

## Juridical Review of Citizen Lawsuit in its Application in Indonesia

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### ABSTRACT

*In Indonesia, there are people who feel that the fulfillment of public facilities provided by the government has not been fully fulfilled. This has an impact on the disappointment of the people who feel that their rights have only been violated or not fulfilled by the government. The community then files a lawsuit to the Court using the Citizen lawsuit method Lawsuits . Many of these lawsuits were rejected by the courts because they were deemed not to meet the elements of the Citizen Lawsuit . Citizen Lawsuit is a citizen's right to sue which is intended to protect citizens from various losses due to actions, policies or decisions made by the Government. Although b many lawsuits are filed using the Citizen Lawsuit method but there are no laws and regulations governing the lawsuit that. This study aims to describe and analyze questions about what elements must be met so that a lawsuit is categorized as a lawsuit Citizen Lawsuit and Position Citizen Lawsuit in civil procedural law in Indonesia . The research method used was collected using normative research techniques and then analyzed qualitatively , namely an analysis that describes the data obtained in the form of sentence descriptions. Then a conclusion is drawn which is the answer to the problem. It is hoped that in the future there will be a definite rule regarding the model of the Citizen Lawsuit lawsuit in Indonesia, as well as the rules regarding Class Action and Legal Standing.*

### KEYWORDS

*citizen lawsuit; public facilities; class action*

### INTRODUCTION

Law may be a set of rules or rules orchestrated in a framework, which decides what is permitted and what cannot be done by people as citizens of society in their social life, beginning both from the community itself and from other sources, which are recognized as substantial by the most noteworthy specialist. In the community, and is really upheld by the individuals of the community (as a entirety) in their lives, and in case these rules are damaged, it'll donate the most noteworthy specialist to force outside witnesses.<sup>1</sup>

In Indonesia, law is established as the only rule in the life of society, nation and state (*supremacy of law*). Law functions as a tool for regulating order, a means for realizing physical and spiritual social justice, a means of mobilizing, developing, determining the allocation of authority, a tool for resolving disputes, maintaining the community's ability to adapt to changing living conditions, regulating the rules of conduct in society in a peaceful and efficient manner. fair, can serve the will of the State. The law also brings prosperity and happiness to the people, provides justice and benefits the people by protecting the

<sup>1</sup> Zainal Asikin, *Introduction to Legal Studies* (Jakarta: PT Raja Grafindo Persada, 2012), 16.

interests of the people. The work of law is to direct and control connections in society and to fathom issues that emerge.<sup>2</sup>

The function of the law works well if law enforcers have the ability to carry out and enforce the law well, with the arts possessed by each law enforcer, for example:

1. Skills in interpreting the law with the *a contrario* method, which is this method to emphasize the existence of legal certainty so that it does not cause harm.
2. Ability to apply applicable law.

The purpose of the legal function according to Prof. Mr. Dr. LJ Van Apeldoorn (1950), in his book entitled "*Inleiding tot de Studie van het Nederlanse Recht*", that the purpose of law is to regulate order in society in a peaceful and just manner. To achieve legal peace, a just society must be created by balancing interests that conflict with each other and everyone must obtain (as much as possible) what is their right.<sup>3</sup>

From the purpose of the law, it is hoped that later the interests of the community will not contradict one another or there will be no dispute. To achieve this situation, it can be done by providing protection for these interests. Provision of protection for these interests can be done through the mechanism of filing a lawsuit so that by submitting a lawsuit to an authorized dispute resolution body, it is hoped that the interests that were initially opposite will be resolved.

With the condition of society that continues to develop, problems also develop. One of the problems is the rights of citizens which are felt to have not been fulfilled by state administrators. The fulfillment of good public facilities is a right for every citizen. Roads, street lighting, *zebra crossings* are one of the facilities that should be provided by the Government to provide convenience for the community in their activities. Therefore, the public has the right to feel comfortable using these public facilities.

However, in practice, in several cities in Indonesia, there are still people who feel that the fulfillment of public facilities provided by the government has not been fully fulfilled. This has an impact on the disappointment of the people who feel that their rights have only been violated or not fulfilled by the government. Decisions 411/Pdt.G/2013/PN.Mdn and decisions 53/PDT.G/2012/PN.JKT.PST regarding public facilities are examples of lawsuits by citizens because they feel that government policies violate the rights of the community. However, the lawsuit was rejected because the elements contained in the lawsuit were not in accordance with the elements of the *Citizen Lawsuit lawsuit*.

In the Indonesian legal system, the Supreme Court has issued Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 1 of 2002 concerning the Procedure for Lawsuits for Group Representatives. The Supreme Court regulation regulates the procedure for filing a lawsuit in groups with a large number of people. So that formally the community has gained legitimacy to fight for their rights through *class action lawsuits* and *legal standing*.

Meanwhile, in the case of the *Citizen Lawsuit lawsuit* in Indonesia, the rights of citizens to sue are intended to protect citizens from various losses due to actions, policies or decisions made by the Government, which have not been regulated in laws and regulations. So there is a legal vacuum.

Although the lawsuit in the form of a *Citizen Lawsuit* has not yet been regulated in a statutory rule that specifically regulates this matter, the court cannot reject the lawsuit because it is based on Article 16 paragraph (1) of Law Number 4 of 2004 concerning

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<sup>2</sup> Efran, *Philosophy of Science* (Bandung: BAS Press, 2011), 56.

<sup>3</sup> Zainal Asikin, *Introduction to Law...*, 21.

Judicial Power which states that:<sup>4</sup>

"The court may not deny to look at and adjudicate cases that are submitted with the argument that the law does not/less clearly regulates it, but is obliged to examine and adjudicate"

Judges only use jurisprudence in deciding *Citizen Lawsuit cases* so that they are afraid of causing legal uncertainty. So that a deeper study is needed regarding the *Citizen Lawsuit* which has been applied in several cases in the District Court. In addition, the elements in a lawsuit using the *Citizen Lawsuit method* must also be known so that people who wish to file a lawsuit using the *Citizen Lawsuit method* are not rejected.

## RESEARCH METHODS

The research method used in this study was analyzed descriptively qualitatively. The data needed in this study were collected using normative research techniques and then analyzed qualitatively, namely an analysis that describes the data obtained in the form of sentence descriptions. Then a conclusion is drawn which is the answer to the problem.

What elements must be met so that the lawsuit is categorized as a Citizen Lawsuit suit then it is reviewed how Islamic law if there are people who sue the government regarding the case of fulfilling public facilities

## RESULTS AND DISCUSSION

### ***Citizen Lawsuit/ Citizen Lawsuit Rights***

Citizens' right to sue or what is known as *Citizen Lawsuit* in the *Common Law legal system* and *Actio Popularis* in the *Civil Law legal system* is a citizen's right to sue which is intended to protect citizens from various losses due to actions, policies or decisions made by the Government. *Citizen Lawsuit* is a right to sue that is given to every citizen to sue because it relates to decision-making policies that are detrimental to the public interest. In the *Citizen Lawsuit/Actio Popularis lawsuit*, the Plaintiff is not really a victim who has experienced it directly (real), for that a citizen does not need to prove that he or she has a legal interest or as a person who has suffered a loss.<sup>5</sup>

In Indonesia itself, there is no legal umbrella that specifically regulates this *Citizen Lawsuit*, either in the Supreme Court Regulation (PERMA), Supreme Court Circular (SEMA), or other laws and regulations. In Indonesia the Court accepts the *Citizen Lawsuit* and Judges in deciding and adjudicating cases with the *Citizen Lawsuit mechanism* because in Article 5 paragraph (1) of Law 48 of 2009 concerning the Basic Provisions of Judicial Power that Judges are obliged to investigate, take after, and get it the values legitimate values and a sense of equity that live in society and in Article 10 section (1) that courts are precluded from denying to look at, listen, and choose on a case that's submitted on the guise that the law does not exist or is vague, but is obliged to look at and attempt it.

### ***Elements of a Lawsuit (Citizen Lawsuit/Actio Popularis)***

#### ***1. Every Person or Every Citizen***

As previously stated, in the *Citizen Lawsuit*, everyone who is a citizen has the *standing* to file a lawsuit, without requiring any real and direct harm to him or her. Thus, everyone can appear as a Plaintiff in a *Citizen Lawsuit* case.

Every citizen has the right to file a *Citizen Lawsuit* because :

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<sup>4</sup> Law No. 4 of 2004 concerning Judicial power

<sup>5</sup> Nommy HT Siahaan, *Development of Legal Standing ...*, 239.

- a. Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia (the right of everyone to recognition, guarantee, protection, legal certainty and equal treatment before the law)
- b. Article 2 of Law 39 of 1999 "The Indonesian state upholds human rights"
- c. Law No. 11 of 2005 and Law No. 12 of 2005: strengthening the recognition of civil and social and economic rights as citizens' rights

## **2. Public interest**

In simple terms, it can be interpreted that the public interest is the needs, needs or interests of many people with broad goals. The public interest includes the interests of the people by paying attention to social aspects.

In principle, each citizen has the correct to protect the open intrigued, hence each citizen on sake of the open intrigued (on sake of the open intrigued) can sue the state or the government for committing acts against the law that are genuinely negative to the open and inconvenient to human rights. get to to equity), in case the state is quiet and does not take any activity for the advantage of its citizens. Because *the Citizen Lawsuit* is fighting for the public interest or the interests of the people in the event that the state does not carry out its obligations to protect, respect, uphold and advance the rights of its citizens, thereby causing harm to its citizens.

Everyone who files a *Citizen Lawsuit* must have a proper basis of interest. Therefore, this element of public interest is one of the main elements that the Plaintiff must prove that the interest that is the basis of his lawsuit in filing the *Citizen Lawsuit* is in the public interest.

## **3. Act against the law**

Act against the law is the result of an act that is contrary to the law, even though the result is not desired by the person who commits the act. Anyone who commits an act that is contrary to the law must compensate for the loss suffered by the person who was harmed by the act. So, it can be said that because of an unlawful act, a bond ( *verbintenis* ) arises to compensate the loss suffered by the injured party. This principle is contained in Article 1365 of the Civil Code, which reads:

"Every act against the law, which causes harm to another person, obliges the person who caused the loss to pay compensation for the loss"

Juridically, there is no regulation in Indonesia's *Citizen Lawsuit* , nor has the Supreme Court accommodated the Supreme Court Regulation (PERMA) or Supreme Court Circular Letter (SEMA), unlike the Class Action regulation. However, the absence of law does not necessarily stop law enforcement.

*Citizen Lawsuit* may only be submitted if there are citizens' rights that are violated by the Government. Violation of the rights of these citizens must be an act against the law. Thus, an unlawful act is one of the requirements in filing a *Citizen Lawsuit/Actio Popularis*

## **4. Not Submitting Compensation in the Form of Money**

In a lawsuit against the law in general, the Plaintiff will demand material compensation and in the form of a large amount of money. The sufferer in a case files a lawsuit to demand compensation in the form of money and must prove the amount of loss he has suffered.

In Indonesia, lawsuits using the *Citizen Lawsuit method* are still few because in Indonesia, lawsuits using the *Citizen Lawsuit method* are still foreign to the public's ears.

Several cases of *Citizen Lawsuit lawsuits* that have been registered in Indonesia relate to the fulfillment of public facilities, namely:

Decision Number: 411/Pdt.G/2013/PN.Mdn The North Sumatra Region of PT PLN (Persero) is designated as a crisis area for electricity supply because within one day there has been a power outage for approximately 4 (four) hours per day. Thus, citizens acting on behalf of the community sued the policy to the Medan District Court using the *Citizen Lawsuit method*. In this lawsuit, which was filed with the Medan District Court, the Plaintiffs are Yusril Darus, Sopian, Eka Putra, Arianto Tambunan, Safaruddin, Darwaman Putra, Fadillah (an Indonesian citizen residing in Medan City) who has sued PT. State Electricity Company (Persero) for the region of North Sumatra, President of the Republic of Indonesia, Minister of Energy and Mineral Resources, Minister of State for State-Owned Enterprises, Minister of Finance of the Republic of Indonesia, Governor of North Sumatra.

In addition to blackouts of approximately 4 (four) hours per day in various areas of the North Sumatra Region, causing the community's daily activities to be hampered, the Plaintiff filed a lawsuit to file for material compensation to the Defendant due to the Decree of the Directorate General of Electricity and Energy Utilization Number: 114/ 2003 "PLN must provide compensation of 10% of the monthly electricity obligation to customers if the blackout is more than one hour", but until now there has been no attempt to compensate. For clarity, the author will describe the petition requested by the Plaintiff: Accept and grant the Plaintiff's claim in its entirety, declare the Defendants have committed an unlawful act ( *onrehtmatigedaad* ), order the Defendant to immediately take steps to overcome the electricity crisis and make policies to ensure the availability of power supply. electricity in the area of PT PLN (Persero) Regional North Sumatra, punishing the Defendant to provide compensation of 10% of the monthly electricity obligation.

However, the judge thought otherwise. According to the judge, the Plaintiffs in filing a lawsuit using the *Citizen Lawsuit method* did not meet the elements of the *Citizen Lawsuit* lawsuit because the lawsuit asked for material compensation, so that the lawsuit could not be accepted. The verdict was issued and it reads:

"Declaring the Plaintiffs' *Citizen Lawsuit claims* are unacceptable, stating that the examination of the substance of the case does not need to be continued, punishing the Plaintiffs to pay court fees of Rp. 1,401,000 (one million four hundred and one thousand rupiah)"

In addition to Decision Number: 411/Pdt.G/2013/PN.Mdn, the author also takes the example of Decision Number: 53/PDT.G/2012/PN.JKT.PST. In this decision, the Plaintiffs are Agustinus, SH., Drs Yohanes Tanggur, SH, Ngurah Anditya, SH, MHLi (Advocate and Legal Consultant at Lex Regis Agustinus Partners), and the defendants are the Jakarta Provincial Government, the DKI Jakarta Regional People's Representative Council which hereinafter referred to as DPRD, the Republic of Indonesia, the Central Executive Board of the Democratic Party, the Central Executive Board of the Party in Indonesia.

The reason for the Plaintiffs is the feeling of discomfort on all roads in DKI Jakarta due to the congestion that occurs, the congestion will be even worse if it rains. In addition, the large number of oncoming vehicles does not match the road segment. The growth of roads in DKI Jakarta is only 0.01 percent per year. Congestion that occurs causes disruption of physical health, waste of effective working time and causes waste of fuel oil. In this case, the plaintiff asked the government to widen the roads in the city of Jakarta.

The judge also decided on the case Number: 53/PDT.G/2012/PN.JKT.PST as follows:

"The judge's decision in this case is to reject the Plaintiff 's claim in its entirety and punish the Plaintiff by paying court fees of Rp. 5,191,000 (Five Million One Hundred Ninety One Thousand)"

According to the judge, the lawsuit did not fulfill the elements of the *Citizen Lawsuit*, and according to the judge, the lawsuit filed was solely for personal interest, not public interest. Because in fact the government of the City of Jakarta has tried to avoid traffic jams. For example, the Transjakarta bus.

From the two decisions that have been described above, the essence can be drawn that if the plaintiff is really going to file a lawsuit, the plaintiff should be well aware of the case and the method of claiming he is submitting so as not to result in a waste of time and material losses.

The judge in deciding this case, the author feels is right, because if you want to file a lawsuit in court, you must understand the elements of the lawsuit method.

## CONCLUSION

Citizens' right to sue or what is known as Citizen Lawsuit in the Common Law legal system and *Actio Popularis* in the Civil Law legal system is a citizen's right to sue which is intended to protect citizens from various losses due to actions, policies or decisions made by the citizen. government. Citizen Lawsuit is a right to sue that is given to every citizen to sue because it relates to decision-making policies that are detrimental to the public interest. The elements of the lawsuit are every person or every citizen, public interest, acts against the law and not filing for material compensation.

In Indonesia itself, there is no legal umbrella that specifically regulates this Citizen Lawsuit, either in the Supreme Court Regulation (PERMA), Supreme Court Circular (SEMA), or other laws and regulations. In Indonesia the Court accepts the Citizen Lawsuit and Judges in deciding and adjudicating cases with the Citizen Lawsuit mechanism because in Article 5 paragraph (1) of Law 48 of 2009 concerning the Basic Provisions of Judicial Power that Judges are obliged to explore, follow, and understand the value of - legal values and a sense of justice that live in society and in Article 10 paragraph (1) that courts are prohibited from refusing to examine, hear, and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it.

In line with the conclusions above, the government should immediately make legislation that specifically regulates Citizen Lawsuit/*Actio Popularis* .

## REFERENCES

- Ahmad Roestandi. (2006). *Constitutional Court in Questions and Answers*. Jakarta: Constitution Press.
- A. Famous Effendi. (2005). *The Development of Human Rights Dimensions and the Dynamics of the Process of Drafting Human Rights Laws*. Jakarta: Ghalia Indonesia
- Basiq Djali. (2012). *Islamic Courts*. Jakarta: Amzah
- Efran. (2011). *Philosophy of Science*. Bandung: BAS Press
- Hasbi Ash Sjiddieqi. (2001). *Islamic Justice and Procedural Law*. Semarang: PT Pustaka Rizki Putra
- Isrok and Rizki Emil Ibrahim. (2010). *Citizen Lawsuit "Alternative Law Enforcement for Citizens"*. Malang: UB Press
- Muhammad Iqbal. (2007). *Fiqh Siyasa*. Jakarta: Media Pratama Style
- Zainal Asikin. (2012). *Introduction to Legal Studies*. Jakarta: PT Raja Grafindo Persada
- . *Introduction to Legal Studies*. Jakarta: PT Raja Grafindo Persada, 2012.

- Nommy HT Siahaan. (2021). The Development of Legal Standing in Environmental Law (A Juridical Analysis in Public Participatory for Environmental Protection). FH. UNISBA
- Alfi Nabilla. (2018). Summary of Al Qawa'id Al Fiqhiyah Al Khasah (Special Fiqh Rules)" in <http://www.academia.edu/25733205/>, accessed on 15 June 2018.