

THE REGULATION AND CONCEPT OF CITIZEN LAWSUITS IN THE PERSPECTIVE OF POSITIVE LAW IN INDONESIA AS AN EFFORT TO FULFILL CONSTITUTIONAL RIGHTS

Fikri Jamal¹, Efik Yusdiansyah², Yoyon M. Darusman³

Doctoral Program in Law, Islamic University of Bandung^{1,2}, Universitas Pamulang³
dosen02426@unpam.ac.id, efiksukabumi@gmail.com, dosen00040@unpam.ac.id

ABSTRACT

The regulation and concept of citizen lawsuits in the perspective of positive law in Indonesia is an important part of efforts to fulfill the constitutional rights of citizens. In this context, Citizen Lawsuit plays an important role in facilitating citizens' access to the justice system to protect their rights as well as ensure the accountability of governments and other entities. Citizen Lawsuit regulation in Indonesia is still limited and faces a legal vacuum that needs to be addressed. Although some laws, such as the Environmental Act, provide space for public participation in the court process, there are no provisions that specifically regulate the Citizen Lawsuit mechanism as a whole. This research is a study of the concept and regulation of citizen lawsuits in Indonesia as the fulfillment of citizens' constitutional rights so that the right type of approach to be used includes a conceptual approach, a legal approach and a comparative approach. The fulfillment of citizens' constitutional rights through the Citizen Lawsuit requires concrete steps, including the drafting of laws that clearly regulate the process, conditions, and mechanisms of the Citizen Lawsuit. The drafting of such legislation should take into account the principles of positive law and the protection of internationally recognized human rights. In addition, public education about their rights and the importance of the Citizen Lawsuit as a tool to protect these rights is also an integral part of efforts to fulfill constitutional rights. Thus, the regulation and concept of Citizen Lawsuit in Indonesia must continue to be developed to ensure effective protection of citizens' rights and strengthen a fair and accountable legal system.

Keywords: *Citizen Lawsuit, Positive Law, Constitutional Rights*

ABSTRAK

Pengaturan dan konsep gugatan warga negara (Citizen Lawsuit) dalam perspektif hukum positif di Indonesia menjadi bagian penting dalam upaya pemenuhan hak konstitusional warga negara. Dalam konteks ini, Citizen Lawsuit memainkan peran penting dalam memfasilitasi akses warga negara terhadap sistem peradilan untuk melindungi hak-hak mereka serta memastikan akuntabilitas pemerintah dan entitas lainnya. Pengaturan Citizen Lawsuit di Indonesia masih terbatas dan menghadapi kekosongan hukum yang perlu diatasi. Meskipun beberapa undang-undang, seperti Undang-Undang Lingkungan Hidup, memberikan ruang bagi partisipasi publik dalam proses pengadilan, belum ada ketentuan yang secara khusus mengatur mekanisme Citizen Lawsuit secara menyeluruh. Penelitian ini merupakan penelitian sebuah konsep dan pengaturan gugatan warga negara (citizen lawsuit) di Indonesia sebagai pemenuhan hak konstitusional warga negara sehingga jenis pendekatan yang tepat untuk digunakan antara lain pendekatan koseptual, pendekatan undang-undang dan pendekatan komparatif. Pemenuhan hak konstitusional warga negara melalui Citizen Lawsuit memerlukan langkah-langkah konkret, termasuk penyusunan undang-undang yang mengatur dengan jelas proses, syarat-syarat, dan mekanisme Citizen Lawsuit. Penyusunan undang-undang semacam itu harus memperhatikan prinsip-prinsip hukum positif dan perlindungan hak asasi manusia yang diakui secara

internasional. Selain itu, edukasi masyarakat tentang hak-hak mereka dan pentingnya Citizen Lawsuit sebagai alat untuk melindungi hak-hak tersebut juga merupakan bagian integral dari upaya pemenuhan hak konstitusional. Dengan demikian, pengaturan dan konsep Citizen Lawsuit di Indonesia harus terus dikembangkan untuk memastikan perlindungan yang efektif terhadap hak-hak warga negara serta memperkuat sistem hukum yang berkeadilan dan akuntabel.

Kata Kunci: Citizen Lawsuit, Hukum Positif, Hak Konstitusional

BACKGROUND

The state is an organization of power or an authoritative organization that must meet certain elements, namely there must be a sovereign government, certain regions and people who live in an orderly manner so that it is a *nation*.¹ *The state is a territorial association in which social and individual forces of every kind struggle in all their great variety to control its government vested with supreme legitimate power.*²

A *citizen lawsuit* is basically a lawsuit filed by a citizen who adheres to the *common law legal system*. The filing of a *citizen lawsuit* originally occurred in the United States in 1970 due to environmental problems. Then the use of *citizen lawsuits* began to be used in various countries for the same thing, namely environmental problems. After experiencing development, *citizen lawsuits* are no longer filed only in environmental cases, but can be due to other things where the state is considered to have made a mistake in fulfilling the rights of its citizens. As in India, there is a more progressive development of *citizen lawsuits*. *Citizen lawsuit* is a citizen's right of action intended to protect citizens from possible losses as a result of state actions or state authorities.³

The emergence of a *citizen lawsuit* mechanism in Indonesia is a process of law transplantation to meet the needs of people seeking justice. The existence of a legal transplant to adopt a legal system in a country is not impossible. Moreover, human life continues to develop, and demands the development of law. With this *Citizen Lawsuit*, citizens can complain to the judge because the judicial authority has the authority to investigate the case.

Basically, Indonesia adheres to the civil law legal system so there are no clear rules regarding *citizen lawsuits*. Several laws and regulations related to the environment have allowed for a representative lawsuit. The first is Article 91 of Law Number 32 of 2009 concerning Environmental Protection and Management which states that "the community has the right to file a class representative lawsuit for their own interests and/or the interests of the community if they suffer losses due to pollution and/or environmental damage" Second, Article 71 paragraph (1) of Law Number 41 of 1999 concerning Forestry which reads "the community has the right to file a representative lawsuit to the court and or report

¹ Yoyon Darusman, *Juridical Study of Citizenship Dualism in Law Number: 12 of 2006 concerning Citizenship (Study on the Case of Gloria Natapraja Hamel)*, Volume 5 No. 1 March 2017, Galuh Justisi Scientific Journal, p.3

² G. Pringgodigdo, in C.S.T. Kansil. Et.All. *State Science (General and Indonesian)*. Pradya Paramita Jakarta 2001, p.9.

³ I Putu Rasmadi Arsha Putra. Et. al. "Demands for Rights in the Enforcement of Environmental Rights". *Adhaper Journal*. Vol 2 No 1 (January-June 2016). pp. 95-113

to law enforcement on forest destruction that is detrimental to people's lives". The third is Supreme Court Regulation Number 1 of 2002 concerning Class Representative Lawsuits. However, there is no law that regulates *how to file* a citizen lawsuit in more detail. To fill the regulatory gap regarding *the citizen lawsuit mechanism*, the Supreme Court of the Republic of Indonesia issued a Decree of the Supreme Court of the Republic of Indonesia Number: 36/KMA/SK/II/2013 concerning the Implementation of Environmental Handling Guidelines which contains the requirements for citizen lawsuits. Based on article 10 paragraph (1) of Law Number 48 of 2009 *jo.* Law Number 4 of 2004 concerning Judicial Power states that in essence, judges are prohibited from rejecting a case on the grounds that there is no law or the law is unclear.⁴ With this provision, the court will still examine *citizen lawsuits* filed by the public even though there are no clear rules governing citizen lawsuits themselves.

In its development, the practice of *Citizen Lawsuit* is only based on Decision Number: 28/Pdt.G/2003/PN. JKT. PST which was decided on December 8, 2003 between J. Sandyawan Sumarji and his friends (as many as 53 people) as Petitioners/Plaintiffs against the State of the Republic of Indonesia c.q Head of State, President of the Republic of Indonesia Megawati Soekarno Putri as Defendant. This case is commonly referred to as the "Nunukan Citizen Lawsuit". This lawsuit was granted by the Panel of Judges, Central Jakarta District Court with the following Decision: a) Law Number 48 of 2009 concerning Judicial Power, Article 10 Paragraph (1): The Court may not refuse to examine and adjudicate a case submitted with the premise that it is not or is not clear, but is obliged to examine and adjudicate it; b) Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power Judges as law and justice enforcers are obliged to explore, follow and understand the values that live in society; c) The application submitted is *a citizen lawsuit* commonly known as *actio popularis*, which is a procedure for filing a lawsuit involving the public interest on a representative basis; d) Every citizen without exception has the right to defend the public interest.⁵ *Actio popularis* is a term used in various points of view and according to some experts this is due to the *principle of de lege ferenda*, which is a view of the law in the future. The *context of actio popularism* has been used in international courts, outside of the judicial context, and is widely used in invoking state responsibility in general as the basis of universal jurisdiction, and measures to protect the public interest.⁶

Looking at the existing practices so far and based on accepted jurisprudence as a legal basis, citizen *lawsuit* can be used as a mechanism for citizens to sue the State (government) so that the state fulfills the rights of citizens through certain actions in the form of the formation of certain policies or regulations. According to Isrok, the Citizen Lawsuit is a

⁴ Paskalina Emadewani, *Judge's Consideration of Granting a Citizen Lawsuit in an Environmental Case*, Verstek Journal Vol 7 No. 3 (2019), p. 140.

⁵ Angela Christina Natalia Kaunang, et al, *Citizen Lawsuit in Positive Legal Perspectives in Indonesia*, Vol. 10 No. 3 (2022): Lex Privatum, p.2.

⁶ Kadek Agus Sudiarawan, dkk, *Discourses On Citizen Lawsuit As Administrative Dispute Object: Government Administration Law Vs. Administrative Court Law*, Volume 7 Issue 2, December 2022, JILS (JOURNAL of INDONESIAN LEGAL STUDIES), hal.453

mechanism for citizens to sue the State for wrongdoing.⁷

In this case, every citizen has the right and has the same position to sue the State in front of a judge so that the State fulfills the rights violated by the State. Therefore, in proving his legal position to sue before a judge, he does not need to postulate interests that are individual and tangible.⁸ Thus, it is known that the subject matter of the lawsuit in this lawsuit is about the attitude of the government (state) in carrying out government affairs (*bestuurzorg*) which should be the domain of public law. The character of *the Citizen Lawsuit* is an administrative dispute, not a civil one, so it should be the authority of the State Administrative Court and not the General Court.

RESEARCH METHODOLOGY

This research is a study of the concept and regulation of citizen *lawsuits* in Indonesia as the fulfillment of citizens' constitutional rights so that the right type of approach to be used includes a conceptual approach, a legal approach and a comparative approach. In accordance with the title and problems that will be discussed in this study and in order to provide useful results, this research is carried out with normative juridical research (normative legal research method). The normative juridical research method is a literature law research conducted by researching literature materials or secondary data. This research was carried out in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject.

FINDING & DISCUSSION

1. There is a *vacuum of law* regarding the regulation of *Citizen Lawsuit* in Indonesia

From the perspective of positive law in Indonesia, the regulation and concept of citizen *lawsuits* is one of the important efforts in fulfilling constitutional rights. A citizen's lawsuit is a legal mechanism that allows individuals or groups of people to file a lawsuit in court regarding violations of constitutional rights committed by certain parties, including the government or state institutions. Regulations regarding citizen lawsuits in Indonesia are contained in Law Number 24 of 2003 concerning the Constitutional Court. The Constitutional Court has the authority to examine and adjudicate citizens' lawsuits related to violations of constitutional rights. With this mechanism in place, citizens have access to protect their constitutional rights through a fair and transparent legal process. Through citizen lawsuits, it is hoped that the constitutional rights of citizens can be more respected and protected by the government and state institutions. This is also one of the efforts to strengthen the rule of law and maintain the balance of power between the government and the people.

The legal vacuum regarding the regulation of *Citizen Lawsuits* in Indonesia indicates that there is no provision that specifically regulates the process or mechanism for ordinary

⁷ Muhammad Adiguna Bimasakti, *Reconstructing the Citizen Lawsuit Paradigm in Indonesia as an Administrative Dispute*, Journal of Law & Development Vol. 50 No. 1 (2020), pp. 230-244

⁸ Isrok and Rizki Emil Birham, *Citizen Lawsuit: Enforcement of Alternative Citizen Law*, Malang: Universitas Brawijaya Press, 2010, p. 15.

citizens or groups of citizens to file lawsuits against the government or other entities for alleged violations of the law or the public interest. This can be problematic because in a good legal system, citizens must have mechanisms that allow them to protect their rights and ensure government accountability. However, in some countries, including Indonesia, there are efforts to fill this legal vacuum through various means. For example, non-governmental organizations (NGOs) or advocacy agencies often play an important role in fighting for the public interest through lawsuits. They can use existing legal tools, such as civil or administrative lawsuits, to prosecute government policies or actions that are deemed unlawful or incompatible with the public interest.

In addition, although there are no provisions that specifically regulate *Citizen Lawsuits*, some laws in Indonesia provide space for public participation in the licensing process or government decision-making. For example, the Environmental Law gives the public the right to participate in the planning and decision-making process related to the environment. Nevertheless, the existence of this legal vacuum remains a challenge, and legal reforms may be needed to accommodate *Citizen Lawsuit* more formally in the Indonesian legal system. This can be done through the drafting of laws that specifically regulate mechanisms, procedures, and conditions for filing lawsuits by residents or groups of residents.

Although Law No. 24 of 2003 concerning the Constitutional Court provides a legal basis for citizens to file lawsuits related to violations of constitutional rights, there is a need to regulate in more detail the mechanisms, procedures, and conditions related to the Citizen Lawsuit. This legal vacuum can lead to legal uncertainty and difficulties for citizens who want to use the Citizen Lawsuit mechanism to protect their constitutional rights. Therefore, efforts are needed to fill this legal void through the preparation of more detailed and comprehensive regulations regarding Citizen Lawsuit, including regarding the conditions, procedures for filing lawsuits, court authority, and mechanisms for implementing judgments. By filling this legal vacuum, it is hoped that the Citizen Lawsuit mechanism can run more effectively and efficiently in protecting the constitutional rights of citizens and strengthening the rule of law in Indonesia.

2. Legal uncertainty arises when judges handle *Citizen Lawsuit* lawsuits and Comparison of the application of *Citizen Lawsuit* in various countries

Legal uncertainty can arise when judges handle *Citizen Lawsuit* lawsuits due to the lack of clear and detailed provisions in the arrangement of the mechanism. Without clear guidelines, judges may face difficulties in determining the proper procedures, criteria for accepting lawsuits, and the court's authority in adjudicating *Citizen Lawsuit* cases. This can lead to mixed interpretations and potential differences of opinion among the judges handling the case. To overcome legal uncertainty in the handling of *Citizen Lawsuits*, efforts are needed to develop more detailed and comprehensive guidelines regarding the mechanism. This guideline must include the requirements for filing a lawsuit, court procedures, the

authority of judges, and the mechanism for implementing decisions so that judges can make more consistent and fair decisions. With clear guidelines, judges can treat each Citizen Lawsuit case with consistency and fairness, thereby reducing the potential for legal uncertainty.

Some sources of legal uncertainty in a Citizen Lawsuit case can include:

- 1) **Unclear Legal Standards:** The legal vacuum regarding the Citizen Lawsuit can make the legal standards that judges must apply vague. Without clear guidance, judges may have to rely on subjective interpretations or analogies of existing law, which can lead to uncertainty.
- 2) **Unspecified Procedures:** The lack of specific guidelines regarding procedures for handling Citizen Lawsuits can lead to uncertainty about the steps that both parties, including the plaintiff and the defendant, must follow during the court process.
- 3) **Unclear Legal Impact:** Without clear provisions regarding the legal impact of a Citizen Lawsuit, judges may find it difficult to determine the consequences of a decision taken. For example, whether the decision is only declarative, or whether it will also result in certain obligations for the losing party.
- 4) **Public Interest Considerations:** In Citizen Lawsuit cases, the judge may be faced with the difficult task of balancing the interests of the individual or group filing the lawsuit with the public interest as a whole. Without clear guidance, this could lead to uncertainty about how judges should assess various considerations.

To address legal uncertainty in the handling of Citizen Lawsuits, there are several steps that can be taken, including drafting laws that specifically regulate mechanisms and procedures for Citizen Lawsuits, providing adequate training to judges in handling such cases, and strengthening existing legal institutions to ensure consistent and fair law enforcement.

In comparison, the implementation of Citizen Lawsuits in different countries can provide valuable insights into the various models and practices that can be applied. Some countries may have more detailed and clear regulations regarding citizen lawsuits, while others may face similar challenges related to legal uncertainty. By learning from the experiences of other countries, Indonesia can improve the arrangement of Citizen Lawsuits and increase legal certainty in handling these cases.

The application of Citizen Lawsuits or citizen lawsuits can vary in different countries, depending on the existing legal system, legal culture, and legal traditions. Here is a brief comparison of how some countries implement Citizen Lawsuit:

- 1) **United States:**

In the U.S., Citizen Lawsuits or "citizen suits" are often related to the environment, where federal laws such as the Clean Air Act or the Clean Water Act give citizens the right

to file lawsuits against parties deemed to have violated environmental protection regulations. Federal law also gives citizens the right to file lawsuits in case of discrimination, civil rights violations, and so on. The process of filing a citizen's lawsuit in the US is quite structured and strictly regulated by federal and state laws.

2) Japanese:

In Japan, Citizen Lawsuit is also known as "jigyō soshō" or private lawsuit. This is a type of lawsuit filed by an individual or group of people against a specific party for a violation of the law or public interest. The Japanese legal system has mechanisms that allow private lawsuits in a variety of contexts, including the environment, consumer rights, and labor rights. However, the process and requirements for filing a private lawsuit in Japan can differ depending on the type of case and the associated laws.

3) German:

In Germany, Citizen Lawsuit is known as "Verbandsklage" or association lawsuit. It refers to the ability of a non-profit organization or association to file a lawsuit on behalf of a particular group or community interest. Verbandsklage is often used in the context of environmental protection and consumer rights. The German legal system has fairly clear rules regarding the requirements and procedures for filing an association lawsuit.

Each country has a unique approach to implementing the Citizen Lawsuit according to its legal and social context. However, in all cases, the Citizen Lawsuit aims to give citizens access to the justice system to protect their rights and ensure accountability of the government and private parties. A comparison of the implementation of Citizen Lawsuit in various countries shows variations in mechanisms, procedures, and their impact on the protection of citizens' rights and public interests. This comparative study can provide valuable insights for other countries, including Indonesia, in developing or improving regulations related to Citizen Lawsuit.

CONCLUSIONS AND RECOMMENDATIONS

From the perspective of positive law in Indonesia, the regulation and concept of citizen lawsuits is one of the important efforts in fulfilling constitutional rights. Although Law No. 24 of 2003 concerning the Constitutional Court provides a legal basis for citizens to file lawsuits related to violations of constitutional rights, there is a need to regulate this mechanism in more detail. Citizen lawsuits allow individuals or groups of people to protect their constitutional rights through a fair and transparent legal process. With this mechanism, it is hoped that the constitutional rights of citizens can be more respected and protected by the government and state institutions. This is also one of the efforts to strengthen the rule of law and maintain the balance of power between the government and the people. To increase the effectiveness of the Citizen Lawsuit, efforts are needed to fill in the legal gaps, develop more detailed guidelines, and learn the practices of other countries. Thus, the Citizen Lawsuit mechanism can run more effectively in protecting the constitutional rights of

citizens and strengthening the rule of law in Indonesia.

In the perspective of positive law in Indonesia, there are several suggestions for the regulation and concept of citizen lawsuits as an effort to fulfill constitutional rights:

1. **Preparation of More Detailed Regulations:** It is necessary to prepare more detailed and comprehensive regulations regarding Citizen Lawsuits, including the requirements for filing lawsuits, court procedures, judges' authority, and mechanisms for implementing judgments. Clear regulation will help reduce legal uncertainty and ensure more effective protection of constitutional rights.
2. **Increased Legal Awareness:** It is important to raise legal awareness among the public about their constitutional rights and the Citizen Lawsuit mechanism as a means of protecting those rights. Legal education and socialization about Citizen Lawsuit can help people understand the importance of using legal mechanisms to fight for their rights.
3. **Strengthening the Role of the Constitutional Court:** The Constitutional Court as the institution responsible for resolving constitutional disputes needs to be given sufficient authority to handle Citizen Lawsuits. Strengthening the role of the Constitutional Court will ensure fair and effective law enforcement in protecting the constitutional rights of citizens.

By implementing these suggestions, it is hoped that the regulation and concept of citizen lawsuits in a positive legal perspective in Indonesia can be more effective in fulfilling the constitutional rights of citizens and strengthening the rule of law.

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