

CHAPTER ONE

INTRODUCTION

A. Background

In business there is a reciprocal relationship between business actors with consumers, either in the form of goods or services. The purpose of the business actor is to gain as much profit from transactions that are done with the consumer. While on the other hand, consumers are entitled to get satisfaction through the needs of the goods in use. In other words, consumers are entitled to obtain satisfactory quality. In transactions between consumers and business actors, there is often an injustice between the two in which the consumer is generally in a weak position, consequently being the target of the decline of the business actors who are socially and economically well-positioned. To protect consumers is very necessary policy from the government through the establishment of legal protection system to consumers.¹

Various difficulties faced by consumers in relation to business actors and are in dire need of legal certainty that can provide clarity about the rights and obligations of the parties so that the emergence of Law No. 8 of 1999 on

¹ Sri Redjeki Hartono, 2010, *Aspek-Aspek Hukum Perlindungan Konsumen pada Era Perdagangan Bebas*, Bandung, Mandar Madju, p. 1-3.

Consumer Protection is expected to overcome various kinds of complexity in the relationship between consumers and businessmen.²

The development of law in Indonesia, especially on legal protection through class actions and legal standing / *ius standi* is being discussed both in academic circles, as well as within the circles of law, justice, and non-governmental organizations. Because of the new concept of class actions, many legal observers give the definition of class action identical to or equal to the definition of legal standing (*ius standi*), whereas the notion of class actions is different from legal standing.³

Class action is a procedure of filing a civil suit that is more widely used and known in countries with common law system around the 1700s.⁴ E. Sundari explained that in the civil law system is not known class action procedures, but because it has many benefits of efficient and economical ease, class action filing procedures are growing and adopted by other countries adherents of the civil law laws system including in Indonesia.⁵

Class action is essentially a civil suit (related to a compensation request) filed by a number of people as class representatives representing their interests, while representing the interests of more than ten and even thousands

² *Ibid*, p. 5.

³ Kurniawan, 2011, *Hukum Perlindungan Konsumen, Problematika Kedudukan dan Kekuatan Putusan BPSK, Jurnal Ilmiah Hukum Legality (JIHL)*, Malang, UB Press, p. 44.

⁴ Indro Sugianto, 2005, *Class Action: Membuka Akses Keadilan Bagi Rakyat: Konsepsi dan Strategi Pembaharuannya di Indonesia, Jurnal Wawasan Yuridika*, Bandung, In-Trans Press, p.24

⁵ E. Sundari, 2015, *Praktik Class Action Dalam Hukum Indonesia*, Yogyakarta, Cahaya Atma Pustaka, p.5.

of people who share the same suit. The large number of people represented is called class members.⁶ Article 46 paragraph (1) of Law no. 8 of 1999 on Consumer Protection ("Consumer Protection Law") mention as follows;

- a. Harmed consumer or the heirs concerned;
- b. Consumer groups having the same interests;
- c. Qualified non-governmental consumer protection agency, namely the form of a legal entity or foundation, which in its articles of association stipulates that the purpose of establishment of such organization is for the benefit of consumer protection and has carried out its activities in accordance with its articles of association;
- d. government and or related institutions if the goods and services consumed or utilized result in substantial material loss and casualties.

Then, the explanation of Article 46 paragraph (1) letter b of the Consumer Protection Law reads:

"This law recognizes a class action. Class action must be filed by a customer who is completely harmed and can be legally proven, one of which is evidence of a transaction".⁷

⁶ Mas Achmad Santosa, 1998, Gugatan Perwakilan Kelompok: Konsep dan Penerapan, Bandung, Lembaga Pengembangan Hukum di Indonesia, p.3.

Before the Supreme Court Regulation No. 1 of 2002 concerning the Class Action of Class Representation, several laws and regulations have given recognition and become the legal basis for the implementation of class action in Indonesia. Among others are in Law No. 23 of 1997 on Environmental Management, Law No. 8 of 1999 on Consumer Protection, Law No. 41 of 1999 on Forestry and Law No. 18 of 1999 on Construction Services, but in practice the application of class action lawsuits is often confronted by various constraints. These constraints include, among others, the absence of provisions governing hearings and deciding class action lawsuits filed before the courts.⁸

Problems arising from the absence of provisions on class action procedures are evident from some court decisions examining and adjudicating civil lawsuits using class action procedures. The results of the ICEL team's review in 2002 on several cases of class actions that are being or are being processed in court before the issuance of the Supreme Court Regulation no. Law No. 1 of 2002 concerning to class action,⁹ find some of the problems that often occur in the practice of class action lawsuits in the judiciary in Indonesia, among others:¹⁰

⁷ Hukum Online, "Aturan dan Praktik Gugatan Berkelompok (Class Acion)", available on [http://www.hukumonline.com/klinik/detail/cl5092/aturan-dan-praktik-gugatan-perwakilan-kelompok-\(class-action\)-konsumen](http://www.hukumonline.com/klinik/detail/cl5092/aturan-dan-praktik-gugatan-perwakilan-kelompok-(class-action)-konsumen), accessed on Monday, February 19, 4:56 pm.

⁸ *Ibid*, p. 15.

⁹ Supreme Court Regulation, Number 1 Year 2002, about Class Action.

¹⁰ Muh. Syahrul R. Lamsu, 2014, *Hak Gugat Perwakilan Kelompok Dalam Penyelesaian Sengketa Konsumen*, *Jurnal Hukum*, Universitas Sam Ratulangi.

- a. About power of attorney from group members to group representatives.

Of all court decisions analyzed, it may be noted that the first rebuttal often raised by the defendant against the use of a class action procedure is the absence of a power of attorney from group member to group member. In the provisions of applicable civil procedure law requires that to be able to act as a representative or proxy, a person must obtain a special power of attorney from the person / party he represents.

- b. About the lawsuit letter. In the lawsuit generally does not explain the characteristics of a suit that uses a class action procedure, in which case it does not clearly describe the definition of class, the posita of the lawsuit does not explain in detail and clear the similarity of facts and laws and the similarity of demands between group representatives with group members, redemption distribution procedures. In addition, in determining group representatives, plaintiffs tend to propose large numbers of group representatives. This will make it difficult for the plaintiff to prove that there is an element of equality of interest between group representatives and group members.

- c. Equalize a class action lawsuit with a legal standing suit. In some decisions both plaintiffs, defendants and courts are still caught up in the

notion that a class action lawsuit is identical to a lawsuit against a non-governmental organization or referred to as "NGO's standing to sue".

- d. About the procedure of the examination. The determination of the recognition or validity of a lawsuit that uses class action procedures in various decisions is conducted in different stages of examination. Some parties use of this procedure to be examined and disconnected at the end of the verdict together with the principal case, while on the other decision the case is terminated on the interruption stage.
- e. About notifications or notifications. The absence of any rule or guidance on court proceedings in examining and adjudicating civil litigation cases through class action procedures, resulting in notification orders or notifications (which in the legal system of other countries constitute a duty) shall not be a priority or a necessity.
- f. About Implementation court decision in terms of the distribution of compensation. In filing a lawsuit as a class action, which typically claim reimbursement in the form of money, posita plaintiff does not clearly about the proposed distribution mechanism for damages.

In judicial practice until 2001, class action procedures in some cases have already begun. For example, in the case of RO Tambunan suing Bentoel Remaja, Advertising and Private Radio company Niaga Prambors (1997), the lawsuit filed by the legal aid Riau Foundation representing itself as well as on

behalf of six hundred thousand Pekanbaru residents of four plantation companies in Riau in the case of burning land (2000) as well as nine consumer lawsuit LPG as LPG consumer representatives throughout Greater Jakarta to PT Pertamina on LPG price hike at the Central Jakarta District Court (2000).¹¹ Other lawsuit cases were filed by Didik Hadiyanto and his colleagues against Saleh Ismailo Iskandar, SH, (member of East Java Legislative Council) in the case of Surabaya city prostitution, Garbage city and Flood city with case number 210 / pdt.G / 2001 / PN.SBY.¹²

While waiting for legislation to regulate the lawsuit of the representatives of the group and in accordance with the authority of the Supreme Court if there is no regulation, then the Supreme Court can make regulations to fill the legal void, then issued the Supreme Court Regulation (PERMA) Number 1 Year 2002 About the Event of Representative Litigation Group. Group representatives in the class action are from a group that has interests and suffers the same losses as the group they represent, while the organization and so on are not those who experience real loss or problems.¹³

The presence of Supreme Court Regulation No. 1 of 2002 provides hope for the certainty of a class action lawsuit. This provision contains class

¹¹ Indro Sugianto, *op. cit.*, p 2-3.

¹² See article, "Kasus Class Action Perlindungan Konsumen" available on, <https://tirto.id/search?q=kasus+class+action+perlindungan+konsumen>, accessed on Friday, December 1, 2016, 4:56 pm.

¹³ E. Sundari, *op. cit.*, p. 32-33.

action lawsuits that have different characteristics than ordinary civil lawsuits. In a class action lawsuit, group representatives do not require power of attorney from group members, but in the HIR regulating the usual civil lawsuit, the granting of power from the class representatives to the legal attorney still requires a special power of attorney. Also, Article 5 of the Supreme Court Regulation No. 1 of 2002 mentions the preliminary examination and in Article 7 mentions a notice that both are unknown in the ordinary civil lawsuit. In the absence of the rules, Article 10 of the Supreme Court Regulation shall refer to the applicable Civil Procedure Code in Indonesia.¹⁴

In Indonesia the class action lawsuit (class action) was only known formally and officially in 2002.¹⁵ It is Regulated in the Supreme Court Regulation No. 1 of 2002. Both group representatives and group members are generally victims of real losses. Non-governmental organizations as plaintiffs are not the victims who suffer real losses.¹⁶ Based on this background, through a series of research process the author intends to know and obtain data on **“CLASS ACTION LAWSUIT IN AN ATTEMPT TO RESOLVE CONSUMER DISPUTES”**.

B. Research Problem

¹⁴ Indro Sugianto, *op.cit.*, p. 35- 36.

¹⁵ Yahya Harahap, 2004, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Jakarta, Sinar Grafika, p.39.

¹⁶ Susanti Adi Nugroho, 2010, *Class Action & Perbandingan dengan Negara Lain*, Jakarta, Kencana Prenada Media Group, p. 4

1. How the legal position of class action in procedure in the court?
2. How the class action procedure in the settlement of consumer disputes?

C. Objective of Research

1. To find out the class action lawsuit in the settlement of consumer disputes
2. To find out the procedure of a class action lawsuit.

D. Benefit of Research

Based on research problems and objective research, the research benefits are expected as follows:

1. Theoretically

Theoretically this research provides benefits in understanding the concept of class action in the settlement of consumer disputes.

2. Practically

Practically this research provide a better legal recommendation to Indonesia's law specifically its consumer protection law.