

Conference Paper

The Urgency of Forming Laws and Regulations on Citizen Lawsuits in Indonesia

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Abstract.

This research aims to seek the formation of laws and regulations regarding Citizen Lawsuits. Citizen Lawsuits access for citizens to represent the public interest to file lawsuits in court based on unlawful acts by the government. Since the receipt of the Citizen Lawsuit filed by Munir CS, based on the abandonment of TKI in Nunukan by the Government of Indonesia, until now there has been no regulation regarding Citizen Lawsuits. The formulation of the problem used in this study is first, what is the urgency of establishing legislation regarding Citizen Lawsuit in Indonesia, and second, what form of legislation regarding Citizen Lawsuit is ideally implemented in Indonesia. The research method used is normative-juridical research. The results of this study show that the condition of the legal vacuum regarding Citizen Lawsuit results in the inconsistency of the Panel of Judges in interpreting formal requirements, namely notifications; therefore, it is necessary to make laws and regulations regarding Citizen Lawsuits to catch up with written law and prevent inconsistencies in court decisions. In conclusion, the legal basis used by the Judges panel in accepting the *Citizen Lawsuit* was based on Article 10 Section (1) and Article 5 Section (1) of Law number 48 of 2009 concerning Judicial Power. Additionally, the Law of Civil Procedure should include the principle of Citizen Lawsuits, but since legislation takes time to pass, the Supreme Court can work around this by creating a PERMA. Suggestions from this research, it is necessary to make efforts to form regulations regarding Citizen Lawsuit, and it is necessary to research Citizen Lawsuit models in Anglo-Saxon countries to be used as reference material in forming Citizen Lawsuit regulations.

Keywords: urgency, formation of legislation, citizen lawsuit

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1. INTRODUCTION

The concept of the rule of law in principle explains that the law in a country occupies the highest position (*supreme*), and the state is obliged to provide human rights protection to every citizen. Citizens can fight for their injured rights by filing a lawsuit in court.

Generally speaking, in Indonesia, parties who have lost out on the subject of disagreement file a lawsuit with the court. However, today there is an alternative to filing a new lawsuit that was previously unknown in procedural law and judicial practice, the

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alternative is the filing of a lawsuit using the *Citizen Lawsuit* mechanism originating from *Anglo Saxon* countries adhering to the *Common Law* legal system.

Citizen Lawsuit is a lawsuit filed by a citizen representing the public interest for unlawful acts (*onrechtmatige overhead daad*) or omission carried out by the state organizer[1]. Furthermore, Michael D. Axline asserts that *Citizen Lawsuit* Give citizens the power to sue certain parties (private) who violate the law, as well as the power to sue states and (federal) institutions that violate laws and regulations or fail to implement laws[2].

Citizen Lawsuit is the result of the adoption of the *common law legal system*, because the lawsuit was previously not regulated and not known in Indonesian procedural law which adheres to the civil law legal system. The *Citizen Lawsuit* was first filed by Munir c.s. in 2003 in case number: 28/Pdt.G/2003/PN.Jkt.Pst. over the neglect of migrant workers in Nunukan by the Government of Indonesia. Although there is no legal basis governing a *Citizen Lawsuit* lawsuit, the case is still acceptable to the court. This is based on the provisions of Article 10 Paragraph (1) and Article 5 Paragraph (1) of Law Number 48 Than 2009 concerning Judicial Power.

Since the receipt of the filing of a lawsuit using the *Citizen Lawsuit mechanism in 2003 until now there are still no laws and regulations* governing *Citizen Lawsuit* claims. Indonesia as a legal country that adheres to the *civil law* legal system, ideally *Citizen Lawsuit* is regulated in the form of laws or accommodated in various laws and regulations that concern the public interest. The establishment of these laws and regulations aims to prevent potential loss of legal certainty in Indonesia.

Based on the brief description above, the formulation of the problem in this study is; First, what is the urgency of the formation of laws and regulations regarding *Citizen Lawsuit* lawsuits in Indonesia. Second, what is the ideal form of legislation regarding *Citizen Lawsuit* lawsuits to be applied in Indonesia.

2. METHODOLOGY/ MATERIALS

The research method used in this study is to use normative legal research, because the object of this study examines law within the scope of norms, rules, principles, theories, and legal regulations to answer legal vacancies[3]. Normative legal research according to Peter Mahmud Marzuki is a process to find legal regulations, legal principles, or legal doctrines to answer the legal problems faced[4].

3. RESULTS AND DISCUSSIONS

3.1. The Urgency of Establishing Laws and Regulations on Citizen Lawsuits in Indonesia

3.1.1. Use of Legal Basis of Citizen Lawsuit in Judicial Practice in Indonesia.

Citizen Lawsuit As a citizen's right to sue, it is more widely known in the country *Anglo Saxon* adherents of the legal system *Common Law*. *Lawsuit Citizen Lawsuit* generally deals with environmental cases, but in its development the Supreme Court of India stated *Citizen Lawsuit* Not only limited to environmental cases, but covers all aspects where state administrators commit unlawful acts (*onrechtmatige overhead daad*)[5].

Basis for filing a lawsuit *Citizen Lawsuit* is against the law (*onrechtmatige overhead daad*) in Article 1365 of the Civil Code. The article is an article that regulates unlawful acts in general, does not distinguish between unlawful acts committed by individuals, legal entities, and by the government[6].

Lawsuit Citizen Lawsuit in Indonesia was first filed by Munir c.s in the Central Jakarta District Court with case number: 28/Pdt.G/2003/PN.Jkt.Pst. Although there is no regulation governing the Citizen Lawsuit, the panel of judges in its determination accepted the plaintiff's lawsuit[7].

The legal considerations used by the Panel of Judges in accepting the lawsuit case number: 28/Pdt.G/2003/PN.Jkt.Pst. refer to Law Number 14 of 1970 concerning the Main Provisions of Judicial Power, as amended by Law Number 35 of 1999 in Article 14 Paragraph (1), further amended by Law Number 48 of 2009 concerning Judicial Power in Article 10 Paragraph (1) "The court shall not refuse to examine, adjudicating, and deciding cases filed on a less clear legal basis or no law governing it".

In addition, the Panel of Judges also referred to Law Number 14 of 1970 concerning the Main Provisions of Judicial Power, as amended by Law Number 35 of 1999 in Article 27, further amended by Law Number 48 of 2009 concerning Judicial Power in Article 5 Paragraph (1) stating "judges are obliged to explore, follow, and understand the values and sense of justice that live in society".

The logical consequence of the use of Article 10 Paragraph (1) and Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, requires the Panel of Judges to conduct legal discovery (*rechtsvinding*). Because as is known that there are no laws and regulations governing *Citizen Lawsuits*, both material and formal law.

The procedural basis used by the Panel of Judges in conducting examinations, trials, and deciding cases number: 28/Pdt.G/2003/PN.Jkt.Pst. based on civil procedural law. Starting from the stage of reading the lawsuit, followed by the agenda of answers or expenses, replicas, duplids, evidence, conclusions, and verdicts. However, before the agenda of the answers by the parties, a preliminary examination is carried out first. As is known that the Panel of Judges determined that basically stated that it accepted *the Citizen Lawsuit* filed by the plaintiff and continued the examination of the case.

3.1.2. Potential Loss of Legal Certainty in Law Enforcement in Indonesia.

Since the receipt of *the Citizen Lawsuit* case number: 28/Pdt.G/2003/PN.Jkt.Pst, by the Central Jakarta District Court Judges, the filing of a lawsuit using the Citizen Lawsuit mechanism has become increasingly attractive to justice seekers (*judicial*). As well as proving that the existence of the *Citizen Lawsuit* is beginning to be accepted in the judicial world in Indonesia.

In accepting citizen lawsuit cases thus far, the panel of judges has followed Article 10 Paragraph 1 and Article 5 Paragraph 1 of Law Number 48 of 2009 Concerning Judicial Power.. Even though in Indonesia there have been many *Citizen Lawsuit* lawsuits entered in court, including:

1. (a) Filing a lawsuit by Munir c.s. in 2003 in case number: 28/Pdt.G/2003/PN.Jkt.Pst. for the neglect of migrant workers in Nunukan by the Government of Indonesia. The case failed at the Appeal level at the DKI Jakarta High Court (case number: 480/PDT/2005/PT. DKI), which basically states that the defendant is not proven to have committed unlawful acts.
2. Citizen *Lawsuit* lawsuit in the fuel price increase case filed by LBH APIK. The form of the *Citizen Lawsuit* was not accepted by the Central Jakarta District Court Judges.
3. Citizen *Lawsuit* in Operation Yustisi case by LBH Jakarta. The form of the *Citizen Lawsuit* was not accepted by the Central Jakarta District Court Judges.
4. Citizen *Lawsuit* lawsuit in the case of organizing the National Examination filed by LBH Jakarta. The lawsuit was granted in part, in a ruling the government was asked to review the policy of holding the National Examination. This case continued until the appeal level in the DKI Jakarta High Court filed by the defendant on December 6, 2007 and finished at the cassation level in the Supreme Court filed by the defendant. However, despite the resistance from the defendant to the level of

cassation, the Supreme Court in decision number: 2596 K / PDT / 2008 stated that the decision of the Central Jakarta District Court had permanent legal force.

5. *Citizen Lawsuit* filed by the Toll Road User Community on the Jakarta Outer Ring Road (JORR) in case number: 40/Pdt.G/2008/PN. Jkt.Sel. The lawsuit by the Panel of Judges, was not accepted due to non-fulfillment of the formal requirement of notification.
6. Lawsuit *Citizen Lawsuit* filed on behalf of citizens holding the right to vote in the 2009 General Election, with case number: 145/Pdt.G/2009/PN.Jkt.Pst. The lawsuit was not accepted by the Panel of Judges due to the non-fulfillment of the formal requirement, namely the notification deadline [8].

Conditions of legal vacuum about *Citizen Lawsuit* in Indonesia has implications for discrepancies in judges' opinions, one of which is about formal requirements *Citizen Lawsuit* i.e. notifications. Notification *Citizen Lawsuit* in its home country (United States) requires that every citizen be required to make notice (*notice*) for the purpose and purpose of filing a lawsuit, before the lawsuit is registered[9]. The notice shall outline the breach and the charges to be filed, and shall subsequently be the basis upon which the lawsuit will be filed. The description of violations and demands is addressed to the violator and/or responsible party in implementing laws and regulations[10].

Lawsuit *Citizen Lawsuit* filed by 23 citizens who are members of the Citizen Advocacy Team Sue (Tawan Gugat) to the President, Ministry of Energy and Mineral Resources, Ministry of Finance, President Director of PT. Pertamina, and the Head of the Downstream Oil and Gas Regulatory Agency related to the increase in the price of Fuel Oil (BBM) in 2014. In an interlocutory judgment on February 12, 2014, the panel of judges stated that it rejected the lawsuit on the basis that the plaintiff did not meet the formal requirement of notification[11].

The plaintiff in his argument stated the purpose of the notification before the lawsuit was filed *Citizen Lawsuit* is to provide an opportunity for the defendant to fix the object being sued, besides that the notification also aims to inform that there will be citizens who want to sue the defendant. Therefore, the plaintiff sent a notification in the form of a press conference, articles in the mass media, and brochures about the Citizen Lawsuit. According to the plaintiff, the notification was a form of warning to the defendant, and the plaintiff felt that the notification was more than a notification, because the notification was carried out for more than a year. The jury of judges disagreed, claiming that the brochures and articles did not qualify as notifications since they did not adhere to the

specifications of the display, which was sent to the intended recipient and verified by receipt.[12].

The panel of judges in the case stated “the use of the lawsuit procedure *Citizen Lawsuit* based on Decision Number: 228/Pdt.G/2006/PN.Jkt.Pst”. even though the decision related to the notification mechanism as stipulated in PERMA No. 1 of 2002 concerning Class Action Proceedings is notification in lawsuit cases *Class Action*, which is clearly very different from the notification in a lawsuit case *Citizen Lawsuit*. In essence, the panel of judges stated “notification from the court to the defendant after the suit has been registered in accordance with the civil procedure law, so that it can be used as a guideline”[13].

Discrepancy of opinion about the notification, plus the condition of the legal vacuum regarding the lawsuit *Citizen Lawsuit* further magnifies the condition of loss of legal certainty in law enforcement in Indonesia. If this happens, then the purpose of law as initiated by Gustav Radbruch is justice (*gerechtigheit*), legal certainty (*Rechtsicherheit*), and expediency (*zwackmassigkeit*)[14]. The three elements are parallel and interrelated with each other, so that if one of these elements is not fulfilled then the purpose of the law will never be achieved.

3.2. Ideal Form of Citizen Lawsuit Regulation to Use in Indonesia

The number of lawsuits *Citizen Lawsuit* In the Indonesian judiciary, the legislative power should go through the DPR to start making laws on Citizen Lawsuits. Regulation formation *Citizen Lawsuit* In the form of a law, it is the right step in answering the legal needs of citizens. Because the process of forming laws is required to involve public participation and must be based on the principles of forming good regulations (Article 5 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations)[15].

Ideally, the concept of *Citizen Lawsuit* is included in the Civil Procedure Law Bill, especially now that the draft is still in the discussion stage and has not been passed into law. In reality, the concept of *Citizen Lawsuit* was discussed in the discussion session of the Civil Procedure Law Bill on Thursday, June 5, 2008 at the Maharadja Hotel Jakarta. However, *the concept of Citizen Lawsuit is not to be included in the Civil Procedure Law Bill, due to several factors, including the lack of references or literature about Citizen Lawsuit.*

It should be understood that the formation of a law requires a long time, because it must go through a series of stages, starting from planning, drafting, discussing, ratifying, and promulgation. So that in order to overcome the problem of this time, it can utilize the

attributive authority possessed by the Supreme Court in forming the Perma on *Citizen Lawsuit*[16].

The Supreme Court as a judicial institution, one of which oversees the general judicial environment, has often heard *Citizen Lawsuit* lawsuit cases. In addition, in 2009 the Supreme Court conducted a study and research entitled (Research Report: *Class Action and Citizen Lawsuit*), of course, *the Supreme Court already understands very well about the legal needs in the practice of handling Citizen Lawsuit cases*. On the other hand, the establishment of Perma by the Supreme Court is also a form of implementation of the principle *of judge made law* (formation of law by judges).

The authority of the Supreme Court in forming Perma is regulated in Article 79 of Law Number 14 of 1985 concerning the Supreme Court “The Supreme Court can further regulate matters needed for the smooth administration of justice if it is found that something has not been adequately regulated in the law”. The provisions of this article can be interpreted that the establishment of Perma is only limited to the administration of justice, and there are conditions of legal and/or regulatory vacuums that have not been able to fulfill the course of justice.

4. CONCLUSION AND RECOMMENDATION

1. The legal basis used in accepting a *Citizen Lawsuit* is Article 10 Paragraph (1) and Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Although there have been many *Citizen Lawsuit* lawsuits *registered in court, until now there are no laws and regulations governing Citizen Lawsuits, thus implicating inconsistencies in judges' decisions that injure the rights of justice seekers* (judicial).
2. In Indonesia, ideally a *Citizen Lawsuit* lawsuit should be included in the civil procedural law, especially now that discussions are still ongoing regarding the Civil Code Bill. However, because a law in its formation takes a long time, to fill the temporary legal vacuum, Perma can be formed by the Supreme Court which regulates *Citizen Lawsuit*.

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