

CHAPTER FOUR

FINDING AND ANALYSIS

A. CLASS ACTION IN PROCEDURAL LAW IN INDONESIA

In civil law are known some kinds of rights demands. Rights demands are defined as an act which aims to obtain the right granted by the court to prevent the existence of *eigenrichting* / vigilante action. The demand for rights in civil law is provided in article 118 paragraph 1 HIR¹ or article 142 paragraph 1 Rbg.² This right of claim may be in the form of a petition for appointment and claim. In the case of a lawsuit there is a common lawsuit that is known to the public and there is no known public, such as class action lawsuit, citizen law suit, and legal standing that can be in the community to sue both the state organizers and parties - parties that harm the community.

A civil suit basically demands compensation for goods or services. In the consumer dispute many ways that consumers can do in the demands of one class action, the legal force of class action recognition is the issuance of law No. 23 of 1997 on environmental management.³ after the issuance of Act No. 23 of 1997 on environmental management, the class action lawsuit is accepted in court and the procedure used is the same procedure as the civil

¹ Article 118 Paragraph 1 of HIR.

² Article 142 paragraph 1 of Rbg.

³ Law No. 23 of 1997 in Environmental Management.

lawsuit, since there is no regulation specifically regulating the class action filing and the filing of the lawsuit. In its development the class action began to be incorporated into several other laws as set forth in Law No. 8 of 1999 concerning consumer protection, in article 46 paragraph 1, Law No. 23 of 1997 on environmental management in Article 37 paragraph 1 and paragraph 2, Law No. 18 of 1999 concerning construction services in Article 38 paragraph 1, Law No. 41 of 1999 on forestry, in article 71 paragraph 1, but in the regulation has not set clearly on the implementation procedures of the class action, only the general picture of class action.

Due to the absence of clear class action arrangements, supreme court regulation no 1 year 2002 about the group of representative, all civil cases that meet the requirements of the class action may be brought to court using a class action procedure,⁴ not only about consumer protection, environmental, forestry but widespread use cases in which the case falls under the terms of the class action, the case may be brought to justice.⁵ Especially for consumer disputes this is regulated in Article 46 paragraph 1 of Law No. 8 of 1999 on consumer protection.⁶

Based on the Supreme Court Regulation No. 1 of 2002 concerning the law on the lawsuit, the representatives of the group formulated:

⁴ M. Yahya Harahap, 2004, Hukum Acara Perdata, Sinar Grafika, Jakarta p.139.

⁵ Puslitbang Hukum dan Peradilan Mahkamah Agung RI, Naskah Akademis Gugatan Perwakilan Kelompok (Class Action), 2003, p. 4.

⁶ Article 46 paragraph (1) law No 8 of 1999 on consumer protection

"A class representative's lawsuit as a procedure for filing a lawsuit, in which one or more persons representing the group filed a lawsuit for themselves and also represented a large group of people who shared the same fact or equality of the legal basis between the representatives of the group and members of the group."⁷

Given the class action of entry into civil procedure law, the proceedings in court are the same as other civil procedural law but there are several things that distinguish it. In practice, class action is applied in some cases ranging from consumer protection, environmental management, construction services and forestry. Given the purpose of the class action form to make a case cheaper, easier and faster.⁸ Based on the principle of the lawsuit and on the basis of civil procedure law principles.⁹

1. Cases Use Class Action as a Resolution

a. case of consumer protection based on the law no 8 of 1999

Class action filing with case number 09 / Pdt. G / 2014 / PN.Grt filed by Drs. H. Abidin Burhanudin, M.Pd, this case began when the Bank perkreditan Rakyat (BPR) was liquidated by the government in 2007. This resulted in the loss of

⁷ Article 1, Supreme Court Regulation No. 1 of 2002 about Procedure of class action

⁸ Undang – Undang no 4 tahun 2004 tentang pokok – pokok kekuasaan kehakiman

⁹ Susanti Adi Nugroho, 2003, Refleksi Praktek Gugatan Perwakilan Kelompok (Class Action) di Indonesia, Jakarta, Mahkamah Agung RI

hundreds of customers because their savings amounted to 4 billion lost without notice from the government and from the Bank Perkreditan Rakyat (BPR). The plaintiffs as the owners of such savings and time deposits have sought and tried their best and are legally justified to claim and take their rights and settle the matter in a kinship, but the result is nil, therefore the plaintiff who is a customer of a rural bank (BPR) filed a class action lawsuit which has been contained in the law article 46 paragraph (2) of the law no. 8 of 1999 on consumer protection.¹⁰

Considering in article 46 paragraph (2) of Law No. 8 of 1999 concerning consumer protection stating that:

"A lawsuit for a business offense may be committed by a group of consumers with the same interests"

In this article, there can be recognition of the class action lawsuit procedure against cases that have similarity and legal standing between the plaintiffs and their representatives.

b. case of environmental management base on the law no 23 of 1997

¹⁰ Pengadilan Negri Garut, dalam kasus gugatan perwakilan kelompok available on, <https://putusan.mahkamahagung.go.id/putusan/5df8451a19eb2471125e4b297c0ddc01>, accessed on Thursday, march 15, 2018, at 3:46 pm.

case with number 49 / Pdt.G / 2003 / PN.BDG case of landslide in Mandalawangi district Kadungora Garut district.¹¹ In this case people or victims suffer property damage, where class action lawsuit filed by dedi and friends filed a lawsuit against the president of R, the Minister of Forestry, Perum Perhutani, the Government of West Java Province and the District Government of Garut Regency Court of Bandung.

The panel of judges of the state in its consideration states that:

1. The State has a responsibility in environmental management. The responsibility of the State is implemented by the government led by the President of the Republic of Indonesia> Minister of Forestry> Perum Perhutani West Java> West Java Provincial Government & Garut Regency Government in accordance with the scope of their respective duties.
2. The Panel of Judges stated that the environmental losses and the material losses of the plaintiffs caused by floods and landslides on Mount Mandalawangi have been factual so that there is no need to be proven again.

¹¹ Pengadilan Negri Bandung in case of Mandalawangi, available on, <https://putusan.mahkamahagung.go.id/putusan/9ee23ed892829c1edce089fa1b3e7757>, accessed on Friday, March 16, 2018, at 4:56 pm.

3. The Panel of Judges also in its consideration refers to the principle of precautionary principle of the Rio Declaration.

In the ruling of the Bandung District Court. 49 / Pdt.G / 2003 / PN.BDG are as follows:

1. To grant class action from representatives of avalanche victims of Mount Mandalawangi, Kadungora Sub-district, Garut Regency for the most part.
2. Declares that Defendant I (Director of Perum Perhutani Unit III West Java), defendant III (Minister of Forestry), Defendant IV (West Java Provincial Government) and Defendant V (Garut Regency Government) are responsible for the impact caused by landslide Mount Mandalawangi Kadungora District, Garut Regency.
3. Punishes Defendant I, Defendant III, Defendant IV, and Defendant V to restore the environmental condition in the forest area of Mount Mandalawangi where the landslide occurred and immediately with the following conditions:

The settlement is:

First : Recovery in Mount Mandalawangi area is charged to the Defendant I and Defendant III by order to rehabilitate the forest and land to restore, maintain and

improve the carrying capacity, productivity and role.
No less than Rp 20,000,000,000.00 (twenty billion
rupiah)

Second : To punish the Defendant I, Defendant III, Defendant
IV and Defendant V to jointly pay compensation to the
Mount Mandalawangi avalanche victims amounting to
Rp 10,000,000,000.00 (ten billion rupiah)

Third : To carry out the procedure for the recovery of
landslide area in Mount Mandalawangi and the
procedure of allocating the compensation fund to the
representative of the group and the group community.

Fourth : To ordering the Governor of West Java (Defendant
IV) to issue a decision on the Establishment of the
Team completely with its duties and responsibilities as
the contents of this decision dictum.

Fifth : To instruct the team to monitor and remedy whenever
the recovery process does not comply with the order of
this decision.

4. Declare that the decision on this case can be carried out firstly despite
the legal efforts of the Defendants.

5. Reject the lawsuit other than and beyond.¹²

Considering Article 37 paragraph 1 and paragraph 2 states that:

Paragraph 1 : "the public is entitled to file a lawsuit to the court and / or report to law enforcement on environmental issues that harm the livelihood of the people"¹³

Paragraph 2 : "if the public knows suffering because of the pollution and / or destruction of the environment in such a way that it affects the basic life of the community, the government agency responsible for the environment can act in the interest of the community"¹⁴

So, in this case the class action has been accepted and applied in the case of the environment and the existence of legal equality between the public in the eyes of the law.

c. case of forestry based on law No. 41 of 1999

The burning of forest that occurred in Riau caused the loss for the people of Riau province and the victims spread to other provinces such as West

¹² Prof. Dr. Rahmadi, Takdir, S.H. LLM. *Hukum Lingkungan di Indonesia*. Jakarta. Penerbit: Rajawali Pers. 2011. Halaman 281-2

¹³ Article 37 Point 1, Law No. 27 of 1997

¹⁴ Article 37 Point 2, Law No. 27 of 1997

Sumatra, Jambi, North Sumatra and Palembang. These forest fires after investigation are thought to have originated from intentional forest fires with the aim of opening new land for palm oil plantations. This forest burning is not only happening in Riau province, but also in other provinces such as south Sumatra, north Sumatra, west Sumatra, Jambi, West Kalimantan, East Kalimantan, West Kalimantan and South Kalimantan. The victimized community complained to the Indonesian environmental Forum (WALHI) which in this case acts as a representative of the wider community who is the victim of the forest burning allegedly belonging to 20 oil palm plantation companies. Some of the plantations claimed by WALHI are DHL, HSL, MAS, IHM, KU, BSS, BMH, SWI, SRL, PBP, BMJ, IFP, TKM, KH, DML, SPW, HE, WAJ, RPP, LIH, TPR, BACP. The entire company is categorized as violating the Law on forestry and the conduct of environment.

In this case WALHI filed a lawsuit using a class action lawsuit as a settlement of cases and losses suffered by another victim due to the forest fires that were carried out for the benefit of the company. In this case the plaintiff conveys that there are several clauses which are at the bottom of the company for the burning of the forest:

Article 87:

“Any person in charge of businesses and activities that commit unlawful acts in the form of pollution and environmental

destruction that cause harm to others or the environment shall pay compensation or perform certain actions”¹⁵

Article 87 (paragraph 2):

“Any person who does transfer, alteration of the nature and form of business and activities of a business entity violating the law shall not relinquish the liability or obligation of that entity.”¹⁶

Based on the article WALHI filed a class action lawsuit to the court but with some weaknesses such as the collection of group identity that is less valid and not enough his group members in this case not all the people who suffered losses or become victims included in the group members and the absence of arrangements strong in terms of granting mandates to WALHI to represent group members as well as the small number of groups making the judge decide that the class action lawsuit against the forest fires is declared void. But in this case WALHI will still file a lawsuit using a class action and will complete the data of the victim as well as collect more group members for the strengthening of the class action lawsuit.

2. Class Action Procedures in Procedural Law

¹⁵ Article 87, Law No. 41 of 1999

¹⁶ Article 87 (2), Law No. 41 of 1999

Referring to the civil procedure law, the group's lawsuit enters into civil law category,¹⁷ considering that in the filing of class action request is filing a claim in the form of compensation for goods or services used by consumers to business actors that produce goods or services.¹⁸ A civil suit is an attempt by a person or legal entity that aims to obtain legal protection through the courts. In the class action filing must be proper and contain the actual dispute, and the parties in the lawsuit are the plaintiff and the defendant. In the class action filing must have some basic elements that can be categorized as a class action.

Emerson Yuntho states there are several elements of class action such as:

1. Civil lawsuit

The class action lawsuit enters into a civil lawsuit, the term lawsuit known in civil law as an act which aims to obtain the right protection granted by the court to avoid any eigerechting. The lawsuit constitutes a claim of rights that contains a dispute, it is the plaintiff and the defendant, in the

¹⁷ Indro Sugianto, 2013, *Class Action Konsep dan Strategi Gugatan Kelompok untuk Membuka Akses Keadilan Bagi Rakyat*, Malang, Setara Press, P. 11.

¹⁸ Elise T. Sulistini dan Rudi T. Erwin, *Petunjuk Praktis Menyelesaikan Perkara-Perkara Perdata*, Jakarta, Penerbit Bina Aksara, Desember 1987.

sense that the parties may be either an individual or a legal entity. The objective of a civil law suit is to ask for compensation in the form of money or goods.¹⁹

2. Representative group (class representative)

Group representatives of one or more persons who share the same losses as group members, who are appointed as representatives in filing a lawsuit, to become group representatives are not in need of special power of attorney from group members. When group representatives filed a lawsuit then they in court became an active plaintiff.²⁰

3. Members of the group (class members)

Members of the group are a large number of people who suffer direct losses, represented by the group representatives in court. If the case is submitted to court then the group member acts as a passive plaintiff.²¹

4. Loss

¹⁹ Mas Achmad Santosa, *Konsep dan Penerapan Gugatan Perwakilan Kelompok (Class Action)*, Jakarta, ICEL, 1997.

²⁰ Sundari, *Pengajuan Gugatan Secara Class Action (Suatu Studi Perbandingan dan Penerapannya di Indonesia)*, Yogyakarta, Universitas Atma Jaya Yogyakarta, 2002, p. 32.

²¹ *Ibid.*

In order to apply class action to court, both class representative and class members must really suffer from concrete injured parties. Parties that do not suffer direct losses cannot file class action to court.

5. Similarities of events and legal basis

There is a similarity of facts and equality of the legal basis (question of law) between the represented parties (class representative) and the party in the represent (class members). Group representatives can explain the similarity of events and legal basis, but this does not mean that there is no difference as long as it is acceptable along substantial differences or principles.²²

in addition to some elements of the class action lawsuit there are also requirements of the class action gangs, since class action lawsuits are the same lawsuit as the civil lawsuit but after the Supreme Court Regulation No. 1 of 2002 on the group representative action, there are several conditions specifically set in a class action lawsuit. The requirement to file a class action

²² Emerson Yuntho, Panduan *Tentang Class Action, Legal Standing, Pra Peradilan, dan Judicial Review*, available on, <http://lama.elsam.or.id/mobileweb/article.php?id=271&lang=in>, accessed Sunday 11, march, 2018, 1:13 pm.

lawsuit is contained in Article 2 of the Supreme Court Regulation No. 1 of 2002 concerning the lawsuit of the representative of the group namely:

1. There are a large number of members (numerosity)

The number of groups must be a lot in filing the case to court using class action. Because it is not effective and efficient if the lawsuit is done individually. Based on Article 2 (a) and (c), the existence of the group consists of two components, namely group representation and group members.²³ The class representative acts as a representative of oneself and the group, the representative of the group has the capacity as a group-by-law proxy, and therefore the group's representatives do not require special power of attorney from the other members of the group, and without the consent of the members of the group,²⁴ in article 8 is declared for group members who are not authorized to be opted out (opt out), so that the member out of the group to be represented by the representative of the group (class representative) and the member is not binding court decision.²⁵ Group representatives must have the honesty and sincerity to protect the interests of group members. The representative of the group may

²³ M. Yahya Harahap, 2005, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Jakarta, Sinar Grafika. P. 15.

²⁴ Supreme Court Regulation No. 1 of 2002 about the procedure of class action article 4.

²⁵ Supreme Court Regulation No. 1 of 2002 about the procedure of class action article 8.

appoint a lawyer and if such power is in conflict with the interests of the group member then such power may be substituted.

Class members, in the Supreme Court Regulation No. 1 of 2002, do not set minimum or maximum limits for group members, but if the number of members is few then the lawsuit can be rejected and if the number of group members is too much where members of the group can have divided into subgroups. The group description should be clearly stated, not too general and not too specific, this description aims to avoid the difficulty of managing the administration of the group members concerned.²⁶

2. Similarity of fact or legal basis (commonality)

In article 1 letter (a) of Supreme Court Regulation No. 1 of 2002 it is stated that among group representatives and group members must have a substantial factual or legal basis.

3. Similar types of demands

In article 2 letter (b) Supreme Court Regulation No 1 of 2002 stated another requirement to file a class action lawsuit is the existence of similar type of demands. The similarity of these demands can mean

²⁶ Syahrul Machmud, 2012, Penegakan hukum lingkungan Indonesia (penegakan hukum administrasi, hukum perdata, dan hukum pidana menurut undang – undang no 32 tahun 2009), Yogyakarta , Graha Ilmu, p. 196.

that among the representatives and members of the group there is a common interest, the equality of suffering and recovery demanded by nature are beneficial to all members of the group.²⁷

Given the requirements and elements set forth in the Supreme Court Regulation No. 1 of 2002 regarding the lawsuit of representatives in the expectation of class action can be a proportional dispute of consumer disputes considering the purpose of the class action lawsuit to make the case cheaper and faster and not the difference of the judge's decision because what if in filing a case to court with the same thing but different time and place then the feared judge verdict will be different when filing a lawsuit with the same case.²⁸

In the class action lawsuit there are also some striking weaknesses and there are also some advantages in filing class action weighing in the class action filing of people who have the same case and the same loss is quite difficult and long but the settlement is easier and faster, some advantages and disadvantages in the class action.

In general, there are three advantages of filing a lawsuit using class action:

1. The Litigation Process Becomes Very Economical

²⁷ M. Yahya Harahap, *op. cit.*, p.151.

²⁸ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta, Penerbit Liberty, 1998, p.23.

for the plaintiff, using the class action mechanism, the cost of the lawsuit and the cost of the lawyer will be cheaper than the individual lawsuit, which is sometimes inconsistent with the amount of compensation to be received for the defendant, through a class action mechanism then the defendant shall only pay one time to serve the lawsuit of the aggrieved party.²⁹

2. Access to Justice

filing a class action lawsuit would be easier than filing an individual suit. Forming groups will reduce barriers to plaintiffs who make individual suits because individual indictments generally place their parties in a weak position both from the economy and the knowledge of the law.³⁰ In addition, the class action does not require the identification of the name, so as to prevent intimidation of class members. Class action also prevents repetition of case roses and prevents different decisions or inconsistent judgments when individual claims are made.

3. Encourages a Cautious Attitude and Encourage the Attitude of the Offender

²⁹ Kadir Mappong, *Prosedur Gugatan Perwakilan (Class Action) dan Kaitannya dengan Hukum Acara Perdata*, bahan makalah Seminar Sehari : Meningkatkan Peran Serta Masyarakat dalam Rangka Pengawasan terhadap Penyelenggaraan Negara Melalui PERMA No. 1/2002, Oktober 2002.

³⁰ Sudaryatmo, *Seri Panduan Konsumen (Memahami Hak Anda Sebagai Konsumen)*, Jakarta, Pirac , 2001, p. 44.

a class action lawsuit can punish a guilty party, is liable to pay for lost replacement with a cursed jug for all injured parties in a more efficient manner, as a result of the unlawful acts committed by the defendant. This makes the party or person in charge of either the private or government to act more carefully. With often filed class action law is expected to change the attitude of the behavior of the defendants to comply with existing rules so grow a deterrent attitude that potentially harm the interests of the wider community.³¹

Although there are many benefits that can be gained in filing class action lawsuits, there are also disadvantages of class action lawsuits, among others:

1. Difficulty to Manage

the more number of group members, the more difficult it is to manage class action lawsuits. Difficulties existed at the time of notification and redistribution. The large number of members and develop in different areas will be difficult in terms of notification and costly. If the lawsuit is filed and the anti-loss is distributed then the cost of disbursement is not proportional to the compensation received.

2. Can Cause Injustice

³¹ Puslitbang Hukum dan Peradilan Mahkamah Agung RI, *op. cit.*, p. 3.

injustice in question is with the problem of determining the membership of the group along with the judge's decision. If the procedure chosen for determining group membership is opt in then the absence of an admission statement from a member of the group that has a common interest only because not knowing the existence of a notice will result in the loss of their right to enjoy the success of a class action suit, since the judge's verdict has only those listed as members of the group.³²

3. Can Lead to Bankruptcy of the Defendant

the amount of claim for damages in a class action lawsuit may result in the defendant being bankrupt if the lawsuit is granted, in which the defendant is obliged to provide compensation for certain actions to all members of the group which may amount to thousands.³³

4. The Publication of a Class Action Lawsuit May Corner the Defendant

the mass media notice of a class action lawsuit can be an attack on the defendant's position, the media reader bias will have a prejudice against the defendant, but not necessarily the defendant is the guilty party and still must be proven through court.³⁴

³² Indra Soerjanto, Pengertian Umum, Manfaat dan Dasar Hukum Class Action di Indonesia, bahan makalah tanggal 6 September 2002.

³⁴ Emerson Yuntho, Class Action Sebuah Pengantar, available on http://lama.elsam.or.id/downloads/1262842560_09_Prosedur_Class_Action.pdf, accessed on, Monday 11, March, 2018, 4:56 pm

B. CLASS ACTION PROCEDURAL IN CONSUMER DISPUTES

The provisions of the procedural law in the class action in Indonesia have been regulated in the Supreme Court Regulation No. 1 of 2002 concerning the group representative action. Class action lawsuits have significant differences compared to civil procedure in general.³⁵ This difference exists in the absence of a power of attorney from a group member of the group's deputy head to act as a representative in the court. Although the group's representatives act on behalf of group members,³⁶ another different matter is the class action lawsuit provision stating that judges have the authority to assess and advocate reimbursement of group lawyers.

The procedure in the class action is done by going through the following steps:

1. Class Action Lawsuit Filing

Class action letters must meet the general requirements of civil events and special requirements in Supreme Court Regulation No. 1 of 2002. The general requirement that must be possessed is the inclusion of the identity of the parties, the concrete proposals on the existence of

³⁵ H S., Salim, 2009, Pengantar Hukum Perdata Tertulis (BW) Cetakan Keenam. Jakarta, Sinar Grafika, p. 12.

³⁶ Lilik Mulyadi, 1998, Hukum Acara Perdata Menurut Teori dan Praktek Peradilan di Indonesia, Jakarta, Djembatan. P. 35

legal relations are the basic and the reason of the demands.³⁷ While the special requirements contained in the Supreme Court Regulation No. 1 of 2002 is:

a. Complete and Clear Identity of Group Representatives.³⁸

The identity of the group and group representatives must be complete and clear because when filing a class action lawsuit, the court needs a complete and clear identity in order to avoid fraud or a false lawsuit filed against the court.

b. The Definition of The Group in Detail and Specific Although Without Mentioning the Names of Group Members.³⁹

Definition of the group in question that is all members of the group experiencing real and direct losses. And in his submission is included with the information that the loss suffered by members of the group with the aim of clarifying the lawsuit.

³⁷ Susanti Adi Nugroho, 2003, Refleksi Prakek Gugatan Perwakilan Kelompok (Class Action) di Indonesia, Jakarta, Mahkamah Agung RI.

³⁸ Article 3, point 1 (a), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

³⁹ Article 3, point 1 (b), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

c. Description of Group Members Required in Connection with the Obligation to Make a Notice.⁴⁰

The provision is not found in the formulation of a lawsuit based on civil procedural law, because by mentioning the identity of the parties, the notice or the call can be fulfilled because in fact they appear in the lawsuit, this is different from the class action lawsuit, because the real appear in the process only group, while group members are members of the group who do not appear in the court forum.

d. The Posita Of All Groups of Both Identified and Unidentified Group and Group Members Representatives Presented in Detail.⁴¹

The plaintiff must explain the equality of interests or factual equality factors, the common ground of law and the similarity of demands used as the basis of the lawsuit. In addition, the plaintiff provides suggestions on the mechanism for redistribution and

⁴⁰ Article 3, point 1 (c), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

⁴¹ Article 3, Point 1 (d), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Acton.

proposals on the establishment of commissions that will assist in the distribution of compensation.

e. Affirmation of Some Parts of Groups or Subgroups.⁴²

Subgroup is grouping group members into smaller groups in one suit based on differences in level of lost or type of loss. In a lawsuit can be grouped into several parts of groups or subgroups, if the demands are not the same because of the different nature and disadvantages

f. Demands and Petition About Compensation.⁴³

The petition on this indemnity shall be presented in a clear and detailed manner, containing proposals on the mechanism or procedure of distributing indemnification to all members of the group, including proposals on team building or panel assisting in the distribution of indemnity.

2. Certification for Litigation Through a Class Action Process

⁴² Article 3, point 1 (e), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

⁴³ Article 3, point 1 (f), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

This stage the judge shall examine and consider whether or not the class action lawsuit is filed in court. The basis for examining this criterion refers and points to the criteria of the class action law contained in article 2 of the Supreme Court Regulation No 1 of 2002.

Furthermore, the judge has the authority to advise the plaintiff and the defendant in relation to the formal requirements of class action letters contained in article 3 Supreme Court Regulation No 1 of 2002.

After the judge examines and considers the criteria of a class action lawsuit, the judge may:

- a. if the judge declares that the lawsuit is legitimate and qualifies the class action, then the court issues a stipulation containing a ditum or amar stating that the class action suit is valid and grants permission for litigation through a class action process. The judge also ordered the plaintiff to propose a notification model for approval of the judge.⁴⁴

⁴⁴ Article 5, point 4, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

- b. if the judge decides that the use of a class action lawsuit is declared invalid, the investigation of the lawsuit shall be terminated by a judge's verdict.⁴⁵

In civil cases, judges are required to encourage parties to peace. This obligation to reconcile is also contained in a class action procedure, in which the judge is obliged to propose peace efforts both at the beginning of the trial and during the trial. Decisions resulting from the peace between the parties are deemed to have the same legal force as the judge's decision, which is an unassailable appeal or cassation and has an executorial power.

3. Notification

After a judge ruled that the filing of a class action lawsuit was declared valid, the judge ordered the plaintiff to propose the model for approval by the judge, the plaintiff with the time period determined by the judge, the plaintiff informed the group members.⁴⁶

informing group members is a necessary mechanism to allow group members the opportunity to determine whether they want to join

⁴⁵ Article 5, point 5, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

⁴⁶ Chapter III, Article 7, Point 1, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

in and be bound by the decision that will take place in the case. If a group member declares no participation in the membership, the group member may file an opt out statement. In this notice, the class members load timeout to exit from the included group complete with date and address intended to declare opt out. In the case of an out-of-group member, the member is not bound by the decision to be decided by the court.

According to article 1 letter (e) of the Supreme Court Supreme Court No. 1 of 2002, the notification to group members is the clerk based on the judge's order. The means of notification to group members may be made through the use of printed or electronic media, government offices such as sub-district, village or village, court office or directly to members who are held together as long as identified by a judge's decision.

Notice shall be made by the plaintiff as group representative to group members at the stage of:

- a. as soon as the judge reports the decision that the filing of a class action lawsuit is declared (at this stage it should also include an outbound mechanism).⁴⁷
- b. at the completion and redistribution stage when the lawsuit is granted

⁴⁷ Article 7, Point 2 (a), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

notification is also done on the examination process, if the defendant to promote peace. If in the process of examination of the defendant to propose peace, then the plaintiff to be able to accept or reject the offer must make a notice to the group members.

The notice should include:⁴⁸

1. lawsuit number and identity of the plaintiff or the plaintiffs as group representatives as well as the defendant or the accused
2. a brief explanation of the case
3. an explanation of group definitions
4. an explanation of the implications of participation as group members
5. an explanation of the possible members of the group belonging to the definition of the group to quit the membership
6. an explanation of the time of the month, date, hour, notice of exit statement may be brought to court
7. an explanation of an address intended to file an exit statement
8. if required by group members about who and where available for the place of providing additional information

⁴⁸ Article 7, Point 4 (a – j), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

9. a statement on the exit statement of group members as set forth in the attachment of Supreme Court Regulation NO. 1 of 2002

10. an explanation of the amount of indemnity to be addressed.

After the notice is made by the group representative through the court clerk based on the consent of the judge, the group member within the prescribed time by the judge shall be given the opportunity to leave the membership if the decision is absolute that the members involved in the group members can no longer file the lawsuit in the same case in case the petition is rejected because the judge's decision affects the entire group members involved, and if the judge's decision is granted all members of the group shall be entitled to compensation with the amount already set by the judge.

4. Examination and verification

in class action lawsuit trial, the process of examination and verification in class action lawsuit is the same as civil case in general, that is:

a. reading of the lawsuit by the plaintiff

b. answer of the defendant

the answer is a rebuttal of the lawsuit presented by the plaintiff.⁴⁹ in the process of submitting this answer, the

⁴⁹ Darwan Prints, 1996, strategi menyusun dan menangani gugatan perdata, bandung, citra Aditya bakti. P. 174.

defendant may file a reconvention. Reconvention is a lawsuit filed by the defendant as a counterattack against the claim of the plaintiff to the defendant.⁵⁰

c. replik or plaintiff's reply to the response of the defendant

Replik contains theorem - additional arguments to corroborate the plaintiffs' arguments. plaintiffs in the replik may raise biblical sources, expert opinions, doctrines, customs and so forth.⁵¹

d. duplik or defendant's response to the plaintiff's response in the reply

e. proof which is the delivery of evidence and to hear the witnesses.

f. conclusion which is a resume and simultaneously read by both parties

because the suit is a class action lawsuit, then there are some things that require more specific examination, namely:

a. Examining Whether an Advanced Representative Is Considered Honest and True in Representing the Interests of The Group

This check is carried out at the stage of verification up to the examination stage, by giving the group members the opportunity to file an objection against representatives of the group advancing in the

⁵⁰ Article 132 Rbg

⁵¹ Darwan Prints, Op. Cit., p. 176.

proceedings. On the basis of the objection, the judge may replace the group representative with another, before the group representative is replaced, the representative of the group shall not resign before the grounds upon which the objection is raised.

- b. checks whether there are equations in law and facts and demands on all members of the group
- c. a special proof to prove the same problem that affects many people
- d. compensation mechanism for large sums of money.

5. Execution of Decision

After the process of examination is completed and the judge has passed a verdict, as in the case of ordinary civil cases, the decision of a judge in a class action lawsuit may be a decision that grants the claimant's claim either wholly or partially or rejects the plaintiff's claim.

If a verdict imposed in a class action suit is declared rejected or unacceptable, then this ruling does not pose a problem. But if the verdict grants a claim in respect of compensation, it is necessary to formulate a more specific and technical verdict compared to ordinary civil cases.

Article 9 of the Supreme Court Regulation NO 1 of 2002 has provided guidance to the judge in the formulation of the ruling on the claim of the indemnity,⁵² namely:

- a. shall clearly and undoubtedly decide on the amount of indemnification individually against the victim, and the loss to the benefit of the community or collective who suffers damage as a cost of recovery
- b. determination of groups and subgroups entitled to indemnification
- c. the decisions governing the distribution mechanism to group members include the formulation by group representatives, including the formulation by group representatives of the steps required to be distributed in compensation to group members, and the manner in which group representatives are required to submit distribution notices to group members.

In law the class action event actually has in common with the law of civil events in general. But it has some in slight insignificant differences, to facilitate the understanding of the difference between class action law and civil procedure law in the implementation then described in the table below:

⁵² Article 9, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

Table of Legal Differences Between Civil Law Procedures and Class Action

Procedures

4.1

No	CIVIL LAW PROCEDURE	SUPREME COURT REGULATION No. 1 of 2002
A	Registration of Current	Registration of Current
1	Submitted a Lawsuit (article 188 HIR)	Submitted a Lawsuit (Article 188 HIR)
2	Payment of Court Fee	Payment of Court Fee
3	Registration of Case Number	Registration of Case Number
4	Establishment of the Panel of Judges	Establishment of the Panel of Judges
5	Stipulation of Register/ Substitute Clerk and Bailiff	Stipulation of Register/ Substitute Clerk and Bailiff
6	Establishment of the Day of Trial (article 112 HIR)	Establishment of the Day of Trial (article 112 HIR)
7	The Plaintiff Call and the Defendant by the Bailiff	The Plaintiff Call and the Defendant by the Bailiff
B	Stage of Case Examination	Stage of Case Examination
	Preliminary Examination (Checking	Preliminary Examination (Checking the

1	the Identity of the Parties)	Identity of Group Representative, Group Identity, Group Posita)
2	Mediation	Case Certification in Class Action Validation
3	The Plaintiff Lawsuit Reading	Notification for a Lawful or Not Matter
4	Answer to the Letter of Lawsuit by the Defendant	The Plaintiff Lawsuit Reading
5	Replik (Responding to Point 4) by the Plaintiff	Answer to Litigation by the Defendant
6	Duplik (Responding to Point 5) by the Defendant	Replik
7	Proof	Duplik
8	Conclusion by the Parties	Proof

9	Deliberation of the Assembly	Conclusion by the Parties
10	Reading of Verdic	Deliberation of the Asembly
11		Examination of Group Representative
12		Examination of Facts of Legal Similarity Between Group Members
13		Specific Verification
14		The Mechanism for the Distribution of Indemnity
15		Execution of Decision (article 9)