



Right to Sue (Citizen Law Suit) Air Pollution as an Alternative Dispute Settlement

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ARTICLE INFO	ABSTRACT
<p>Keywords : Citizen Lawsuit; Unlawful Acts; Air Pollution; Environmental Damage.</p> <p>How To Cite : Ulfanora, U. (2024). Right to Sue (Citizen Law Suit) Air Pollution as an Alternative Dispute Settlement. <i>Nagari Law Review</i>, 7(3), 555-566.</p> <p>DOI : 10.25077/nalrev.v.7.i.3.p.555-566.2024</p>	<p><i>A good and healthy environment is a human right of every Indonesian citizen. The mandate of the 1945 Constitution is not obtained by citizens as they should. The proof is that high air pollution, such as air quality in some areas, causes environmental damage. As for the negative impact of air pollution, in addition to material losses, it also causes immaterial losses in poor air quality. Facing the occurrence of environmental damage due to air pollution in the city of Jakarta, citizens have the right to sue the government as state administrators who have neglected to protect the rights of their citizens, as regulated in Article 91 paragraph (1) and (2) of Law no. 32 of 2009. The results of this study are that the Citizen Lawsuit lawsuit becomes a forum for the community if they experience losses due to pollution and environmental damage. This Citizen Lawsuit lawsuit only asks for accountability for Government policies that result in losses for citizens, such as the lawsuit filed by the Optimistic Capital Coalition on Number 374/Pdt.G/2019/Pn.Jkt.Pst which was received by the Panel of Judges in 2021.</i></p>

1. Introduction

Indonesia is a state of law (*rechtsstaat*). As a country that puts law as the primary foundation in the administration of the state, the law must support the state's goals and not injure the values that live and develop in society. Law has an important aspect in social and state life, namely as a guide or guide for human behavior with other humans. That is, the law functions to regulate society by integrating and coordinating every interest of legal subjects so that later, it is hoped that the interests of legal subjects will not conflict. This condition is achieved by protecting the interests in question. One of the ways to protect these interests is through the mechanism of giving opportunities to file lawsuits to resolve conflicting interests.¹ So, by submitting a lawsuit to a dispute resolution body authorized to fix it, it is hoped that the initially opposite interests will be resolved. In its development, the law is a means of community renewal, which makes it inseparable from community development.² This was followed by the growing legal needs of the community in line with advances in technology, information, and communication, which resulted in the resolution of conflicting interests not only based on the Indonesian legal system oriented to the legal system of civil law but also adopting the system of common law. One of the developments of the law can be seen from the existence of legal instruments that were born from the influence of other legal systems

¹ Bachrul Amiq, at al, (2024). "Environmental Damage: Community Lawsuit Against The Government Over Industrial Business Licenses," *Law Reform*, 20(1), p. 1-21.

² Meng Zhou, Ling Huangand, Zhenjiang Shen, (2018), "Community Renewal Strategy from the Perspective of Cultural Planning A Case Study on Caohuajie Community in Chongqing", *IRSPSDA International*, 6A (1), 1-16,

on the development of law in Indonesia. For example, in the field of civil law regarding dispute resolution mechanisms, where disputes arise from violations of the rights of others that cause losses.

In Indonesia, in principle, there are two ways of resolving civil disputes: settlement through the courts (litigation) and settlement outside the court (non-litigation). One way of resolving disputes through non-litigation channels is through peace, known as the Alternative Dispute Resolution. In practice, the implementation of rights claims to the court is not a new thing. When there is a conflict of rights between two parties, one way to resolve the conflict of rights is to file a claim to the court through the mechanism for filing a lawsuit. A lawsuit can be filed in two ways: first, by the person concerned or his heirs, and second, by a group of people with the same interests³. The problem will be more complicated if the rights violated are the rights of the community, which cause harm not only experienced by one person but the loss experienced and suffered by many people. To answer the problems and events that occur due to the increasingly complex issues in society, which are not only limited to the context of material law but procedural law as formal law that functions to enforce material law, foreign law is also adopted. Several mechanisms have been noted in law enforcement efforts in Indonesia to adopt foreign laws originating from the system of common law, such as Legal Standing and Class Action⁴. Observing the substance of the civil procedural law, which is deemed unable to accommodate the problems that have arisen recently, the Supreme Court issued Regulation of the Supreme Court of the Republic of Indonesia (PERMA) No. 1 of 2002 concerning the Events of a Group Representative Lawsuit. The PERMA regulates the procedure for filing a lawsuit in groups with many people⁵. So, formally, the community has gained legitimacy to fight for their rights through lawsuits, class action, and legal standing. As a result of the increasing variety of problems in people's lives, there is also a growing need, including legal means, to resolve conflicts of interest. Subsequent developments, such as civil litigation, emerged from a foreign legal system previously unknown in the Indonesian legal system.⁶ This legal system. has almost the same characteristics as a representative lawsuit but has several elements that are principally different from the rights of citizens to sue, known as Citizen Lawsuit in the system of common law and *Actio Popularis* in the system of civil law. Citizen lawsuits are one mechanism born, the right to sue, as a manifestation of individual access or the individual citizen's right to defend the citizens' overall interests for the public's sake. Every citizen can exercise a lawsuit against the action or even omission (omission) of state officials who cause violation of the rights of citizens⁷. Referring to the articles in Chapter XA of the 1945 Constitution, human rights must be protected. The Universal Declaration of Human Rights also confirmed this on 10 December 1948, as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were approved by the United Nations General Assembly in 1966⁸. In Indonesia, regarding the Protection of Human Rights is accommodated by Law No. 39 of 1999 concerning Human Rights. Starting from the awareness of paying attention to the protection of human rights, the idea arose about the rights of citizens to claim, which is used when there is a violation of the rights of citizens. Article 28 I, paragraph (4) of the 1945 Constitution states that protecting, promoting, enforcing, and fulfilling *human rights is the state's responsibility, especially the government*. This is reinforced by Article 28 I

³ Isrok dan Rizki Emil Ibrahim,. (2010). *Citizen Lawsuit*, UB Press, Malang, p.2

⁴ *Ibid*, hlm.19

⁵ Pasal 1 butir a PERMA No.1 Tahun 2002 : *Gugatan Perwakilan Kelompok adalah suatu tata cara pengajuan gugatan, dalam mana satu orang atau lebih mewakili kelompok mengajukan gugatan untuk diri sendiri atau diri mereka sendiri dan sekaligus mewakili sekelompok orang yang jumlahnya banyak, yang mewakili kesamaan fakta atau dasar hukum antara wakil kelompok dan anggota kelompok dimaksud.*

⁶ Nugraheni, P. D., & Aime, A. F. (2022). "Environmental Law Enforcement in Indonesia Through Civil Law: Between Justice and Legal Certainty". *The Indonesian Journal of International Clinical Legal Education*, 4(2), 143-160. <https://doi.org/10.15294/ijicle.v4i1.55763>.

⁷ Isrok dan Rizki Emil Birham, *Op Cit*, p.3

⁸ A. Masyhur Effendi, (2005), *Perkembangan Hak Asasi Manusia dan Proses Dinamika Penyusunan Hukum Hak Asasi Manusia*, Ghalia Indonesia, Jakarta, p. 65

paragraph (5), which states that to uphold and protect human rights by the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and outlined in laws and regulations so that a lawsuit is filed in the form of Citizen Lawsuit⁹.

One of the problems that is repeated every year in several regions in Indonesia is forest and land fires. Even the Minister of Environment and Forestry Regulation concerning the Ministry of Environment and Forestry Strategic Plan for the Year 2020-2024 prevents, overcomes, and restores damage to natural resources and the environment. Several events and problems have become our common agenda to overcome now and 'in the future, including floods, air pollution, forest and land fires, global warming, and land damage due to mining. The importance of air is increasing because it influences human life and living things that must be preserved for its function in the maintenance of human health and welfare as well as protection for other living things¹⁰. 41 of 1999 concerning air pollution control, it is stated in Article 1 point 2 that efforts should be made *to prevent and control air pollution and restore air quality*. In the past 5 (five) years, air quality in Indonesia has degraded and caused a sense of discomfort to disrupt the respiratory function of humanity. Even recently, the people of DKI Jakarta filed a group lawsuit with case number 374/Pdt.G/LH/2019/PN Jkt.Pst through the Optimistic Capital Coalition to sue the Indonesian government, including the President of the Republic of Indonesia, the Ministry of Home Affairs, the Ministry of Health, the Ministry of the Environment. DKI Provincial Government, Banten Provincial Government, and West Java Provincial Government¹¹.

According to data from the United States Embassy air monitoring station in Jakarta, Jakarta only experienced 40 days of "good" air quality in 2017. In 2018, it had only 25 "good" days, compared to 77 days recorded as "unhealthy." In 2019, "unhealthy" days increased to 108, up nearly 50% from the previous year.¹² Then, according to the Ministry of Environment and Forestry, it stated that the source of air pollution in the PM (particulate category matter or dust) in Jakarta came from the transportation sector by 70%, in March 2019¹³. This problem has become a concern for the community and visitors who come to DKI Jakarta over the disruption of air quality that is unsuitable for breathing. Air pollution in Jakarta causes discomfort, and the victim has spots on the lungs, as in one of the patients in Jakarta. However, air pollution resulting from movable or immovable business activities has also disturbed the people in the Jakarta surrounding area (Jabodetabek). The failure to control air pollution in Jakarta is caused by the government experiencing limitations in monitoring air quality (ambient). In addition to these limitations, the government also did not make efforts or quick reactions to inform the public of the steps that must be taken to avoid dirty air.¹⁴ Data on the AirVisual website in 2019 once put Jakarta in the world's first rank for poor air quality.¹⁵

Poor air quality has become a basis for the community to file a lawsuit against the government against the air quality in Jakarta, which has been visited by many people and has caused respiratory problems for several people in Jakarta. The DKI Jakarta Government has issued Governor Regulation Number 66 of 2020 concerning Motor Vehicle Exhaust Emission Tests in Article 1 point 4 that "*The Threshold for Motor Vehicle Exhaust Emissions, from now on referred to as the Emission Threshold, is the maximum limit for substances or pollutant substances that may be released directly from motor vehicle exhaust pipes.*" However, this regulation will only be implemented in 2021, when every vehicle

⁹ Isrok dan Rizki Emil Birham, *Op Cit*, p.4

¹⁰ Consideration of Government Regulation Number 41 Year 1999 tentang Pengendalian Pencemaran Udara

¹¹ Ananta Damarjati. (2021). *Koalisi Ibukota Optimistis Gugatannya atas Polusi Udara Menang Putusan*. *Rumahberkelanjutan.Id*. <https://rumahberkelanjutan.id/koalisi-ibukota-optimistis-gugatannya-atas-polusi-udara-menang-putusan/>

¹² *Ibid*

¹³ Walhi. (2019). *Kualitas Udara Jakarta Terus Memburuk! Warga Resmi Gugat Gubernur, Menteri hingga Presiden* . <https://www.walhi.or.id/kualitas-udara-jakarta-terus-memburuk-warga-resmi-gugat-gubernur-menteri-hingga-presiden>

¹⁴ Kompas.com. (2019). *Walhi Nilai Pemprov Lamban Atasi Polusi Udara di Jakarta*. *Megapolitan.Kompas.Com*. <https://megapolitan.kompas.com/read/2019/07/29/16510781/walhi-nilai-pemprov-lamban-atasi-polusi-udara-di-jakarta>

¹⁵ Dw. (2019). *Penggugat Polusi Udara Jakarta: Negara Abai dan Gagal Menjamin Hak Warga*. *Www.Dw.Com*.<https://www.dw.com/id/polusi-jakarta-negara-abai-dan-gagal-menjamin-hak-warga/a-57592833>

belonging to a resident of DKI Jakarta must have an emission test carried out with proof of vehicle emission test certification within 1 () year.

In Government Regulation (PP) No. 41 of 1999 concerning Air Pollution Control in Article 22 paragraph (1), that "Everyone who carries out business and source activities does not move that emits emissions and disturbances must meet the requirements for the quality of emissions and disturbances stipulated in the permit to conduct business and activities." Even though Indonesia has many regulations prohibiting air pollution, in reality, what happens on the ground, law enforcement of these regulations is still very weak. If examined further, there is a decrease in air and land quality in DKI Jakarta Province, which results in material losses and interferes with public health; not only can individuals or companies conducting movable or immovable business activities that emit excess gas emissions be legally responsible for the case. -this case. This is because there have been human rights violations or legal violations by state administrators against the environment or state negligence that has resulted in community losses, where the government takes actions that cause environmental damage. This government action stipulates regulations that are detrimental to the environment and the surrounding community, as well as authorities, in the name of the public interest of changing the use of the environment. So far, Class Action and Legal Standing have become a means of law enforcement in environmental issues. Along with the increasingly complex needs of the community, the more excellent the opportunity for violations committed by state officials. The problem is no longer only limited to the environment, so as an effort to enforce the law in protecting the constitutional rights of the community, an influential media is needed *legitimate*.

2. Methode

The method was conducted in juridical-normative method (doctrinal research) articles. An analytical approach, statute approach approach this method, and cases approach.

3. Result and Discussion

3.1. Types of Right to Sue

Right to sue (standing/standing to sue) can be interpreted broadly, namely the access of individuals, groups/organizations, or government institutions in court as the Plaintiff for the restoration of their rights that the Defendant has violated, or compensation for what they have suffered¹⁶. In Law no. 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH), the right to sue is regulated in several articles, which provide guarantees of access for several parties, namely the right to sue for individuals, the right to sue for environmental organizations, the right to sue for group representatives or class action, Rights to sue the Government and Local Governments, and Citizens' Lawsuits.

3.1.1. Right to sue Person Individual (Individuals)

Sues for individual rights can be Voluntair or Contensia. Lawsuits Voluntair that are unilateral, i.e., the problems submitted for settlement by the court do not contain disputes (undisputed matters), are unilateral only (for the benefit of one party only), without disagreement with other parties (without dispute or differences with another party). No other person or third party is drawn as an opponent (defendant). The lawsuit is solely for the benefit of the applicant. Meanwhile, Contestia's lawsuit is a lawsuit that contains a dispute between two or more parties. Problems submitted/expressed as a lawsuit are disputes or disputes between the parties (between contending parties) to be resolved in

¹⁶ Esmilia Eka Andriana et. Al. (2023) 'Legal Standing and Organization's Right to Sue in Cases of Onrechtmatige Overheidsdaad (Unlawful Government Acts) After the Implementation of Law No. 30 of 2014', NURANI, 23(2) p. 283-296

court. In addition to containing conflicts between two or more parties, this lawsuit is a party in nature, with the composition: one party acts. It is domiciled as the plaintiff, and the other party is the defendant.

3.1.2. *Class Action*

This is regulated in Article 91 of the UUPPLH. Class Action is due to the emergence of legal conflicts and conflicts involving many people, namely between individual communities, between the community and legal entities, or between the community and the government (public officials)¹⁷. Rights Group Sues Representative, or the Class Action (ClassAction), is one form of procedural proceedings in civil law. In a lawsuit class action, a group of aggrieved people can file a lawsuit to the Court only by representing or more people to act as Plaintiffs, as long as they have the same facts or legal basis.¹⁸

3.1.3. *The Right to sue the Government and Local Government*

Government and local government can be used to demand civil accountability for those in charge of businesses or activities that cause ecosystem damages to obtain compensation for environmental/ecosystem damages¹⁹. In fact, the government's right to sue has been known since Law No. 23 of 1997 concerning UUPPLH, which states that "if it is known that the community suffers from environmental pollution and destruction in such a way that it affects the basic life of the community, **then** the government agency responsible for the environment can act for the benefit of the community. Further developments, the government's right to file a civil lawsuit to the court is also recognized in Law No. 32 of 2009 concerning UUPPLH, where in Article 90 it is stated that "government agencies and local governments responsible for the environment are authorized to file claims for compensation and certain actions. Businesses and activities that cause environmental pollution and damage result in environmental losses. Significant differences exist in regulating the Government's Lawsuits in Law No.23 of 1997 with Law No.32 of 2009. The Government's Laws of Law No.32 of 2009 emphasize that the object of the government's lawsuit is to file a claim for compensation and certain actions against business and activity that causes environmental pollution and damage resulting in environmental loss. Meanwhile, the clause in Law No.23/1997 regarding compensation or compensation suffered by the community is no longer the government's obligation. The next question is what "environmental loss" and "certain actions" mean. In the Elucidation of Article 90 paragraph (1) of the UUPPLH, it is emphasized that "Environmental Loss is a loss arising from pollution and environmental damage which is not private property, while Certain Actions are measures to prevent and overcome pollution and damage to function restoration—environment to ensure that negative impacts on the environment will not occur or recur.

3.1.4. *Environmental Organizations' Rights to sue (NGOs)*

Lawsuits This is regulated in Article 92 of the UUPPLH. Environmental organizations or NGOs (Non-Governmental Organizations) can appear in court because NGOs are guardians of the environment. This opinion departs from the theory put forward by Christopher Stone. In his widely known North American article, *Should Trees Have Standing?* This theory gives legal rights (legal rights) to natural objects, and according to Stone, forests, seas, or rivers as natural objects deserve law, and it would be unwise to think otherwise just because they are inanimate (unable to speak). In the legal world, it has long recognized the legal rights of innovative objects, such as individuals, the state, and minors. For legal counsel, their attorney or guardian acts for their legal interests. An environmental organization has the right to file a lawsuit (lawsuit legal standing) if it fulfills the requirements, firstly, in the form of a legal entity and, secondly, confirms in its articles of association

¹⁷ Syamsul Arifin, (2013), *Hukum Perlindungan dan Pengelolaan Lingkungan Hidup di Indonesia*, ICEL, hlm.219

¹⁸ Peraturan Mahkamah Agung RI Nomor 1 Tahun 2001 tentang Gugatan Perwakilan Kelompok, Pasal 1 huruf (a)

¹⁹ ICEL, Anotasi UU No. 32 Tahun 2009, p.10

that the organization was established to preserve environmental functions and thirdly, has carried out actual activities by its articles of association at least two years. For the Environmental Organization, the claim (*petitum*) cannot be in the form of compensation. Claims for rights that are allowed are only in the form of an obligation to take specific actions without any claim for compensation, such as (1) asking the court to order the defendant to take specific legal actions aimed at preserving environmental functions, (2) asking the court to declare the defendant has committed an unlawful act (3) asked the court to order the defendant to repair the waste management installation. In addition, the Environmental Organization is also entitled to request reimbursement of the actual costs that have been incurred in the context of overcoming pollution and environmental damage that has occurred (*out-of-pocket expense*)

3.1.5. *Citizen's Lawsuit or Actio Popularis*

Citizen lawsuits or citizens' right to sue are mechanisms in court intended to protect citizens from the possibility of losses from various consequences of actions or policies or due to inaction (omission) by the government or decision-makers. The right to sue in a citizen lawsuit is a right that is given to every citizen because they are pleased with the policies of decision-makers that are detrimental to the public interest. In a citizen lawsuit, the plaintiff is not a victim who has experienced it directly (natural); for that, a citizen does not need to prove that they have a legal interest or is a person who has suffered a loss. Citizen Lawsuit or *Actio Popularis* is a mechanism for filing lawsuits on behalf of citizens aimed at state administrators for not carrying out their legal obligations in the context of fulfilling citizens' rights, so this lawsuit is a type of lawsuit in the name of the public interest. The basis for filing a lawsuit Citizen Lawsuit/*Actio Popularis* is the existence of an unlawful act committed by a state administrator that causes harm to citizens. Because of this illegal act, the state is punished for taking specific actions or issuing a general policy so that negligence does not occur in the future.

Citizen Lawsuit is intended to protect citizens from possible losses due to actions or omissions from the state or state authorities. A citizen lawsuit is used by countries that adhere to the standard law legal system. In contrast, in the legal system of civil law, there is a lawsuit that is, in principle, the same as the Citizen Lawsuit, namely *Actio Popularis*. This similarity can be seen in citizens' lawsuits against environmental protection, regardless of whether they experienced it directly. This is due to problems concerning the public interest; therefore, every citizen has the right to demand it.²⁰ In the history of Citizen Lawsuit, the first case filed was a problem against the environment. In its development, it turns out that the Citizen Lawsuit is not only submitted in environmental cases but in all fields where the state is considered negligent in fulfilling its citizens' rights. The basis for filing a lawsuit Citizen Lawsuit is that there is an act against the law in which the state is considered to be negligent in fulfilling the rights of citizens so that the state can be punished and provide compensation immaterial, namely by issuing a regulatory policy so that negligence doesn't happen again. Quoting the opinion of an Indonesian legal expert, Sudikno Mertokusumo stated that the limitation of the definition of the Citizen's Lawsuit (*Actio Popularis* or Citizen Lawsuit) is the right of every citizen in the name of the public interest to sue the state or government or anyone who commits an unlawful act, which is accurate. Significantly detrimental to the public interest and the welfare of the wider community. In *Actio Popularis*, the right to file a lawsuit for citizens in the name of the public interest is unconditional, so the person who takes the initiative to file a lawsuit does not have to be a person who has directly experienced the loss, and also does not require an extraordinary power of attorney from the member of the community he represents²¹. In its history, the Citizen Lawsuit was first proposed for environmental issues. In its development, the Citizen

²⁰ Mas Achmad Santosa, (1997) *Konsep dan Penerapan Gugatan Perwakilan Kelompok (Class Action)*, Seri Informasi Hukum Lingkungan, ICEL, Jakarta, p.20

²¹ Sudikno Mertokusumo (2021), *Gugatan Actio Popularis dan Batas Kewenangan Hakim*, Hukum Online, diakses 30 Oktober 2021, Pukul 20.15 WIB

Lawsuit is submitted in ecological cases and all fields where the state is considered negligent in fulfilling its citizens' rights. In Indonesia, the concept of *Actio Popularis* was mentioned by the Panel of Judges in the legal considerations of the dengue fever case decision around 1997²².

However, the lawsuit was rejected by the panel of judges because the legal arrangement did not yet exist, even though the panel of judges recognized the principle of *Actio Popularis* when considering its decision. In 2021, the concept lawsuit *Actio Popularis* was then carried out again with the Citizen Lawsuit on the acceptance of the panel of judges with the entry of lawsuit Number 374/Pdt.G/2019/PN.Jkt.Pst regarding Environmental Pollution in the City of Jakarta. Apart from the term Citizen Lawsuit with *Actio Popularis*, in principle, this right of lawsuit is a lawsuit model that protects the interests of citizens. Some notes on handling Lawsuit Citizen lawsuits based on several Citizen Lawsuit cases that have been filed in Indonesia are as follows;

- (1) Defendants in the Citizen Lawsuit are State Administrators;

It starts with the president, vice president, ministers, and state officials in the field who are considered negligent in fulfilling their citizens' rights. Suppose other parties (individuals or legal entities) are withdrawn as Defendants/Co-Defendants. In that case, the lawsuit will no longer be a citizen lawsuit because there is an element of citizens against citizens. The lawsuit is an ordinary lawsuit that the mechanism of a Citizen Lawsuit cannot examine. In the case of air pollution in the City of Jakarta in the lawsuit Number 374/Pdt.G/2019/PN.Jkt.Pst there are 5 (five) defendants, including the President of the Republic of Indonesia Joko Widodo (Defendant I), Minister of Environment and Forestry (Defendant II), Domestic Affairs (Defendant III), Minister of Health (Defendant IV), and the Governor of West Java (Defendant V).

- (b) The unlawful act argued in the lawsuit is the negligence of the state administrator;

In fulfilling the rights of citizens. In this case, it is necessary to describe what forms of negligence have been committed by the state and what rights of citizens have failed to be fulfilled. The plaintiff must prove that the State has committed the unlawful act, as in a regular lawsuit. In addition, the Plaintiff as a whole represents Indonesian Citizens; there is no need to separate them according to the group of similarities in facts and losses as in the Lawsuit Class Action

- (c) The plaintiff is a citizen;

Acting on behalf of the citizen. In this case, the plaintiff is sufficient to prove that he is an Indonesian citizen. In contrast to Class Action, the Plaintiff does not have to be a group of citizens whom the state has directly harmed. Therefore, the Plaintiff does not have to prove material loss that he has suffered as the basis for a lawsuit, unlike an average lawsuit

- (d) Citizen lawsuit does not require an Option notification Out;

After the lawsuit is registered as regulated in PERMA concerning Class Action, in practice in Indonesia, based on arrangements in several common law countries, it is a citizen lawsuit sufficient to provide only a notification in the form of a subpoena to the state administrator. The content of the subpoena is that a Lawsuit will be filed Citizen against state administrators for the state's negligence in fulfilling the rights of its citizens and providing an opportunity for the state to fulfill it if it does not want a lawsuit to be filed. This subpoena must be submitted no later than two months before the lawsuit is registered. Still, because no formal regulation regulates this matter, this provision is not binding. The claim (*Petitum*) in a lawsuit may not ask for material compensation because the group of citizens who are suing is not a group that

²² Perkara No.251/PDT.G/1998/PN.JKT.PST. Dalam Putusan Akhir disebutkan "gugatan yang diajukan penggugat adalah gugatan dengan prinsip *Actio Popularis*

is materially harmed and has the same losses and legal facts as the lawsuit Class Action. The petition for the Citizen Lawsuit must contain a request for the state to issue a general regulation (*regeling*) so that unlawful acts in the form of negligence in fulfilling the rights of these citizens in the future do not occur again. The Lawsuit Citizen petition may not contain the cancellation of a State Administrative Decision (State Administrative Decision), which is concrete, individual, and final because it is the authority of the State Administrative Court. The *Petitum* (claim) of the Lawsuit Citizen also cannot request the cancellation of a law because it is the authority of the Constitutional Court. Additionally, a citizen lawsuit may not request cancellation of legislation under the law because it is the authority of the Supreme Court, as provided in PERMA on the Judicial Review of legislation under the law.

3.2. Unlawful Act Element

Acts Unlawful conduct is an act committed by a legal subject that has implications for losses to other parties. Acts against the law are regulated in Book III of the Civil Code (KUHPerdata) concerning Engagement in Articles 1365-1380 of the Civil Code. Acts against the law here are legal acts in the civil sector. Acts against criminal law (crime), or the term "criminal act," have an entirely different meaning, connotation, and legal arrangement. Acts against the law by state authorities or the government lawful act or *onrechtmatige overheidsdaad* also have different meanings, connotations, and legal arrangements²³. The term against the law in Dutch is called *onrechtmatigedaad*, while in English, it is called tort. The word tort only means wrong (wrong); however, especially in the legal field, the word tort has developed in such a way that it means a civil error that does not come from a breach of contract. So, it is similar to the definition of an unlawful act in the Dutch legal system or other Continental European countries. The word tort comes from the Latin word *torquere* or *tortus* in French, just as the word wrong comes from the French word *wrong*, which means an error or loss or injury²⁴. The definition of an unlawful act does not exist in the Civil Code. Article 1365 of the Civil Code only specified conditions for claiming compensation for an illegal act if the loss arises due to the perpetrator's fault. So, the article in question does not regulate unlawful acts but governs the conditions for claiming compensation due to illegal acts.²⁵

As we know, Article 1365 of the Civil Code states that "Every act against the law and brings harm to others requires the person who caused the loss because of his mistake to compensate for the loss."²⁶. Unlike the provisions of other Articles, the formulation of norms in this Article is unique. This means that the formulation of the norms of Article 1365 of the Civil Code is more of a normative structure than the substance of a complete legal provision. Therefore, the substance of the provisions of Article 1365 of the Civil Code always requires materialization outside the Civil Code. Judging from the time dimension, the provision will be "eternal" because it is only a structure; in other words, like a well-known figurative word, Article 1365 of the Civil Code is timeless because heat is not weathered by rain.²⁷. Citing the opinion of legal experts, Mariam Darus Badruzaman said that Article 1365 of the Civil Code has a significant meaning because, through this article, unwritten laws are considered by law. Sri Soedewi Mascjhoen Sofwan and Rachmat Setiawan also use the term against the law rather than breaking the law. MA Moegni Djojodirdjo said that, in the word fight, there are active and passive characteristics.²⁸

Mariam Darus Badruzaman called it a positive and negative trait.²⁹. On the other hand, E. Utrecht defines unlawful act or *onrechtmatigedaad* as an act contrary to legal principles that covers:³⁰

²³ Munir Fuady. (2005). *Perbuatan Melawan Hukum Kontemporer*, Citra Aditya Bakti, Bandung.p.1

²⁴ Ibid, p.2

²⁵ MA Moegni Djojodirdjo, 1(982) , *Acts Against the Law*, Pradnya Paramita, Jakarta. P. 51

²⁶ R. Subekti and Tjitrosudibio, *Civil Code*, Pradnya Paramita, Jakarta, p.346

²⁷ Rosa Agustina. (2004) *Unlawful Acts*, Graduate Program Faculty of Law, University of Indonesia, Jakarta, p. 3

²⁸ M. A. Moegni Djojodirdjo, *Op Cit*, p.17

²⁹ Mariam Darus Badruzaman, *Op Cit*, pp.146

- a. Does not fulfill something that is his obligation other than his contractual obligation that issues the right to claim compensation;
- b. An act or not doing something that causes harm to another person without previously having a legal relationship, where the act or not doing something is either an ordinary act or it can also be an accident;
- c. Failure to fulfill an obligation imposed by law, an obligation which is aimed at everyone in general, and by not fulfilling this obligation, compensation is requested;
- d. A loss that is not caused by a breach of contract or instead is an act that harms the rights of others created by law that does not arise from a contractual relationship;
- e. An act or not doing something contrary to the law violates the rights of others created by law, and therefore, the injured party can claim compensation; and
- f. Illegality is not a contract, just as chemistry is not physics or mathematics³¹

3.3. Unlawful by The State Administration

3.3.1. Acts against the law by state officials or authorities

Indonesia adopted the meaning of the Dutch known as *Onrechtmatige Overheidsdaad*. This is due to the Dutch application of the principle of concordance to their colonies. As previously stated, according to Article 1365 of the Civil Code, *every act against the law that causes harm to another person obliges the person who, because of his mistake, caused the loss to compensate*. Furthermore, it is further clarified in Article 1366 of the Civil Code, which states that everyone is responsible for losses caused by his actions and negligence or carelessness.

Based on the formulation of Article 1365 of the Civil Code, elements of an unlawful act can be drawn, namely;

- i. This act must be against the law
- ii. The act must cause harm;
- iii. The act must have an element of error and
- iv. The act must have a causal relationship

The elements of this unlawful act then developed since the decision on Hoge Raad 31 January 1919 in the case *Lindenbaum-Cohen*, so that there are four criteria for illegal acts, namely;

- i. Contrary to the legal obligations of the perpetrator
- ii. Violating the subjective rights of others;
- iii. Violating the rules of ethics; and
- iv. Contrary to the principle of propriety, thoroughness, and prudence that should be owned by a person in association with fellow people or against other people's property

Through *Osterman Arrest* (HR 20 November 1924), the authorities can commit an act against the law if the act is contrary to the legal obligations of the perpetrator (fulfilling elements 1 and 2 of *Cohen-Lindenbaum Arrest* HR 31 January 1919). In a further development, through *Ontvanger Arrest* (HR 20 December 1940), the actions of the authorities are also against the law if they meet elements 3 and 4,

³⁰ E. Utrecht, (1967), *Introduction to Indonesian Law*, Sumur, Bandung, p. 7

³¹ Munir Fuady, *Op Cit*,

namely contrary to decency or contrary to the attitude of prudence that is considered appropriate in society³²

3.3.2. *Nature of Unlawful Acts by State Administrators*

According to its contents, law can be divided into two groups: *public law and private law*. *Public law* is the law that regulates the relationship between rulers and members of society, while *private law* is the law that governs the relationship between individuals. Furthermore, the authorities' actions can be divided into two forms, namely actions in public law and *civil law*. The state is a legal entity, both in the administrative field and in the civil field; therefore, the state has a dualistic nature, namely;

- i. The location of the government's duties in the field of public law
- ii. The government also acts as a subject of civil law or participates in legal traffic civil
- iii. The rules that contain the division of duties for the government and which are found between the government and individuals constitute public law. But if, in the field of legal traffic, the government and individuals face each other as joint subjects, then that is included in a civil relationship³³

3.3.3. *Liability for Unlawful Acts by State*

Administrators If a state administrator commits an unlawful act, he is like ordinary people responsible for the losses caused by his actions. The nature of illegal acts committed by state officials is defined differently than that of individuals. The reason for this can be stated that individuals' actions are driven by their interests, while the authorities serve the public interest. Fighting for the welfare of the people results in the interests of other individuals or groups.

An act is carried out by a state administrator as the ruler, meaning a party that controls the other party. It is a lawful government act or oversight, but if the state's action occurs on the rights of the two parties, it is a private affair, not a government act. After Aresst Hoge Raad 1901, there was a permanent stance that the judge was authorized to examine cases if the ruler acted civilly or if what was violated was a subjective right, except if the ruler's actions were based on a regulation or was an obligation to act. Therefore, it is appropriate if the state, in the sense of state administrators, is responsible for its actions against the law.³⁴

4. Conclusion

From the discussion that has been carried out above, it can be concluded that citizens can exercise their rights to sue the government or state administrators through Citizen Lawsuit or *Actio Popularis*. Unlawful acts arise if the government or state administrators commit or state administrators are negligent in protecting the interests of citizens, which results in citizens experiencing losses, although not directly. In lawsuit Number 374/Pdt.G/2019/Pn.Jkt.Pst, the Optimist Capital Coalition group has the same rights in filing a lawsuit, Citizen Lawsuit. The air quality in DKI Jakarta has resulted in widespread loss of citizens, so people do not get fresh air quality in the city of Jakarta.

References

- A Masyhur Effendi. (2005) *The Development of Human Rights Dimensions and the Process Dynamics of the Drafting of Human Rights Law*, Ghalia, Indonesia, Jakarta.
- Chidir Ali. *Legal Entity*" (1987), Alumni; Bandung.

³² Djaja S. Meliala, *Op Cit*, pp. 118

³³ Chidir Ali, (1987), *Legal Entities*, Bandung, Alumni, pp. 23

³⁴ Sudikno Mertokusumo, (2014), *Actions Against the Law of the Ruler*, Cahaya Atma Pustaka, Yogyakarta, p.42

- Djaja S. Meliala. " *Development of Civil Law on Objects and Bond.*" Nuansa Aulia, Bandung..
- E.Utrecht " (1995), *Introduction to Indonesian Law.*" Sumur, Bandung
- Isrok and Rizki Emil Ibrahim, (2010), *Citizen Lawsuit*, UB Press, Malan
- MA Moegni Djojodirjo, (1982), *Unlawful Acts*, Pradnya Paramita, Jakarta
- Mariam Darus Badruzaman, (1983), *KUH Civil Book III, Law of Engagement with Explanation*, Alumni, Bandung
- Mas Achmad Santosa, (1997), *Concept and Application of Class Action – Environmental Law Information Series*, ICEL Jakarta
- Munir Fuady, (2005), *Unlawful Acts – Contemporary Approach*, Jakarta, Citra Aditya Bakti Aditya Bakti, Bandung
- Nandika Dodi, 2005, *Forests for National Resilience*, Surakarta, Muhammadiyah University Press
- R. Subekti and Tjitrosudibio, 2003, *Civil Code*, Pradnya Paramita, Jakarta
- Rosa Agustina, 2004, *Unlawful Acts*, Graduate Program Faculty of Law, University of Indonesia, Jakarta
- Of Guslam (2014), *Unlawful Acts by the Government*, Cahaya Atma Pustaka, Yogyakarta
- Guslam (2014), *Legal Findings an Introduction to Revised Edition*, Cahaya Atma Pustaka, Yogyakarta

Web/Journal

- Ananta Damarjati. (2021). *Koalisi Ibukota Optimistis Gugatannya atas Polusi Udara Menang Putusan*. Rumahberkelanjutan.Id. <https://rumahberkelanjutan.id/koalisi-ibukota-optimistis-gugatannya-atas-polusi-udara-menang-putusan/>,
- Bachrul Amiq, at al, (2024). "Environmental Damage: Community Lawsuit Against The Government Over Industrial Business Licenses", *Law Reform*, 20(1), p. 1-21
- Meng Zhou , Ling Huangand, Zhenjiang Shen, (2018), "Community Renewal Strategy from the Perspective of Cultural Planning A Case Study on Caohuajie Community in Chongqing", *IRSPSDA International*, 6A (1), 1-16,
- Esmilia Eka Andriana et. Al. (2023) 'Legal Standing and Organization's Right to Sue in Cases of Onrechtmatige Overheidsdaad (Unlawful Government Acts) After the Implementation of Law No. 30 of 2014', *NURANI*, 23,(2) p. 283-296.
- Walhi. (2019). *Kualitas Udara Jakarta Terus Memburuk! Warga Resmi Gugat Gubernur, Menteri hingga Presiden* . <https://www.walhi.or.id/kualitas-udara-jakarta-terus-memburuk-warga-resmi-gugat-gubernur-menteri-hingga-presiden>,
- Kompas.com. (2019). *Walhi Nilai Pemprov Lamban Atasi Polusi Udara di Jakarta*. *Megapolitan*.Kompas.Com. <https://megapolitan.kompas.com/read/2019/07/29/16510781/walhi-nilai-pemprov-lamban-atasi-polusi-udara-di-jakarta>,
- Dw. (2019). *Penggugat Polusi Udara Jakarta: Negara Abai dan Gagal Menjamin Hak Warga*. *Www.Dw.Com*.<https://www.dw.com/id/polusi-jakarta-negara-abai-dan-gagal-menjamin-hak-warga/a-57592833>

Regulations

The 1945 Constitution of the Republic of Indonesia

Law Number Government Regulation 41 of 1999 concerning *Air Pollution Control*

Law of the Republic of Indonesia Number 32 of 2009 concerning *Environmental Protection and Management*

Law Number DKI Jakarta Regional Governor Regulation 66 of 2020 Motorcycle vichel Uji Gass Emission

Law Number 3 of 2009 concerning the *Supreme Court*

Law Number 48 of 2009 concerning *Judicial Powers*

Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2002 concerning Lawsuits for Representatives of the Group