament of DKI Jakarta, Co-Defendant 1: Pam Lyonnaise Jaya and Co-Defendant 2: Aetra Air Jakarta. The plaintiff argued that the transfer made residents of DKI Jakarta could not enjoy clean water due to poor clean water services they received. From the legal point of view, the changing of clean water management to private party was considered to violate Article 33 of the 1945 Constitution.

The Panel of Judges who was examining the case provided an interim decision stating that the suit could not be accepted. Several important points can be found about why the judges stated that the claim was unacceptable, namely:

- a. Citizen Lawsuit can only be filed against Government Administrators aimed at improving services to the public, whereas in the Citizen Lawsuit described above the Plaintiff included two private parties as co-defendants.
- b. The judge had opinion as follow, Citizen Lawsuit originated from Common Law system requiring Plaintiff to send notification to Defendant before a lawsuit is filed, while before filed the claim, the Plaintiff had filed a subpoena in the same manner as an ordinary civil case.

This problem seems to harm the principle of legal certainty to be sought. The judges relied on PERMA of the Group Representation Lawsuit in adjudicating the case, but a legal basis according to PERMA of Group Representation Lawsuit was not found in all considerations of the judges.

Arguments of the Judges are based on Decree of the Supreme Court of Indonesian Republic Number 36/KMA/SK/II/ 2013 concerning Implementation of Guidelines for Handling Environmental Cases. In the Decree, the Supreme Court requires that a Citizen Lawsuit suit can be filed on the condition that:

- a. Plaintiff is one or more citizens of Indonesia, not a legal entity;
- b. Defendant is government and/or state institution;
- c. Basis of lawsuit is general public interest;
- d. Object of the lawsuit is omission or non-implementation of legal obligations;
- e. Notification/subpoena must be filed within 60 working days prior to the lawsuit and it is mandatory. If no notification/subpoena is filed, it must be declared that the claim is not accepted;
- f. Notification/subpoena from prospective plaintiff to prospective defendant with a copy to the Head of the local District Court containing information of infringement party and institutions relevant to the violation, type of violation, violated regulations and claim for material compensation must not be demanded.
- g. The period of 60 working days aims to provide opportunity for Government to carry out its legal obligation as requested or demanded by the prospective claimant.

Notification referred to in the Decree of Supreme Court is different from notification set forth in the PERMA of Group Representation Procedures. In the Citizen Lawsuit, notification/subpoena is submitted by plaintiff to government and it is forwarded to the local District Court and the notification/subpoena must be submitted before the lawsuit is filed in court because contents of the notification is a requirement for the lawsuit. Letter of claim should contain notification/subpoena with proof of court receipt or registered letter receipt. Meanwhile, notification in the Class Action lawsuit as regulated in the PERMA of the Group Representation lawsuit Procedure will be filed on order of the judge with an interlocutory decision after the Class Action lawsuit is deemed to have met requirements of formality for Class Action suit.

Based on decision above, it appears that there is a legal void related to Citizen Lawsuit in Indonesia resulting in a loss of certainty in judging Citizen Lawsuit. In making a decision, the judge will use the Law of Judicial power, "judges cannot refuse to adjudicate on grounds that there is no law", but this lack of law cannot be left unresolved. Therefore, a regulation governing procedure of Citizen Lawsuit should be arranged. The main point of Citizen Lawsuit is negligence in part of state administrator to fulfill the right of its citizens. Of many recent Citizen Lawsuit cases, most of them concerned violation of human rights.⁸ The main issues in this Citizen Lawsuit, namely the absence of a legal umbrella and where is the correct authority

⁸ *Ibid*, p. 301.



to trial it located, result in failure in part of citizens to fight for the human rights that Government should fulfill.

Closing

Based on the thought above, Citizen Lawsuit is filed to fulfill the rights of citizens to get the best service from State Administrators, but it has no specific procedure of law. The implementation of the Supreme Court Decree on Group Representation Lawsuit has not been able to provide a trial system that can accommodate the interests of citizen as a plaintiff, so that different opinions of the judges had been found about technical procedure of trial. Therefore, more specific arrangements distinguishing between Class Action and Citizen Lawsuit must be regulated in the Draft of Civil law Procedure.

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