

Citizen Lawsuit as a Legal Effort on Government Eco-Unfriendly Action

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This study aims to link the model of citizen lawsuits to eco-unfriendly government action. The type of government action that causes a loss to the community's right to a clean and healthy environment. The citizen lawsuit is the right suit model to sue the Government into re-evaluating and improving all efforts and policies to address problems over government actions that are eco-unfriendly. The citizen lawsuit is a means of legal protection for the community in fulfilling citizens' rights to a good and healthy environment. One form of this citizen lawsuit is found in Supreme Court Decision No. 31 K/Pdt/2017, which stated that the defendant was negligent in providing fulfillment and protection of human rights for water to the citizens of DKI Jakarta, and ordered that the management of drinking water be restored in the DKI Jakarta Province. If the lawsuit is filed in an unlawful or faulty manner, then the court's decision to order the management of drinking water in the DKI Jakarta province will not be carried out.

Keywords: *Citizen Lawsuit; Citizens' Rights to a Good and Healthy Environment; Government Action*

Introduction

The Indonesian Constitution affirms that Indonesia is a legal state, contained in Article 1 of the 1945 Constitution of the Republic of Indonesia. The characteristics of the state law, according to A.V Dicey, are namely: (Dicey, 1968)

1. The supremacy of the law, there should be no arbitrariness, so that someone who violates the rules will incur punishment.
2. Equality before the law. Both for ordinary people and officials.
3. Guaranteed human rights in law or court decisions.

Indonesia, as a legal state, must protect all its citizens. The fourth chapter of the opening of the 1945 Constitution of the Republic of Indonesia states that the Government of Indonesia is

obliged to protect the entire Indonesian nation and all of Indonesia's bloodshed. That is, the communities as citizens have the right to be protected in all aspects, including in the environmental elements.

On the other hand, Indonesia, which adheres to the civil law legal system, certainly adheres to the legitimate primary source, namely in rules. Rules are closely related to government actions. What is meant by government action is any action carried out by government organs in carrying out government functions (Ridwan, 2006). This government action is divided into two forms, namely legal action and factual or real action (Utrecht, 1960) Legal actions based on their nature are actions that can cause legal consequences (creating rights and obligations). There are two forms of government legal action, namely government legal actions based on public law, and government legal actions based on private law). (Risidiana and Xavier, 2019) These two forms of government legal action are related to the position of the government, as an institution holding a government position, and as a legal entity. The making of legislation is one of the implementations of government legal actions (Sri Winarsi et.al. 1380).

When the state administrators carry out a government action, whether the response is classified as factual or legal action, the state must not forget the position of the country as a constitutional state that is obliged to provide legal protection for its citizens. However, there are government actions that have been taken by the state that have an improper outcome for the community. The government is often entangled in the condition of ignoring, allowing, or not taking into account the interests of the population, which results in the direct disruption of people's rights as citizens. With this situation, the injured party is the community.

In other words, state administrators have violated the constitutional rule; namely, the state is obliged to protect the rights of its citizens (Sri Winarsi et.al. 1380). When actions taken by the government disturb the rights of the people as citizens in Indonesia, there are no adequate legal remedies or claim procedures that can be made by the community to cancel or stop these actions. In Indonesia, there are two types of claims in civil procedural law, namely lawsuits against the law, and non-performance lawsuits (Sedyo, 2016). In lawsuits against claims, compensation only can be obtained, as well as a lawsuit against a settlement that is accompanied by a cancellation of cooperation, even though with regard to the damaged environment and the disadvantaged community, of course, follow-up is required from the government in improving adverse environmental conditions. In its development, Indonesia's civil procedural law was influenced by the absorption of different legal systems due to inter-state relations and legal relations. So, new concepts emerge in accommodating legal problems in society. (Xavier Nugraha et.al., 2019) The form of new development in the practice of civil legal procedure at the moment is the concept of a lawsuit through the mechanism of the Citizen Lawsuit, with the government as the defendant and citizens as the plaintiff. With this tort mechanism, citizens can sue state administrators to fulfill their legal obligations as bodies that should protect the public. (Retnowulan and Iskandar, 2019) The mechanism of this lawsuit allows citizens to sue

the government based on having committed an illegal act because it has harmed the rights of citizens.

Environmental cases have certain characteristics that are different from other cases. Environmental matters are a matter of rights guaranteed in the constitution, namely the right to a good and healthy environment. Besides, environmental cases categorize as structural cases that face vertically between parties who have greater access to resources and those with limited access.

In environmental issues, if the government acts carelessly to cause environmental damage and change the use of the environment so that people's rights in obtaining a good and healthy environment derogated, the Citizen Law Suit mechanism can use as a legal effort to deal with government actions that have an impact detrimental to citizens. Thus, environmental damage that will or has occurred can be stopped and restored to its intended state.

Discussion

Citizen Lawsuit Concept

The mechanism of the Citizen Lawsuit comes from countries that implement common law legal systems, such as the United States, India, and Australia. In Indonesia, the claim mechanism of the Citizen Law Suit first presented in 2003 through the Central Jakarta District Court which granted a lawsuit from Indonesian Migrant Workers (TKI) who deported from their workplace in Malaysia. The lawsuit was registered by the Deportation Indonesian Migrant Workers Advocacy Team in Nunukan. The Plaintiffs assumed that the Government had been negligent in protecting undocumented migrant workers and their families who threatened with deportation from Malaysia. This model of the Citizen Lawsuit granted by the Panel of Judges. In the Decision with case number: 28 / Pdt.G / 2003 / PN.JKT.PST which was decided on December 8, 2003, by Andi Samsan Nganro, SH., As Chairperson of the Panel of Judges, H. Iskandar Tjake, SH., And Ny. Andriani Nurdin, SH., Respectively as a member of the panel of judges, has acknowledged the existence of the Citizen Lawsuit model. (Sinar, 2008).

In essence, a Citizen Lawsuit is the access of individual citizens to the whole citizen or public interest including environmental interests to file a lawsuit in court to demand that the government or state enforce the law that is obliged to him or to recover the public losses that occur. (Isrok and Rizki, 2010)

Citizen Lawsuit Definition

Citizen Law Suit is a mechanism for citizens to sue the responsibility of state administrators for mistakes in fulfilling the rights of citizens. (Patra and Daniel, 2006) According to the Guidelines for Handling Environmental Cases, Citizens' Lawsuit is a claim that can be filed by any person

against an act against the law, in the name of public interest, arguing that there are omissions or not carrying out legal obligations by the government or the Environment Organization. The mistakes which have had made categorized into illegal acts in Article 1365 BW. Michael D. Axline stressed that the Citizen laws provide strength to every citizen to sue certain parties (private) who violate the law and also have the power to sue the state and institutions (federal) who violate the law or those who fail to fulfill their obligations in implementing the law. (Bambang, 2009) According to Gokkel, Citizen Law Suit, also known as Actio Popularis, is a claim that can be submitted by every citizen, indiscriminately, by state regulation. According to Kottenhagen-Edzes in Actio Popularis, people can sue in the name of public interest by using Article 1401 Niew BW (article 1365 BW). As a result of mistakes made by the country's organizers, the state punished for taking certain actions or issuing a policy that is general so that the negligence does not occur again in the future.

Between the lawsuit mechanism of Citizen Lawsuit and the Lawsuit of Unlawful Action, it seems that there is no difference, but there is a fundamental difference in the two lawsuit mechanisms, namely in the claim mechanism of Citizen Lawsuit acting as plaintiff does not have to suffer from the policy determined by the government. Whereas in the Lawsuit against the Law by state administrators acting as plaintiffs are people who feel a direct loss of policy set by the state administrators.

Legal Basis of Citizen Lawsuit

In Indonesia, there is no direct arrangement related to Citizen Lawsuit. However, the Judge may not reject the case filed because there is no law (Article 16 paragraph (1) of the Republic of Indonesia Law Number 4 of 2004 concerning Judicial Power). Also relates to the role of Judges who are obliged to explore, follow, understand the values that live in society. (Article 27 of the Law of the Republic of Indonesia Number 35 of 1999 concerning Amendment to Law Number 14 of 1970 concerning Basic Provisions for Judicial Power). Some of the laws and regulations related to the legal basis of Citizen Lawsuit are:

- a. Article 28 of the 1945 Constitution in conjunction with Article 65 of the Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management of the Environment. Guidelines for Handling Environmental Cases
- b. Article 5 of the Republic of Indonesia Law Number 3 of 2009 concerning the Second Amendment to the Law of the Republic of Indonesia Number 14 of 1985 concerning the Supreme Court, that judges explore the law in society.
- c. Ratification of various International Covenants on Human Rights, both Covenant on Civil and Covenant Rights through Law Number 12 of 2005 and Covenant on Economic, Social and Cultural Right 1966 through Republic of Indonesia Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights)

- d. Some Decisions about cases submitted based on citizen lawsuit, such as 28/Pdt.G/2003/PN.JKT.PST, 55/PDT.G/2013/PN.SMDA, decision No. 31 K/Pdt/2017

Characteristic of Citizen Lawsuit

This Citizen Lawsuit mechanism has different characteristics from other civil procedure laws, namely:

1. Citizen Lawsuit is the access of individuals or citizens to file a lawsuit in court for and in the name of the interests of all citizens or public interests;
2. Citizen Lawsuit is intended to protect citizens from the possibility of loss as a result of actions or omissions from the state or state authority;
3. Citizen Lawsuit gives citizens the power to sue the state and government institutions that violate the law or who fail to fulfill their obligations in implementing the law;
4. Individuals who are plaintiffs in Citizen Lawsuit do not need to prove the existence of tangible or real direct losses.

Characteristic comparison of the Citizen Law Suit with other civil suits

| | Ordinary Civil Lawsuit | Class Action | Legal Standing | Citizen Lawsuit |
|---------------------------------|---|---|--|--|
| Philosophy | individualism | Distrust of Individualism | NGO as trustees | individuals can represent the public interest |
| Term | Civil Lawsuit | Group Representative Lawsuits | NGO Standing | Citizen Lawsuit |
| Relationship of Interest | Direct interest (real and tangible) | Direct interest (real and tangible) | Has No Direct interest (real and tangible) | Has No Direct interest (real and tangible) |
| Claim | material compensation and certain actions | material compensation and certain actions | certain actions and out of pocket expenses | certain actions and implementation of legal action |
| Subject | the person who directly harmed | Class Representative, Class Members | eligible organization | individual citizen |
| Notification | Not required | Notification from Class Representative | not required | notification from the plaintiff to the |

| | | | | |
|--|--|---------------------|--|-----------|
| | | to Class Members | | defendant |
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Conditions for fulfilling the claim mechanism of the Citizen Lawsuit

According to Susanti Adi Nugroho, the claim of the Citizen Law Suit must at least meet the following requirements :

- a. The defendant in the lawsuit of Citizen Lawsuit is the State Organizer, starting from the President and Vice President as the top leaders, the Minister and to State Officials in the field deemed to have committed negligence in fulfilling the rights of their citizens. In Citizen Lawsuit parties other than State Administrators may not be included as Defendants or Participate Defendants, and if other parties are withdrawn as to Defendants and Participate, Defendants, the lawsuit is not a claim of Citizen Lawsuit. Because there are elements of Citizens against the State Administration;
- b. Unlawful acts argued in the lawsuit of Citizen Lawsuit is the negligence of the State Administration in fulfilling the rights of citizens.

According to Hermawanto, in the implementation of the Citizen Lawsuit, the requirements must be met, namely:

- a. The existence of a Standing, the Plaintiff must have a standing to carry out this claim, meaning that a person or a group of people is said to have a standing if there is a legal interest, which is usually associated with proprietary interest or a loss directly experienced by the plaintiff (in fact Injury) . If the applicant is proven to have no standing, the defendant may request the cancellation of the lawsuit. But in Citizen Lawsuit, the ultimate standing is Indonesian citizens.
- b. The existence of notices (notifications) Regulations regarding Citizen Lawsuit in the United States requires that individual citizens must make prior notice of the intent and purpose of filing a claim before being registered. The notification in question must specify specific violations and demands and then become the basis for filing a claim — details of violations and demands given to offenders. And agencies are responsible for implementing legislation that gives Citizen Lawsuit rights.
- c. Other requirements of the Citizen Lawsuit lawsuit are:
 - a) The Plaintiff is one person or more Indonesian Citizen, not a legal entity;
 - b) The Defendant is a government or state institution;
 - c) The basis of the claim is for the public interest;
 - d) The object of the claim is the omission or failure to carry out legal obligations;
 - e) Notification/subpoena must be submitted within 60 working days before the claim is made and is obligatory. If there is no notification/claim of claim, it must be declared not accepted;

- f) Notification/subpoena from the prospective plaintiff to the prospective defendant with a copy to the Chairperson of the local District Court. Fill out a short notification /notification/subpoena in writing that contains:
- Information on violators, and institutions relevant to violations;
 - The types of violations;
 - Regulation of legislation that has had violated;
 - What is meant by public interest is the interests of the environment and the interests of living beings that are potential or have been affected by environmental pollution or damage;
 - May not submit claims for compensation for money;
 - The procedure for the CLS trial refers to the HIR
- g) The period of 60 working days aims to provide an opportunity for the Government to carry out its legal obligations as requested or demanded by the prospective plaintiff.

Application of Citizen Law Suit as Legal Protection Against Government Measures that Are Not Environmentally Friendly

Judging from the laws and regulations in Indonesia, the Citizen Lawsuit does not have written legal protection. But when viewed from the many legal issues brought to the court table using the Citizen Lawsuit claim mechanism, it can say that the Citizen Lawsuit mechanism gets legitimacy from the judiciary, in this case, the General Courts under the auspices of the Supreme Court, plus there are cases granted, and this becomes jurisprudence in Indonesia. One of the jurisprudences, related to a civil lawsuit related to government actions that are not environmentally friendly is the Decision Number 31K/Pdt/2017.

This case began in 2012, and there was a lawsuit against government actions that were not environmentally friendly namely the environmental case of water privatization in Jakarta carried out by DKI Jakarta PDAM with two private companies namely PT PAM Lyonnaise Jaya (Palyja) and PT Aetra Air Jakarta. The lawsuit was submitted to the Central Jakarta District Court by the people who were members of the Community Coalition Against Privatization of Jakarta Water. During the 21 years of privatization, around 20 percent of DKI Jakarta residents did not receive clean water supplies at the equivalent price already paid. Where water that has had paid handsomely is dirty and not always runny. On March 24, 2015, the Central Jakarta District Court granted a coalition claim. In fact, both in the Interlocutory Decision and in the final verdict, the Panel of Judges of the Central Jakarta District Court has also acknowledged the Plaintiff's claim as a claim by a citizen. The decision of the Judges of the Central Jakarta District Court as a prove, along with the legal considerations of the Panel of Judges in the Interlocutory Decision which expressly states that the quo case is a lawsuit against the responsibility of state administrators in water management through a citizen lawsuit

mechanism. Then the defendants, namely PT Palyja and PT Aetra filed an appeal to the Central Jakarta High Court. It did not stop there; the Coalition brought its lawsuit to the Supreme Court. The Citizen Law Suit lawsuit made from the District Court to the Supreme Court resulted in a cassation decision that cooperation between PAM Jaya and private companies was illegal and the management of drinking water in DKI Jakarta must return to PAM Jaya. It is evident that in fact, the mechanism of the Citizen Lawsuit used as a new mechanism in civil procedural law in Indonesia. Some of the points that need to underline from this case of privatization of water are:

- a. A cooperation agreement has proven to eliminate the duties and functions of PAM Jaya
- b. The cooperation between PAM Jaya and third parties is not following the constitution and laws and regulations
- c. Evidenced the transfer of assets of PAM Jaya to the private sector
- d. The President's instructions in the New Order were a form of coercion
- e. The existence of a support letter is proof of the irregularities of the Jakarta water privatization agreement
- f. The agreement resulted in real losses for the state and society

The case itself began in 1995, when President Soeharto issued the Indonesian Presidential Directive dated 12 June 1995 to the Minister of Public Works Radinal Mochtar regarding the involvement of the private sector in water management in Jakarta as suggested by the World Bank. What is the presidential instruction in the New Order period is a form of coercion which was not preceded by the tender process as mandated by legislation but immediately there was the appointment of a private company namely PT Kekar Plastindo - Thames Water International and Salim Group - Lyonnaise des Eaux. Continuing in 1997 where the PKS signed / Collaborative Agreement that the implementation of DKI Jakarta Province clean water supply was transferred from PT PAM Jaya (DKI Provincial Government-owned BUMD) to the private sector, PT PAM Lyonnaise for the western region of Jakarta and PT Thames PAM Jaya for the eastern part of Jakarta. Therefore, in the decision of the Panel of Judges on this case, it was decided as follows:

- 1) Declare that the Defendants have committed an unlawful act for surrendering the authority of Jakarta water management to the private sector in the form of establishing a Cooperation Agreement (PKS) dated June 6, 1997, which was renewed by the 22 October 2001 Cooperation Agreement which remains in force and up to now ;
- 2) Declare the Cooperation Agreement (PKS) made and signed by the Director of the DKI Jakarta Provincial PDAM with PT PAM Lyonnaise Jaya on June 6, 1997, as amended and restated in the Cooperation Agreement dated January 28, 1998, October 22, 2001, along with all the addendums canceled and not valid;
- 3) Declare a Cooperation Agreement (PKS) made and signed by the Director of the DKI Jakarta Provincial PDAM with PT Thames PAM Jaya on June 6, 1997, as amended and

restated in a Collective Agreement dated January 28, 1998, October 22, 2001, along with all addendums canceled and not valid.

In order to be able to cooperate with third parties, the government must submit to Article 15 paragraph (1) letters a and paragraph (2) DKI Jakarta Regional Regulation Number 13 of 1992 and Article 4 paragraph (1) of DKI Jakarta Provincial Regulation Number 11 of 1993, that any management of drinking water cultivated other than by PAM Jaya must first obtain written permission from the Governor of Regional Head. In line with these provisions, the written approval needed from the Governor to hold the cooperation agreement valid for more than one year, hold loans from within and outside the country, obtain, transfer, and reduce immovable objects belonging to PAM Jaya.

The Support Letter issued by the Minister of Profit is one of a series of government actions to support the creation and implementation of cooperation agreements that hit legal provisions. This action is a clear action against the law. The support letter argued is not an agreement and formally issued after the cooperation agreement was signed. The substance of the Support Letter is the provision of guarantees to cover all losses suffered by the private sector that have the potential to inevitably burden state finances (APBN and APBD) and are not an agreement from the regional government on the cooperation agreement on privatization/privatization of water supply management.

Many real and extraordinary losses to the community arising from the cooperation agreement, namely:

- 1) Piped clean water services that can only be accessed by approximately half of the population, because the coverage of water service areas has not increased since water privatization which has resulted in the difficulty or inaccessibility of piped clean water by the poor;
- 2) Residents of the community must pay for clean water at very high water rates but with poor quality and quantity of water. Since the Cooperation Agreement, PAM Jaya, which is following Regional Regulation No. 13 of 1992, should provide drinking water services to the community, the authority to reduce or degrade water is only to provide clean water.
- 3) State losses that continue to increase every year as cooperation agreements due to "debt schemes" are indeed designed in such a way as the Jakarta Water Privatization Agreement which results in the State having to bear the burden of losses from water management by the APBD and APBN is the tax revenue collected from the community.

In the end, the decision taken by the Panel of Judges was to grant the petition of the appeal appeals, stating that the Defendants had committed an unlawful act for surrendering the authority of Jakarta water management to the private sector in the form of Establishing a

Cooperation Agreement (PKS). Stating that the defendants had harmed the local government DKI Jakarta and the people of DKI Jakarta, and ordered the defendants to:

- a) Stop the privatization of drinking water in the DKI Province;
- b) Restoring the management of drinking water in the DKI Jakarta Province;
- c) Implementing Drinking Water Management in the DKI Jakarta Province. According to Regional Regulation No. 13 of 1992, and other laws and regulations, Implement Drinking Water Management in the DKI Jakarta Province following the principles and values of human rights. As stated in Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights as ratified through Law Number 11 the Year 2005 in conjunction with General Comment Number 15 the Year 2002 Right to Water United Nations Committee on Economic, Social and Cultural Rights.

Conclusion

Based on this study, found that in its development the lawsuit did not only consist of acts against law and default, but a new type of lawsuit created, namely a civil lawsuit adopted from a common law system. Through this lawsuit, the community can demand the government to take certain actions, which are the government's obligation. One example of a civil lawsuit in Indonesia that is related to government actions that are not environmentally friendly is in decision No. 31 K / Pdt / 2017, where the Supreme Court declared the defendant negligent in providing fulfilment and protection of human rights to water against the citizens of DKI Jakarta. This decision also triggered a review of the drinking water management contract between the DKI Jakarta Provincial Government and private companies and ordered the Restoration of drinking water management in the DKI Jakarta Province following Regional Regulation No. 13 of 1992 and other laws and regulations. If the lawsuit filed in an act against law or default, then the order to order the management of drinking water in the DKI Jakarta province will not be carried out.

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