

## Class Action in Dispute Settlement Environment in Indonesia

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### Abstract

Lawsuits (class actions) is a lawsuit from a group of people in large numbers who have a common interest (interest) injured on a question of law, which is represented by a person or group to act upon them and represent the interests of the other communities (class members). gugatan representation is a reflection of the legal protection of the public due to environmental pollution. The law in the event in Indonesia, conducted in a civil court dipermasalahkannya provided that the object is a violation of legal norms state administrative / clerical state. The most important in filing this lawsuit there is a request for the examination of the lawsuit on the basis of the principles contained in the class actions. In this case the feasibility study into the class representative (preliminary certification test) performed by means of a notification as stipulated by laws and regulations, especially in the Supreme Court Regulation No. 1 of 2002.

**Keywords:** *Representative lawsuit Legal Protection Environmental law*

### Preliminary

In association law, basically every person has the right to sue when their rights diciderai, or harmed. The aim is that those rights restored or be given compensation equivalent to the loss arising from such rights harmed. No exception in environmental issues as subjects of law puts anyone who suffered losses in various forms, as a result of environmental management activities.

In the perspective of right to sue is no right to sue the environmental community groups and environmental organizations the right to sue. Both are a reflection of the efforts to restore civil rights, or the rights of citizens and communities harmed by activities that pollute the environment that directly or indirectly me nimbulkan negative impact on the environment in question. The provisions concerning the right to sue the community under Article 91 of the Right to sue the Society.

Right to sue public, usually represented by the environmental organization. The provisions of Article 92 concerning the right to sue Environmental Organization. In the old resources, Indonesia as a developing country in the world has the resources are very rich and abundant. A wealth of resources (resources) exist in every region in Indonesia. However, a wealth of resources, especially natural resources it also raises the potential for pollution and environmental damage. It menjadi logical consequence of the management of natural resources ats itself. Therefore, as an imperative is to neutralize, thereby reducing losses, especially in the form of negative impacts due to environmental management.

The situation may be one of the obstacles for Indonesia in carrying out development that aims to improve the welfare of the Indonesian people themselves. Cycle between the management and the anticipation of the impact into a kind of agenda coexist. Therefore iu balance must be realized so that both the management and neutralization to the effect that management can go hand in hand. That the problem of pollution and environmental damage is actually a problem of a general nature. In a sense experienced by all countries in the world that manage natural resources as a potential buffer the economy.

Various environmental problems whether caused by natural or man-made that is not as it should be, certainly disrupt ecological processes. Consequently resulting in degraded quality, or even cause damage to the ecosystem as a whole. In the terms of the destruction of ecosystems that do not recognize administrative boundaries even knows no national boundaries.

In the language of the public, resource management alama it is a development effort. The aim is to improve the quality of people's lives in general. It is therefore understandable that in addition to the construction of a positive impact in the form of welfare, but on the other hand also had a negative impact.

In the environmental dimension of the negative impact it is damage or environmental contamination. For this reason, its relevance memb erikan legal protection against losses arising from the impact. Such protection is already selayaknya set forth in the rules that definitely can be measured.

In the dimension of environmental law, the legal notion of sustainable development of environmentally become key words (key word) in environmental management. Rules in the environmental law that integrate environmental considerations in the development implementation. The point is how to build without damaging the environment, with a certain size set out in law.

Based on the above, when a decline in the function of environmental destruction and / or contamination of environmental living, then a series of law enforcement activities (law enforcement) should be performed. The goal is not just to impose sanctions on the destroyer or the polluter. Moreover, its most

fundamental purpose adalah to restore the capacity of the environment, working to improve its quality, and protect the affected parties or megalami keugian due to the environmental management activities ..

### **About Class Action**

On environmental issues, today in Indonesia increasingly use the lawsuit class action procedure. Technically done through the District Court with a variety of reasons that underlie the lawsuit. Therefore, the information requirements and the development of knowledge about the lawsuits that are practically indispensable now as part of the accommodation against claims for damages on environmental management.

Historically, about the lawsuits have been known the first time in the eighteenth century in England. Next widespread application in the nineteenth century in other countries like USA, Canada, Australia, and others, which in general are the countries with the common law system. But for Indonesia's own understanding of the concept is still relatively new. Not that because hukumnya system characterized by continental Europe. However, as stated that environmental issues memang relatively new.

In addressing this lawsuit procedures, both legal practitioners and judges on the court do not all understand the technical aspects of the application procedure. Inadequate understanding of the procedure is due to lawsuits no way procedures manual or the application of technical guidelines, and generally associated with highly complex procedural aspects. The absence of some sort of Procedural Law governing class action procedure, to be one of the obstacles.

In the meantime, the problems of this class action stipulated in the Supreme Court of the Republic of Indonesia Number 1 of 2002 on Procedures for Application of Class Action. In terms of the level, of course, very important permasalahan these products should be regulated in the Constitution Act beruipa law. laws made by the people's representatives in Parliament.

In principle, the class action is a way to facilitate the search for justice to obtain redress through the law violated civil. That is ineffective and inefficient if the problems that cause harm to people, have the facts or legal basis, and the same defendant, filed individually. If it still will be implemented menimbulkan complexity. Not only for the injured but also for the defense even to the court itself.

The purpose of class actions, litigation in order to process more ekonomis and more cost efficient (judicial economy). It is not economical for the court if a lawsuit should serve similar one by one. Economic benefits of class actions is not only felt by the plaintiff, but also by the defendant, because by filing a lawsuit as representatives of the group. In this case the defendant only once the cost to serve the lawsuit parties who feel aggrieved. (Sundari, 2002: 45).

As a baseline, the suit could dikicermati representation of this group in the United States. In legislation United States US Federal Rule of Civil Procedure (1938) Article 23: "a class action is a way given to a group of people who have an interest in an issue, whether one or more of its members to sue or be sued as representative of the group without must participate from each member of the group.

Some argue that the class action is a procedural against one or a number of people (the number of which is not much), acting as plaintiff for the interests of the plaintiffs themselves as well as representing the interests of hundreds, thousands, hundreds of thousands or even millions of others who suffer or loss, Single person or people (more than one / plural), who appeared as plaintiff referred to as a representative class (class representative), while the number of people they represent so-called class members. (Mas Achmad Santosa, 2005: 78).

Meanwhile there is another opinion stating that the class action is a procedure in ordinary civil proceedings. Regular events relating to demand compensation (injuction), which gives procedural rights to one or a few persons acting as the plaintiff itself. As well as representing the interests of hundreds, thousands and even millions of others who have in common the suffering or loss.

According to the Supreme Court Regulation No. 1 of 2002 defined that the "lawsuit / groups as the procedures for filing a lawsuit in which one or more persons representing the group filed a suit for himself and at the same time represent a group of people who are numerous, which have in common the fact or basic similarities between the legal representatives of the group and group members.

Therefore, the concept and application of lawsuits (class action) is still something new and not widely understood by law enforcement officials as well as by legal practitioners publik.oleh therefore as a result the understanding of lawsuits (class action) is often confused with the concept of right to sue NGO. In the not the same thing.

### **Lawsuit Mechanism**

Dispute resolution mechanisms through civil action to the district court (litigation) in the legal system in Indonesia is basically stipulated in the Law on Civil Procedure (Herziene Indonesisch Reglement / HIR or Updated Revised Indonesia Regulation (Stb. 1848 No. 16 and Stb. 1941 No. 44) for Java and Madura, while for areas outside Java and Madura applicable Rechtsreglement buitengewesten / Rbg (Regelemen Overseas

Territories - Stb. 1927 No. 227) for regions outside Java and Madura. (A. Tirta Irawan, 2005: 78)

However, since 1997 the system of civil law in Indonesia is set one mechanism for dispute resolution through the court known as a class action community (class action).

Stated in Article 91 (1) of Law No. 32 of 2009 on the Protection and Environmental Management (UUPPLH) that the Community is entitled to file class action suit to court and / or reported to law enforcement agencies on a variety of environmental problems that harm the people's life.

The explanation stated in the article in question stated that the right to file a class action is the right of a small group of people to act on behalf of people in large numbers who are disadvantaged on the basis of similarity of issues, facts of law, and demands arising from the pollution and / or destruction of the environment.

From the formulation of Article 91 (1) UUPPLH above can be interpreted that the class action in the case of the environment is the procedural rights of communities (class members) in the form of a lawsuit to the court by representatives of the group (class representative), on the basis of similarity of issues, legal facts and demands for redress and / or certain actions as a result of actions pecemaran and / or destruction of the environment which made the defendant.

The explanation stated in Article 46 (1) letters b that this Act recognizes a group or class action lawsuit. Group or class action lawsuit must be filed by consumers who actually harmed and can be proven legally, one of which is a proof of the transaction

In UUPPLH, as stated under Article 92, but operasionalisasinya as stated above is still not regulated. By deikian basically still in the Supreme Court Regulation No. 1 of 2002 is.

Theoretically meaning and ultimate goal of class actions can basically be described as follows: The class action means to avoid lawsuits individual who is repetition (repetition) to the issues, the facts of law, and demands the same from a group of people who suffered losses because cases of pollution and / or destruction of the environment.

The above means that a lawsuit filed by a group of class action would be more economical (judicial economic) if compared to each person individually filed to the court. In addition, time and costs to file a lawsuit perwakinan group will be more efficient (judicial cost efficiency) when compared to filing a lawsuit individually from each member of the group. (Main Arya, 2005: 45).

Class actions provide access to justice (access to justice) because the burden together to file a lawsuit to the court in order to fight for the rights of the public to justice to obtain compensation and / or perform certain actions to be more attention and priority handling by the court.

The class action also has an important meaning in the legal education efforts (legal education) in the community is that:

- a. on the one hand class actions can encourage change in the attitude of society (class members) to obtain justice and dare to demand their rights through the courts;
- b. on the other hand class actions encourage changes in attitudes of those who could potentially harm the rights and interests of the public in environmental management; and
- c. class actions can also be a deterrent effect (deterrent effect) for anyone who ever harm the rights and interests of groups of people in society.

To maintain the meaning and purpose of filing lawsuits, as described above, then any class action must comply with the requirements as follows: There is a number / group of people (numerousity of class members) and some of them who are authorized to represent himself or members group (class representative) to file a civil suit to court. The existence of common issues, legal facts, and the interests of all members of the group (commonality of class members), either authorize or authorized, in filing a civil suit to court.

There is the same kind of demands (typicality) compensation and / or perform certain actions from all members of the group, which is represented as well as those representing the group. The presence of representatives of the feasibility of the character of the group (class representative) for appearing in an honest, fair, responsible and capable of protecting the interests of all members of the group (class members) in court proceedings (adequacy of representation).

From the above facts, that the ultimate goal lawsuits like the one above can be seen that the lawsuit representation group is basically a part of the mechanism for the settlement of civil disputes through the court (in court settlement) by a group of people by giving power to one or more people (who derived from group members) to represent file a lawsuit to the court.

Moreover, in the context of the legal instruments necessary to file a class action was still not enough with the provisions of article stipulated in the legislation, as explicitly stated further stipulated in Government Regulation (PP). However, so far the PP which is intended to mengoperasional class action procedure does not exist. This brings significant implications in relation to the implementation and performance of judges when examining the lawsuits in court.

## Environmental Dispute Resolution

Environmental problems are increasingly meprihatinkan does not only happen in Indonesia but also has become a global issue. One of the steps taken by the government to prevent and protect the health of the environment is by improving product Act. That's why the government issued Law No. 32 of 2009 to replace Law No. 23 of 1997, one of whose objectives is to cover the legal loopholes left by Act No. 23 of 1997 with the hope that offenses and disputes on the issue of environment can be minimized maybe.

The fundamental differences are described in the explanation of UUPPLH, namely the reinforcement contained in this Act on the principles of environmental protection and management that is based on good governance. Therefore, in every process of formulation and implementation of pollution prevention instrument and / or damage to the environment as well as prevention and law enforcement requires the integration of aspects of transparency, participation, accountability, and fairness. UUPPLH also introduced a penalty of minimum quality standard violations, alignment of criminal law enforcement, and criminal acts of corporate setting. (Sunarso Siswanto, 2005: 64)

This law is also still consider the use of the principle of ultimum remedium that only applies to certain formal criminal act that is criminal prosecution for violation of water quality standards of waste, emissions and interference. At this UUPPLH dispute resolution environmental problems in the third set. In the legal problems kerperdataan limiting rules regarding the filing of a lawsuit by certain parties only, as prevention and environmental preservation efforts, that matters of compensation and environmental restoration.

Stated in Article 87 (1) states that every person in charge of business and / or activities that carry out illegal acts such as dan.atau environmental pollution that cause harm to people or the environment is obliged to pay compensation and / or perform certainactions.

The provisions of Article 87 (2) states that every person who commits the alienation, changing the nature and form of business, and / or activity of a business entity that violates the law does not relinquish legal liability and / or obligations of the business entities.

## Conclusion

Environment that the settlement of disputes through non Litigation can be done using Alternative Dispute Resolution mechanisms as stipulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Alternative Dispute Resolution is an institution for settling disputes or differences of opinion through the procedure agreed by the parties, the settlement out of court by way of consultation, negotiation, mediation, conciliation or expert assessment.

In accordance with the above that the environmental dispute resolution through litigation or legal means justice is done by asking "environmental claim" under Article 91 UUPPLH jo. Article 1365 BW about "damages due to unlawful acts" (onrechtmatigedaad).

Lawsuits (class actions) is a lawsuit from a group of people in large numbers who have a common interest (interest) injured on a question of law, which is represented by a person or group to act upon them and represent the interests of the other communities (class members),

Inspection procedures lawsuits (class actions) in administrative court on the same principle as the examination lawsuits (class actions) in civil court dipermasalahkannya provided that the object is a violation of legal norms state administrative / clerical state. The most important in the filing of a class action is there a request for inspection of the lawsuit on the basis of the principles contained in the class actions, such as the feasibility study into the class representative (preliminary certification test) performed by means of notification, and giving the opportunity to enter (opt in) or get out of a lawsuit (opt out).

Where a claim meets the requirements to be examined in class actions, the court will grant the request in the form of determination. Conversely, if a lawsuit filed does not meet the requirements to be examined according to the procedure of class actions, the lawsuit was rejected examination with the examination process lawsuits (class actions) and further such claims will be examined in ordinary tort cases. In accordance with the above, that this fact shows the importance of legal protection to victims of environmental destruction as a manifestation pencemaran- projective environmental rights (life) is good and healthy. Unfortunately, the quality of normative regulation UUPPLH to the dispute settlement mechanism is felt less conducive environment and significant for the development of environmental awareness.

Too many obstacles that must be faced by the victims of pollution-destruction of the environment in environmental dispute resolution: the juridical, economic and technological. This fact victims of pollution-causing environmental destruction are often reluctant to settle environmental disputes through legal channels. It is not fair, so the law should simplify the process simpler and siding with the victims of environmental management which result in losses.

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