

CLASS ACTION AS A FORM OF COMMUNITY PARTICIPATION IN ENVIRONMENTAL LAW ENFORCEMENT

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ABSTRACT

Class action on environmental law enforcement is related to community participation as stated in Article 91 of the Law on Environmental Protection and Management No. 32 of 2009. The right to participate is recognized as a way to get the right to a good and healthy environment. The community is given access to participate in activities that can or have had an impact on the environment and in law enforcement.

Keywords: Class Action, Law Enforcement, Environmental Law.

PRELIMINARY

Class action or class action suit is a synonym for class suit or representative action (RA) according to PERMA No. 1 of 2002 is a procedure or procedure for filing a lawsuit, in which one or more people who represent a group file a lawsuit for themselves and at the same time represent a large group of people, who have the same facts or legal basis and similar claims between group representatives and members. the group.¹

The main purpose of regulating class action is to be able to streamline or streamline the process of resolving disputes or cases involving groups with many members. Another objective is to provide access to justice and as an opportunity to foster a deterrent effect.² It is conceivable that if there were more than 50 victims of environmental pollution/destruction, each would file a lawsuit against the court for the same matter, how inefficient and effective it would be when each filed a separate lawsuit. What a huge cost to be incurred by such a lawsuit.

¹Syahrul Machmud, Enforcement of Administrative Law, Civil Law and Criminal Law According to Law no. 32 of 2009, Graha Ilmu, 2012, p. 196.

²Indro Sugianto, Class Action, Concepts and Strategies of Group Lawsuits to Open Access to Justice for the People, Setara Press, 2013, p. 11.

People who appear as plaintiffs (can be more than one) are called class representatives, while a large number of people they represent are called class members.). Class representatives that are small in number (manageable), represent a very large number of class members.³

Class action on environmental law enforcement is related to community participation as stated in Article 91 of the Law on Environmental Protection and Management No. 32 of 2009 (hereinafter referred to as UUPPLH) as an improvement from article 37 of the Environmental Management Law no. 23 of 1997 (hereinafter referred to as UUPPLH)

While public participation according to Canter (in Luwihono, 2007) he simply defines it as feed forward information (communication from the government to the public about a policy) and feedback information (communication from the community to the government on the policy).

Citing the opinion of Luwihono (2007) that if the involvement of local communities in environmental management is really for the purpose of achieving optimal results, not only for the initiator/investor but also for the community, participation should not be seen as a formality activity that only aims to gain public legitimacy. . To overcome the obstacles in the participatory approach, strengthening local community knowledge about the environment, its management and hazards is a top priority that must be considered by the government.

The type of legal research conducted is normative juridical (normative law). The normative legal research method is a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side. Therefore, this legal research is focused on examining legal research on the rules or norms in positive law, namely legal norms related to environmental law enforcement. Because the type of research used is a normative juridical research type, the approach used is a statutory approach. This approach examines the laws and regulations related to the subject matter.⁴

³Ibid, h. 197.

⁴Johny Ibrahim, Theory & Research Methods of Normative Law, Banyumedia Publishing, Malang, 2006, p. 57.

Group Representative Civil Lawsuit in Environmental Cases

Class action or group representative civil lawsuits in environmental cases must meet the following elements:

1. Civil lawsuit
2. Group Representative (Class Representative)
3. Angroup members
4. Adanyes loss
5. Samen events or facts and legal basis.

The legal basis for examining a representative lawsuit in an environmental case is:

1. Article 91 of the Law on Environmental Protection and Management No. 32 of 2009 (UUPPLH):
 Verse (1): the community has the right to file a group representative lawsuit for their own interests and/or for the benefit of the community if they suffer losses due to pollution and/or environmental damage.
 Verse (2A) lawsuit can be filed if there are similarities in facts or events, legal basis, and types of claims between group representatives and group members.
 Verse (3) the provisions regarding the community's right to sue shall be carried out in accordance with the laws and regulations.
2. regulationsn Supreme Court (PERMA) No. 1 of 2002 concerning Group Representative Lawsuit (GPK).
 Article 1: Contains the definition of GPK, group representatives, group members, sub-groups, notification and exit statement.
 Articles 2 and 3: Contains procedures for GPK requirements
 Article 4: To represent the interests of group members, group representatives are not required to obtain a special power of attorney from group members.
 Article 5: Judge's assessment of the validity of the criteria for submitting GPK. The validity of the GPK is stated in a court decision. If it is declared valid, the judge orders the plaintiff to submit a notification model proposal to obtain the judge's approval. If it is not valid then the examination of the lawsuit is terminated by a judge's decision.
 Article 6: The judge recommends the parties to settle the case referred to in peace.
 Article 7 : Notice
 Article 8 : Statement of exit
 Article 9: In the event that the claim for compensation is granted, the judge is obliged to decide the amount of compensation in detail, the determination of the groups and sub-groups who are entitled, the mechanism for distributing the compensation and the steps that must be taken by the group representative in the process of determining and distributing it as well as the obligation to carry out distribution or notification.

In the attachment to PERMA 1/2002, there is a class action notification form and a notification form regarding a statement from group members.

3. Decision of the Chairman of the Supreme Court of the Republic of Indonesia No. 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases. In essence, the decision is the implementation of PERMA No. 1 of 2002. To determine whether there is pollution and/or environmental damage, the judge may appoint an independent expert at a fee based on the agreement of both parties. In the proof, strict liability is possible in terms of B3 waste or serious threats.⁵

The efforts and plans of the MA national LH working group related to guaranteeing community participation are contained in:

- Article 28 H of the 1945 Constitution (2nd amendment)
- Article 28 E paragraph 3 of the 1945 Constitution (2nd amendment)
- Article 9 paragraph 3 of Law no. 39 of 1999.

The importance of community participation in environmental management is motivated by several reasons, namely:

1. In order to formulate common problems more effectively.
2. Get information and understanding beyond scientific factors.
3. Public opinion is a source of problems and consideration of alternative solutions for the common good
4. The awareness of participation can form a feeling of belonging to the plan and problem solving.⁶

Community participation in the environment is regulated in Article 70 of the UUPPLH. The provision of suggestions and opinions in this provision is included in the preparation of the KLHS and Amdal.

Some examples of environmental cases that were filed with class action lawsuits include:

1. A class action lawsuit by the Capital Coalition against the Indonesian government for negligence causing severe air pollution in Jakarta. (National News, September 16, 2021).

⁵ [https://leip.or.id/wp-content/uploads/2021/01, community participation in environmental law enforcement](https://leip.or.id/wp-content/uploads/2021/01/community_participation_in_environmental_law_enforcement)

⁶M. Chazienul Ulum, Rispa Ngindana, Environmental Governance, Policy Issues and Environmental Governance, UB Press, 2017, p. 70

2. A class action lawsuit by residents in several villages in Blitar Regency, East Java, against PT Greenfields Indonesia regarding allegations of cow dung waste pollution. (Kompas, July 21, 2021).
3. A class action lawsuit by a group of Riau residents represented by 61 people against 32 oil palm and plantation companies accused of causing forest and land fires that caused the haze disaster. (Tempo, Friday 11 March 2016), and many other class action lawsuits.

Conclusion

In general, public awareness and concern emerges after environmental damage and even environmental disasters have serious impacts. This is an indication that the behavioral approach of the bureaucracy and the majority of the community still tends to be reactive. Likewise in environmental law enforcement, class action is a form of community participation who feels that justice has not been fulfilled in protecting and managing the environment. The right to participate in UUPPLH is recognized as a way to get the right to a good and healthy environment. The community is given access to participate in activities that can or have had an impact on the environment and in law enforcement.

Reference

- Johny Ibrahim, Theory & Research Methods of Normative Law, Banyumedia Publishing, Malang, 2006.
- Syahrul Machmud, Enforcement of Administrative Law, Civil Law and Criminal Law According to Law no. 32 of 2009, Graha Ilmu, 2012.
- Indro Sugianto, Class Action, Concepts and Strategies of Group Lawsuits to Open Access to Justice for the People, Setara Press, 2013.
- M. Chazienul Ulum, Rispa Ngindana, Environmental Governance, Policy Issues and Environmental Governance, UB Press, 2017.