

**CLASS ACTION LAWSUIT IN AN ATTEMPT TO RESOLVE
CONSUMER DISPUTES**



Name : Yudha Kusuma Wardani

Student Number : 20140610362

FACULTY OF LAW

UNIVERSITAS MUHAMMADIYAH YOGYAKARTA

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Written by:

YUDHA KUSUMA WARDANI

20140610362

APPROVE BY:

Advisor



Dr. Mukti Fajar ND, S.H., M.Hum.
NIK. 19680929199407 153 019

Endorsed by:

Dean Faculty of Law

Universitas Muhammadiyah Yogyakarta

Dr. Trisno Raharjo, S.H., M.Hum.

NIK. 19710409199702 153 028

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By: Yudha Kusuma wardani

International program for law and sharia, faculty of law, universitas Muhammadiyah
Yogyakarta, brawijaya street, tamantirto, Kashan, Bantul, Yogyakarta, Indonesia, 55183

Email : danitavia@gmail.com

ABSTRACT

Class action is a way of settling cases adopted from common law system. Indonesia adopted the class action because it gave many benefits in the settlement of the law. The purpose of this research is to know how the class action lawsuit in an attempt to resolve consumer dispute. with the problem of the procedure in the settlement of consumer disputes. Researchers in this study using the method with the normative legal research with the type of secondary data and methods of data collection through library research and data analysis in this study using prescriptive qualitative. The results of this study indicate that, first, the position of class action in Indonesian law already has a strong legal position with the enactment of Supreme Court ruling no 1 of 2002 on the law of class action event, which in its implementation has been applied in various cases such as consumer disputes, environment, and forestry. Secondly, given the strong legal basis that class action law has a special position in the court, the distinction between civil procedural law and class action law occurs in cases involving large groups rather than individuals. The presence of group representatives, group members and retesting the case resulted in procedural law within the court distinguishing the civil procedure law. The lack of information dissemination by the government affects the lack of public knowledge of consumer dispute resolution cases, which has caused many communities who have been harmed by business actors to have no courage to file a lawsuit.

Keyword: *class action, consumer protection, class action procedure.*

1. INTRODUCTION

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

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.

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.² 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.³

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 of people who share the same suit. The large number of people represented is called class members.⁴ 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;

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

² 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

³ E. Sundari, 2015, *Praktik Class Action Dalam Hukum Indonesia*, Yogyakarta, Cahaya Atma Pustaka, p.5.

⁴ Mas Achmad Santosa, 1998, *Gugatan Perwakilan Kelompok: Konsep dan Penerapan*, Bandung, Lembaga Pengembangan Hukum di Indonesia, p.3.

- 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".⁵

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.⁶

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.⁷

- 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.
- 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

⁵ Hukum Online, "Aturan dan Praktik Gugatan Berkelompok (Class Acion)", available on [http://www.hukumonline.com/klinik/detail/c15092/aturan-dan-praktik-gugatan-perwakilan-keompok-\(class-action\)-konsumen](http://www.hukumonline.com/klinik/detail/c15092/aturan-dan-praktik-gugatan-perwakilan-keompok-(class-action)-konsumen), accessed on Monday, February 19, 4:56 pm.

⁶ *Ibid*, p. 15.

⁷ Supreme Court Regulation, Number 1 Year 2002, about Class Action.

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.

- 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.

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.⁸

⁸ E. Sundari, *op, cit.*, p. 32-33.

The presence of Supreme Court Regulation No. 1 of 2002 provides hope for the certainty of a class action lawsuit. This provision contains class 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.⁹

2. RESEARCH METHODE

2.1 Type of research

The type of this research is normative legal research. Normative legal research is the legal research which uses law as the foundation. It is related to the principle, norm, and rules from legislation, verdict, treaties, and doctrine.¹⁰ Besides, according to Soerjono Soekanto the normative legal research, consist of research related to the principle of law, systematic of law, synchronization level of law, history of law, and comparison law,¹¹ about class action lawsuit in an attempt to resolve consumer dispute.

2.2 Type of data

This research used secondary data. Secondary data is the sources of the data known as the legal material. Legal material is anything that can be used or required for the purpose of analyzing the applicable law. Legal materials in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials.

- a. Primary legal material is primary legal material that has a legal binding. Primary legal material, consist of:
 1. The 1945 Constitution

⁹ Indro Sugianto, *op.cit.*, p. 35- 36.

¹⁰ Zainuddin Ali, 2009, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, p. 105.

¹¹ Mukti FajarND, Yulianto Achmad, 2015, *Dualisme Penelitian Hukum*, Yogyakarta, Pensil Komunika, p. 153.

2. Law no. 8 of 1999 about consumer protection
 3. Supreme Court Regulation no. 1 of 2002
 4. The various laws related to the investment in Indonesia, etc.
- b. Secondary legal material is legal materials giving explanation about the primary legal materials. Secondary legal materials consist of:
1. Books;
 2. Scientific journals;
 3. Others legal documents related to the issue;
 4. Trusted site internets; and
 5. Other non-legal documents related to the issue.
- c. Tertiary legal material is legal material giving explanation about both of primary legal materials and also secondary legal materials, like:
1. Black's Law Dictionary;
 2. Indonesian Dictionary; and
 3. Encyclopedia.

2.3 Method of Collecting Data

The data were collected through library research. This research is conducted by reading, viewing, listening, or searching through the internet.¹² In the other words, this research only required the researcher to read, analyze and finally made a conclusion.

2.4 Data analysis

This research used prescriptive qualitative analysis. This research refers to the legal norms contained in legislation and judicial decision and norms that live and develop in the society.¹³

¹² Muhammad Endriyo Susila *et al.*, 2007, *Buku Pedoman Penulisan Hukum*, Yogyakarta, Laboratorium Hukum Fakultas Hukum Universitas Muhammadiyah Yogyakarta, p. 36.

¹³ Mukti Fajar ND, Yulianto Achmad, 2009, *Dualisme Penelitian Hukum*, yogyakarta: pensil komunika. P.123.

3. DISCUSSION

3.1 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 HIR¹⁴ or article 142 paragraph 1 Rbg.¹⁵

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.¹⁶ 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 lawsuit, since there is no regulation specifically regulating the class action filing and the filing of the lawsuit.

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,¹⁷ 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.¹⁸

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

"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

¹⁴ Article 118 Paragraph 1 of HIR.

¹⁵ Article 142 paragraph 1 of Rbg.

¹⁶ Law No. 23 of 1997 in Environmental Management.

¹⁷ M. Yahya Harahap, 2004, *Hukum Acara Perdata*, Sinar Grafika, Jakarta p.139.

¹⁸ Puslitbang Hukum dan Peradilan Mahkamah Agung RI, *Naskah Akademis Gugatan Perwakilan Kelompok (Class Action)*, 2003, p. 4.

of the legal basis between the representatives of the group and members of the group."¹⁹

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.²⁰ Based on the principle of the lawsuit and on the basis of civil procedure law principles.²¹

3.1.1 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 hundreds of customers because their savings amounted to 4 billion lost without notice from the government and from the Bank Perkereditan 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.²²

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"

¹⁹ Article 1, Sumpreme Court Regulation No. 1 of 2002 about Procedure of class action

²⁰ Undang – Undang no 4 tahun 2004 tentang pokok – pokok kekuasaan kehakiman

²¹ Susanti Adi Nugroho, 2003, Refleksi Prakek Gugatan Perwakilan Kelompok (Class Action) di Indonesia, Jakarta, Mahkamah Agung RI

²² Pengadilan Negeri 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.

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

case with number 49 / Pdt.G / 2003 / PN.BDG case of landslide in Mandalawangi district Kadungora Garut district.²³ 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.

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

²³ 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.

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.²⁴

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"²⁵

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"²⁶

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 Sumatra, Jambi, North

²⁴ Prof. Dr. Rahmadi, Takdir, S.H. LL.M. *Hukum Lingkungan di Indonesia*. Jakarta. Penerbit: Rajawali Pers. 2011. Halaman 281-2

²⁵ Article 37 Point 1, Law No. 27 of 1997

²⁶ Article 37 Point 2, Law No. 27 of 1997

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.

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:

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”²⁷

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.”²⁸

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

²⁷ Article 87, Law No. 41 of 1999

²⁸ Article 87 (2), Law No. 41 of 1999

the victim as well as collect more group members for the strengthening of the class action lawsuit.

3.1.2 Class Action Procedures in Procedural Law

Referring to the civil procedure law, the group's lawsuit enters into civil law category,²⁹ 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.

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.³⁰

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.³¹

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.³²

4. Loss

²⁹ Indro Sugianto, 2013, *Class Action Konsep dan Strategi Gugatan Kelompok untuk Membuka Akses Keadilan Bagi Rakyat*, Malang, Setara Press, P. 11.

³⁰ Mas Achmad Santosa, *Konsep dan Penerapan Gugatan Perwakilan Kelompok (Class Action)*, Jakarta, ICEL, 1997.

³¹ Sundari, *Pengajuan Gugatan Secara Class Action (Suatu Studi Perbandingan dan Penerapannya di Indonesia)*, Yogyakarta, Universitas Atma Jaya Yogyakarta, 2002, p. 32.

³² *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.³³

The requirement to file a class action 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.³⁴ 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.³⁵

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

³³ 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.

³⁴ M. Yahya Harahap, 2005, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Jakarta, Sinar Grafika. P. 15.

³⁵ Supreme Court Regulation No. 1 of 2002 about the procedure of class action article 8.

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 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.³⁶

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

1. The Litigation Process Becomes Very Economical
2. Access to Justice
3. Encourages a Cautious Attitude and Encourage the Attitude of the Offender

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
2. Can Cause Injustice
3. Can Lead to Bankruptcy of the Defendant
4. The Publication of a Class Action Lawsuit May Corner the Defendant

3.2 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.³⁷

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,

³⁶ M. Yahya Harahap, *op. cit.*, p.151.

³⁷ H S., Salim, 2009, Pengantar Hukum Perdata Tertulis (BW) Cetakan Keenam. Jakarta, Sinar Grafika, p. 12.

the concrete proposals on the existence of legal relations are the basic and the reason of the demands.³⁸ While the special requirements contained in the Supreme Court Regulation No. 1 of 2002 is:

- a. Complete and Clear Identity of Group Representatives.³⁹
- b. The Definition of The Group in Detail and Specific Although Without Mentioning the Names of Group Members.⁴⁰

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.

- c. Description of Group Members Required in Connection with the Obligation to Make a Notice.⁴¹

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.

- d. The Posita Of All Groups of Both Identified and Unidentified Group and Group Members Representatives Presented in Detail.⁴²

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.

- e. Affirmation of Some Parts of Groups or Subgroups.⁴³

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

³⁸ Susanti Adi Nugroho, 2003, Refleksi Praktek Gugatan Perwakilan Kelompok (Class Action) di Indonesia, Jakarta, Mahkamah Agung RI.

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

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

⁴¹ Article 3, point 1 (c), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

⁴² Article 3, Point 1 (d), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Acton.

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

the demands are not the same because of the different nature and disadvantages

f. Demands and Petition About Compensation.⁴⁴

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

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..⁴⁵
- 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.⁴⁶

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

⁴⁴ Article 3, point 1 (f), Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

⁴⁵ Article 5, point 4, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

⁴⁶ Article 5, point 5, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

judge, the plaintiff with the time period determined by the judge, the plaintiff informed the group members.⁴⁷

informing group members is a necessary mechanism to allow group members the opportunity to determine whether they want to join in and be bound by the decision that will take place in the case.

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. 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
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

⁴⁷ Chapter III, Article 7, Point 1, Supreme Court Regulation No. 1 of 2002 on Procedure of Class Action.

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

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 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
- 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

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

⁵⁰ Article 132 Rbg

⁵¹ Darwan Prints, Op. Cit., p. 176.

- 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.

4. CONCLUSION AND SUGGESTION

4.1 CONCLUSION

Based on the discussion of procedural law, a class action lawsuit can be summarized as follows:

1. Based on Law No. 8 of 1999 on consumer protection, procedure law in court in the case of consumer disputes has been regulated in Article 46 paragraph 1, which

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

in this case can be settled by using a class action lawsuit. The basis for the application of class action lawsuits in Indonesia is explained in Law No. 8 of 1999 concerning consumer protection, Law No. 23 of 1997 on environmental management, Law No. 18 of 1999 on Construction Services and Law No. 41 of 1999 about forestry. With the regulation of class action lawsuits in the law, it becomes the basis that the class action has been widely applied in various cases in Indonesia. As an example, in the case of consumer protection, cases of forestry, and cases of environmental management mentioned above, it can be concluded that the class action lawsuit is considered very effective in the settlement of a case that harms many people and with very low cost.

2. The procedure in filing a class action lawsuit is stipulated in the Supreme Court Regulation No. 1 of 2002 concerning the law of the class action lawsuit in which it states that the class action lawsuit filing is still the same as the civil lawsuit but has little difference in the case of the verdict, the examination of the case, the test group representation, validation of his or her case whether the loss occurred or not and the distribution of compensation to each group if in the settlement of the case the judge decides the indemnification. The obstacles encountered are often in the distribution of compensation to group members that sometimes members of the group are in a difficult area to reach.

4.2 RECOMMENDATION

The class action lawsuit is a very effective civil lawsuit but the difficulty that arises is the lack of community knowledge about class action and causes many people who have the same problems but do not dare to file a lawsuit because they judge the expensive cost of litigation in court yet again expensive attorneys' fees are sometimes not worth the demands raised, as well as the lack of dissemination of class action information that causes people to lack the class action that is actually quite effective in solving cases at a low cost, let alone the group in considerable numbers and reasonable tries. The government is expected to play an active role in the dissemination of information on class action and to

educate the public at large about how to conduct law in court and to motivate the public about how the people are protected by the state.

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