

Effectiveness of Environmental Completion Through Class Actions

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Abstract

This study aims to determine the effectiveness of environmental settlement through class action. The research method used in this research is normative juridical which is supported by empirical data. In a Class Action lawsuit, a person or more who file a lawsuit to the Court represent other interests based on common interests and the existence of a common problem. Settlements for the environment are less effective, this is due to a lack of knowledge from the public and law enforcers themselves regarding the procedures for a representative lawsuit.

Keywords: Effectiveness, Environment, Class Action

Introduction

Class Action is a civil lawsuit filed by one or more persons representing a group that has been harmed to file a lawsuit in court because of the similarity of facts and legal basis between one or more persons representing the group and the group being represented. According to Law no. 23 of 1997 concerning Environmental Management, what is meant by class action is the right of a small group of people to act on behalf of a large number of people who have suffered losses on the basis of common issues, legal facts and demands arising from environmental pollution and/or damage.

Class action provisions in UUPPLH have not been equipped with class action procedural procedures, so that the application of class action in civil court practice is guided by PERMA No. 1 of 2002 (Group Lawsuit Event). In addition, it is also guided by the Civil Procedure Code stipulated in the HIR/RBg and other laws and regulations including judge decisions regarding class action.

Issues involving the interests of the wider community, the emergence of more and more losses, including pollution, damage in the environmental sector. Communities experience difficulties in fighting for their rights in filing claims for compensation to court. According to Susanto Adi Nugroho, violations of the law do not affect anyone but also the wider community [1]. E. Sundari opinion is in line with Susanti Adi Nugroho, law violations do not only affect a person, but can also affect a large group of people or the wider community [2].

Class action is actually better known by countries that adhere to the common law legal system than in countries that adhere to the civil law system. This is because in its history and development, class action was introduced for the first time in England, the country that gave birth to the common law legal system. In its development the British Commonwealth countries then adhered to it. Meanwhile, countries that do not adhere to the common law legal system, such as America and Indonesia in general, only adopt and adapt it to the legal system that applies in their respective countries.

Class Action in Positive Law in Indonesia was only given recognition after the promulgation of the Environmental Law in 1997 and then it was also regulated in the Consumer Protection Law and the Forestry Law in 1999. However, Class Action regulation is limited and regulated in several articles. In addition, the three laws do not regulate in detail the procedures and procedures for class action. Prior to 2002, class action lawsuits were generally filed without any notification mechanisms for group members and statements from

group members. Class action lawsuits are carried out through the same procedures as ordinary civil lawsuits. Provisions specifically regarding Class Action programs and procedures were only regulated in 2002 with the issuance of PERMA No. 1 of 2002 concerning Class Action Lawsuit Events. In PERMA No. 1 of 2002 regulates the obligation to notify group representatives and opens the opportunity to opt out of class action lawsuits for group members (opt out).

In article 37 paragraph 1 of Law no. 23 of 1997 stated that the community has the right to file a representative lawsuit to court and/or report to law enforcement regarding various environmental problems that are detrimental to people's livelihoods. In the elucidation of Article 37 paragraph (1) it states that what is meant by the right to file a representative lawsuit in this paragraph is the right of a small group of people to act on behalf of a large number of people who have suffered losses on the basis of similarities in issues, legal facts, and claims arising due to pollution and/or environmental destruction.

After the recognition of class action in 1997, class action lawsuits became frequently used by justice seekers. Several class action cases were filed after the promulgation of Law no. 23 of 1997 concerning Environmental Management, for example the Class Action Lawsuit for the 2002 Jakarta Flood. The lawsuit was registered at the Central Jakarta District Court in March 2002 with Case Number: 83/Pdt.G/2002, where the plaintiffs were Jakarta residents consisting of 15 flood victims group representatives who represent the plaintiff in the classification of group representatives as follows: 1) Flood victims who suffer loss of life/death. 2) Flood victims who suffer from illness. 3) Flood victims who suffer losses lose property. 4) Flood victims who suffer loss of property damage. 5) Flood victims who suffer losses lose the benefits that should be obtained. Meanwhile, the basis of equality of position and legal interests of group representatives in relation to class action lawsuit procedures at that time used several provisions that explicitly regulated class action lawsuit procedures such as Law no. 23 of 1997 concerning Environmental Management, Law no. 8 of 1999 concerning Consumer Protection, Law no. 18 of 1999 concerning Construction Services, Law no. 41 of 1999 concerning Forestry and several other regulations and existing jurisprudence.

The advantage of class action is that decisions apply to all people who are harmed, for example in cases of environmental pollution. In short, even though there is only one person filing a lawsuit, the entire community who has been harmed has the right to receive compensation in accordance with what the court has decided [3]. Thus, if the victim community files a lawsuit individually or if the pollution is sued one by one, the process can be very long and costly. As a result, the principle of fast, simple and low-cost justice (constant justice) is not fulfilled as stated in Article 5 paragraph (2) of the Law on Judicial Power.

Research Methods

The research method used in this study is normative juridical supported by empirical data, namely examining legal principles, legal principles and legal systematics. Normative legal research is library research or document study conducted on secondary data in the library in the form of primary legal materials, secondary legal materials and tertiary legal materials [4].

The research specification used is descriptive analysis, namely describing the applicable laws and regulations associated with legal theories and the practice of implementing written law so that it can describe the implementation and application of class action lawsuits in civil procedural law in Indonesia. The data analysis used is qualitative data analysis, so that it can provide a detailed and systematic description of the application of class action in civil justice practices.

Discussion

Class Action as a description of the existence of a large group of people who have an interest in a particular

case, which can consist of one or more who make a claim to represent the large group of people without having to mention one by one the members of the group they represent. This representation is carried out solely not because the group cannot act alone, but because there are too many people who will sue, so it must be represented so as not to cause court administrative difficulties and for the sake of efficiency and effectiveness of litigation. The definition of having an interest in the Class Action procedure is having an interest directly,

In a Class Action lawsuit, a person or more who file a lawsuit to the Court represent other interests based on common interests and the existence of a common problem. This means that when a person or several people submit a lawsuit to the Court, they can file a lawsuit for their own interests as well as for the interests of a group of people, because the interests of the party filing a lawsuit with the party being represented have the same interests.

From the explanation above, it can be concluded that a class action lawsuit is a procedure for filing a lawsuit, in which one or more people representing a group file a lawsuit for themselves or themselves and at the same time represent a large group of people who have the same facts. or legal basis between the representative of the group and the members of the said group.

The application of Class Action in the field of civil procedural law has a very effective and efficient role. Why is that? Because the Plaintiff and Defendant only paid one time fee for litigation. Of course this will benefit both parties and can fulfill the low cost principle in court proceedings. Through this Class Action lawsuit, obstacles can be overcome by joining together with other victims or sufferers in just one lawsuit, namely a group lawsuit. This class action lawsuit can also prevent different and inconsistent judgments. In addition, group lawsuits can produce justice and reduce obstacles for individual plaintiffs, who are generally in a weak position.

Class action lawsuit procedures include:

1. Class Representative Lawsuit is a procedure for filing a lawsuit, in which one or more people representing a group file a lawsuit for him or himself.
2. Class Action Lawsuit is filed in terms of:
 - a. The number of group members is increasing so that it is not effective and efficient if the lawsuit is carried out individually or jointly in one lawsuit.
 - b. There are similarities in facts or events and similarities in the legal basis used which are substantial in nature, and there are similarities in the types of claims between group representatives and group members.
 - c. Group representatives have honesty and sincerity to protect the interests of the group members they represent.
3. The class action letter refers to the requirements stipulated in the applicable Civil Procedure, and must contain:
 - a. Complete and clear identity and group representation.
 - b. Group identity in detail without mentioning the names of the members.
 - c. Complete and clear identity of group representatives, without mentioning the names of group members one by one.
 - d. Group identity required in connection with the obligation to make notifications.
 - e. Posita from all groups, both group representatives and identified and unidentified group members, stated clearly and in detail.
 - f. Representative lawsuits can be grouped into several groups or sub-groups, if the claims are not the same due to different nature and losses.
 - g. Claims or petitums regarding compensation must be stated in a clear and detailed manner, including suggestions regarding mechanisms or procedures for distributing compensation to all

members of the group, including suggestions for forming a team or panel to help expedite the distribution of compensation.

4. Representative lawsuits can be grouped into several groups or sub-groups, if the claims are not the same due to different nature and losses.
5. To represent the legal interests of group members, group representatives are not required to obtain a special power of attorney from group members (Article 4).
6. At the beginning of the trial examination process, the judge is obliged to examine and consider the criteria for class action and provide advice to the parties regarding the requirements for class action, then the judge gives a determination regarding whether the class action is legal or not.
7. If the use of the class action procedure is declared valid, the judge immediately orders the plaintiff to submit a proposed notification model to obtain the judge's approval.
8. If the use of the class action procedure is declared invalid, then the examination of the lawsuit is terminated by a judge's decision.
9. In the case process, the Judge is obliged to encourage the parties to settle the case through reconciliation, both at the beginning of the trial and during the case examination.
10. How to notify group members can be done through print and/or electronic media, government offices such as sub-districts, sub-districts or villages, court offices, or directly to the members of the group concerned as long as they can be identified based on the approval of the judge.
11. Notification to group members must be carried out at the following stages:
 - a. As soon as the judge decides that the filing of a class action procedure is declared valid; and then group members can make exit statements.
 - b. At the stage of settlement and distribution of compensation when the claim is granted.
12. Notification loading:
 - a. Claim number and identity of the plaintiff or plaintiffs as a group representative as well as the defendant or the defendants;
 - b. Brief description of the case;
 - c. Explanation of the definition of groups;
 - d. Explanation and implications of participation as group members;
 - e. Explanation about the possibility of group members included in the definition of the group to leave the group membership;
 - f. An explanation of the time, namely month, date, hour, notice of exit statement can be submitted to the court;
 - g. Explanation of the address intended for submitting an exit statement;
 - h. When required by group members as to who is available to provide additional information;
 - i. The filling form regarding the group member's exit statement as stipulated in the attachment to this Supreme Court Regulation;
 - j. An explanation of the amount of compensation to be filed.
13. After the notification is made by the group representative based on the judge's approval, the group members within the period determined by the judge are given the opportunity to declare their departure from group membership by filling out the form stipulated in the attachment to this Supreme Court Regulation.
14. Parties who have declared themselves out of class action membership are legally not related to the decision on the representative class action in question.
15. Group representative lawsuits were filed in environmental cases (Article 37 of Law No. 23 of 1997 concerning Environmental Management), consumer protection cases (Article 46 of Law No. 8 of 1999 concerning consumer protection), and forestry matters (Article 71 of Law -Law No. 41 of 1999 concerning Forestry).
16. In a class action lawsuit, if the claim for compensation is granted, the judge is obliged to decide on the amount of compensation in detail, determine the group and/or sub-group that is entitled, the mechanism for distributing compensation and the steps that must be taken by the group representative

in the determination and distribution process such as as well as the obligation to make notifications or notifications. (Article 9 PERMA).

Class actions This regulation inspired the formulation of class action in Indonesia, in Law no. 23 of 1997 UUPPLH jo Article 91 UUPPLH No. 32 of 2009. Contents of Article 37 UUPPLH:

- The community has the right to file a representative lawsuit to court and/or report to law enforcement regarding various environmental problems that are detrimental to people's livelihoods.
- If it is known that the community is suffering as a result of environmental pollution and/or destruction in such a way that it affects people's livelihoods, the government agency responsible for the environment can act in the interests of the community.
- Further provisions as referred to in paragraph (2) are regulated by Government Regulation.

In the elucidation of Article 37 paragraph (1) it is emphasized that what is meant by the right to file a representative lawsuit in this paragraph is the right of a small group of people to act on behalf of a large number of people who have suffered losses on the basis of similarity in issues of legal facts and demands arising from environmental pollution and/or damage. .

When detailed explanation Article 37 paragraph (1) requirements for a representative lawsuit include:

- *Class representatives* in small quantities
- *Class members* in bulk
- Problem commonality
- Legal facts
- Similar demands
- Because of pollution, destruction.

The existence of Class Action lawsuits applied in environmental disputes is very helpful in resolving cases in cases of community protection. This is due to the fact that the number of people who have been harmed is not small enough to file lawsuits in court. So that if each community submits a case individually it will be inefficient especially if each community filing a lawsuit uses the services of a lawyer, it will require a special power of attorney for each attorney representing the community filing the case. This shows that Class Action lawsuits are very appropriate for community protection cases because society often consists of many people.

One of the formal requirements for filing a Class Action lawsuit regulated in PERMA Number 1 of 2002 is that there is a similarity of facts or legal basis used in the lawsuit and the similarity of facts and legal basis is substantial. 7 Lawsuits related to community protection issues are often filed by non-governmental organizations. In this case, related to the requirements for equality of facts or legal basis, non-governmental organizations cannot become class representatives in class action lawsuits [5]. This is because non-governmental organizations do not suffer direct losses or feel the impact of the things being sued directly, but their role is only to represent the community whose authority is granted by law.

There are several benefits that can be obtained when filing a lawsuit using a class action procedure. John Basten Q. C sees that there are five benefits that can be obtained, namely (1) Regulating the settlement of cases involving many people that cannot be filed individually. (2) Ensuring that claims for small damages and limited funds are appropriate.

(3) Prevent conflicting decisions for the same problem. (4) Use of a more efficient administration of justice and (5) Develop law enforcement processes. Although there are many benefits that can be obtained in filing a class action lawsuit, that does not mean that it does not have weaknesses. Some of the disadvantages of

class action procedures are: difficulty in administering, can lead to injustice [6].

Before stating how effective the resolution of environmental cases is through class action, there are several examples of cases of environmental destruction that have been resolved by taking class action, namely in January-February 2002 there was a very large flood in Jakarta and its surroundings. The flood disaster resulted in significant losses, both material and immaterial losses, both individual and communal, which were suffered by approximately 8,300,000 Jakarta residents. One of these losses is caused by the absence of the government's role as a public servant, especially in terms of the early warning system and emergency response when the flood event occurs. Based on this, the citizens of Jakarta took legal action to sue the government for legal actions.

Meanwhile, the defendants are: 1) The Republic of Indonesia cq. The President of the Republic of Indonesia as the Defendant I. 2) The Republic of Indonesia cq. The President of the Republic of Indonesia cq Governor Head of Level I Region of DKI Jakarta Province as Defendant II. 3) Republic of Indonesia cq. The President of the Republic of Indonesia cq Governor Head of Level I Region of West Java Province as Co-Defendant.

On April 26, 2002, PERMA No. 1 of 2002 which regulates class action proceedings. Some of the rules in this PERMA were then used as an excuse for the defendants and co-defendants in submitting their exceptions, some of the things at issue were for example: 1) The lawsuit was not based on specific rules/laws that had regulated/included a class action mechanism. 2) In accordance with PERMA, for a class action lawsuit to be valid, it must be stated in the form of a stipulation so that the claim must be considered premature and declared not accepted. 3) Use of the term "class representative" as a substitute for the term "Plaintiff". 4) Questioning the legality of the position of class representatives.

However, the Panel of Judges did not grant the defendant's exception and co-defendant in the interlocutory decision with legal considerations because when the examination began the PERMA was not yet valid so the provisions in the PERMA that appeared later could not be retroactively applied. In the interlocutory decision, the Panel also decided to continue the judicial process to examine the substance of the case and asked the Plaintiff to make notifications (notifications) to class members through the mass media as stipulated in the PERMA. The notification was then made in the *Warta Kota* daily newspaper on 27 July 2002. After an examination at the trial, the Panel of Judges finally rejected the lawsuit of 15 flood victims on 21 November 2002. In its final decision, the panel of judges rejected the class action plaintiffs' argument. The Assembly considers that those who are responsible for flooding in Jakarta are not the Governor of DKI, but each Mayor in the five areas of DKI. The Assembly is of the opinion that based on Law no. 22 of 1999 concerning Regional Government, autonomy authority is at the Municipal and/or Regency level, not at the province. Therefore only regency and municipal governments can be held legally accountable both inside and outside the court. In addition, it was also stated that Defendant II (Governor of DKI) had made every effort to overcome and control flooding in Jakarta during January-February 2002.

Starting from this case, judging from the decision, it clearly illustrates how shallow the plaintiff's knowledge of compensation and class action is as stipulated in articles 34 and 37 of the UUPH. It can be said from the dispute cases above, that the failure of the representative lawsuit was caused by the unclear understanding and procedures for filing a class action. Or in other words, the implementation of class action in Indonesia is still not effective. It is hoped that with the enactment of the Republic of Indonesia Supreme Court Regulation No. 1 of 2002, ignorance regarding class action does not continue to occur.

Siti Sundari Rangkuti's opinion on the group lawsuit is food for thought for civil procedural law regarding the environment [7].

Because representative lawsuits are unknown in the Indonesian civil procedural law system, recognition of

class action procedures by the UUPH requires juridical adjustments to the civil law currently in force [8].

Conclusions and Suggestion

Conclusion

Class Action is a civil lawsuit filed by one or more persons representing a group that has been harmed to file a lawsuit in court because of the similarity of facts and legal basis between one or more persons representing the group and the group being represented. The legal recognition of class action in Indonesia is regulated in the UUPH, namely article 37 paragraph (1) and (2). Specifically then regulated in the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2002 concerning Events for Group Representative Lawsuits. The application of class action is less effective, this is due to the lack of knowledge from the public and law enforcers themselves regarding the procedures for class action.

Suggestion

It is recommended that those who wish to file a Class Action Lawsuit thoroughly understand the mechanism or formulation of a lawsuit so that what is expected in the submission can be processed properly and correctly.

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