

INDONESIA

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Abstract. Since 1997, class actions filing procedures have appeared in environmental, consumer protection and forestry laws, with increasing use. Pending clarification of detailed procedural aspects in expected legislation, the Supreme Court has issued an interim Regulation.

The Indonesian Legal System

The Indonesian system is akin to the civil law system, since the Indonesian legal system has historically been strongly influenced by the legal system introduced by the colonial administration of the Dutch, who ruled this territory for 3 ½ centuries. This can be seen in Chapter II of Transitional Regulation of the 1945 Constitution. However, the supporting legal subsystem contains the influences of customary laws, Islamic law and other western laws, so the result is complex. Judicial power is carried out by the Supreme Court and judicial institutions under it, namely general courts, religious courts, military courts, administrative courts and the constitutional court.¹ The Civil Law Procedure, HIR (*Herziene Indonesische Reglement*),² was inherited from the Dutch East Indies administration, and derives from IR (*Inlandsche Reglement*) contained in *Staatsblaad* no. 16 in conjunction with 57/1848, still remaining in force.³ The HIR does not address class actions or class representatives.

Public Interest Litigation

After some attempts to bring class procedures,⁴ a successful class action emerged in Indonesia in 1988 when an NGO, *Indonesia's Forum for Environment* (WALHI)'s *Foundation*, brought a public interest claim questioning public access to information,

the legality of environmental impact analysis conducted by a paper company, and resulting pollution and environmental degradation.⁵ The court shifted its conventional legal standing doctrine (formerly *point d'interest, point d'action*) by permitting an environmental organization to file a lawsuit on behalf of the public interest.⁶

The Legal Framework of Class Actions

In justifying a class action procedure, Indonesian public interest advocates invoke the general provisions contained in Law No. 14 of 1970 regarding *the Judicial Power*, now superseded by Law No. 4 of 2002, the latter stating that “*The court proceeding shall be carried out through simple, quick and inexpensive judiciary process*”⁷ and “*The courts shall assist those seeking justice and help overcome all barriers and constraints to achieve simple, quick and inexpensive judiciary process.*”⁸

The WALHI case judgment led to **Law No. 23 of 1997 regarding Environmental Management**, which includes regulation of the legal standing of NGOs in Article 38 as follows:⁹

- (1) *in respect to the execution of environmental management according to the partnership pattern, environmental organizations are entitled to file suits to the sake of conserving the environment;*
- (2) *The right to file a suit as referred to paragraph (1) shall be restricted to the demand to exert certain actions without any compensation except for real expenses or fee (out of pocket expenses);*
- (3) *All environmental organizations are entitled to file suits as referred to in paragraph (1) if it fulfills the following requirements;*
 - a. *namely they are legal entities or foundations.*
 - b. *The articles of association of such organizations clearly mentions that the such organizations are dedicated to conserve/protect the environment;*
 - c. *Have been carrying out their activities according to their articles of association.*

After this recognition of legal standing, NGOs and the public lodged a number of public interest actions, referring to the articles on legal standing and class actions in Law No. 23 of 1997 and two other laws mentioned below. Article 37 paragraph (1) of Law No.23 of 1997 regarding Environmental Management states:

“The public is entitled to file a class action to the court and/or notify the law enforcers concerning various environmental management issues that severely affects their lives”.

The elucidation of article 37 (1) states:

“The right to file class action in this paragraph refers to that of small group of people to act on behalf of larger group of people severely affected by or based on commonality of issues, legal facts and claims resulting from pollution and/or environmental damage”.

Law No. 8 of 1999 on Consumer Protection states that “Lawsuit against the breaches committed by the business people may be lodged by: ... b. group of consumers with the same interest”¹⁰ The elucidation of this paragraph states: “... This law recognizes class actions. They must be lodged by the consumers who have been severely affected and legally proved. One of the evidence is transaction record”.

Law No. 41 of 1999 regarding Forestry mentions in Article 71:

“(1) The public shall be entitled to lodge a representative lawsuit to the court and notify the law enforcers against forest damage that severely affects people’s lives.

(2) The right to file a lawsuit as referred to in paragraph (1) shall be restricted to the demand against forest management that does not comply with the prevailing laws and regulations”

On the other hand, article 73 states:

(1) In order to carry out the responsibility for forestry, forest organizations have the right to lodge representative lawsuits for the sake of conserving the forest functions;

(2) Forestry organizations entitled to lodge lawsuits as defined in paragraph (1) must meet the following requirements:

- a. have legal entities;*
- b. such organizations in their articles of associations expressly state that the goal of incorporating organizations is for the sake of conserving forest functions;*
- c. have been carrying out its activities in compliance to their articles of associations.*

The formulation of article 73 paragraph (1) is similar to that of article 37 paragraph (1) of Law No. 23 of 1997 on Environmental Management. The formulation of article 73 is similar to that of article 38 paragraphs (1) and (3) of Law No. 23 of 1997, which addresses the NGO’s standing to sue. Conceptually, there is a fundamental difference between the class action and an NGO’s standing to sue. First, class actions comprise class representatives and class members, whereby both are the victims or the parties severely affected. While, under the NGO’s standing to sue, an NGO plaintiff is not the party severely affected. Secondly, in the environmental context, as the party representing environmental protection, a right to damages in the NGO’s standing to

sue is not the scope guaranteed by the law. In contrast, in the class action concept in general, it leads to a compensation demand.

Comparative Procedure of Common Suit based on HIR & Class Action Filing Procedure ¹¹

In general, the civil case examination process in a first level court based on the civil case procedures prevailing in Indonesia is carried out as follows. (1) The first stage is the suit-filing stage while meeting the administrative requirements. (2) The second stage is counter-plea between the plaintiff and defendant, if during the rejoinder, the plaintiff presents a demurer that corresponds with the court's absolute power. Under such circumstance, the judge will pass an injunction. (3) The next step is presenting the evidence followed by (4) stages reaching the conclusion between the parties followed by (5) the decision making stage. The next stage (6) is execution of the verdict.

Fundamental differences between a class action lawsuit and a civil lawsuit pursuant to the procedure applicable in Indonesia lie in: (1) preliminary case examination (prior to the examination of the main case), whereby during the examination of the class action, there are the certification and notification stages, and (2) the stage of verdict execution, whereby a class action must involve an examination or tentative settlement proposal and notification to distribute the compensation.

Class Actions Procedure pursuant to Supreme Court Regulation No. 1 of 2002

Although a number of laws, mentioned above, had addressed the basis for a class application, Indonesia lacks provisions on examination, trial and decision of a class

action. Pending clarification in a new Civil Procedure Law, which is currently being considered, on 26 April 2002, the Indonesian Chief Justice issued Supreme Court Regulation No. 1 of 2002 regarding Class Action Procedure. The aim was to contribute to the assurance, orderliness, smooth examination, trial and passing judgments of suits lodged by class representatives.¹²

Supreme Court Regulation No. 1 of 2002 consists of definitions, procedures, notification, opting out, decision, and closing provision. It defines a class action as follows:

“Class Representative Suit is a procedure to file a suit, where one or more persons representing a class of people lodge a lawsuit for himself or themselves, and simultaneously represent a class of people in great number representing similar facts or legal bases between class representatives and said class members.”

Class Action Suit Requirements

A lawsuit may be brought through the class action procedure if it meets the following prerequisites:

- (1) The number of the class members is so numerous that it will not be effective and efficient for the suit to be filed separately or jointly under one suit;
- (2) The facts or events are similar and there is basic legal similarity that is substantial, and there are similar types of claim/demand among the class representatives and class members;
- (3) The class representatives own honesty and seriousness to protect the interests of the class being represented.

In the addition, a Class Action Statement of Claim must contain six elements as follows:

- (1) Complete and clear identities of class representatives;
- (2) Detailed and specific definition of class, though the names of the class members do not need to be mentioned one by one;
- (3) Information about the class members as required in correspond to mandatory notification’
- (4) statement of fact and law which must be pointed out in clear and detailed manner including the interests of the class representatives and class members.
- (5) When applicable, a class action may be broken down into different sub classes, when the demands are not the same due to different characteristics and losses;
- (6) the demand for compensation must be pointed out in clearly and detailed manner, containing the proposal for mechanism or procedure of compensation distribution to the entire class members including the proposal to form a team or panel that smoothens the compensation distribution.

Role of Judges

During the preliminary process of a court hearing, the judge must examine and take into account the suit criteria of class representatives. The judge may advise the parties regarding the class action filing requirements. It is the court that determines whether a class action is legal or not. In the event that the judge declares that the application of a class action filing procedure is acceptable, soon afterwards the judge shall instruct the plaintiff to present a notification to obtain the judge’s approval. If the

judge decides otherwise, the suit investigation must be terminated through his adjudication. Under such class action suit proceeding, the judge remains obligated to encourage the parties to look for out-of-court amicable settlement, both at the beginning and during the trial.

Notification

Notification to any (potential) class member is required as follows: (1) as soon as the judge declares that the submission of the class action filing procedure is acceptable; (2) during the settlement and distribution of compensation against the suit as granted by the judge. Notification to the class members may be done through print and/or electronic media, government officers such as sub-district office, village unit office, court, or submitted directly to the class member as long as he is identifiable pursuant to the judge's approval. Supreme Court Regulation No. 1 of 2002 also regulates in detail the notification substance (Article 7 paragraph 4).

Opt Out

Upon notification by the representative class based on the judge's consent, the class members within the time specified by the judge are given the opportunity to opt out from group membership by filling out the form as regulated in the enclosure of Supreme Court Regulation No. 1 of 2002. The party who declares having opted out shall not be subject to the court decision concerning such class action suit.

Verdict

Where a compensation suit is granted, the judge must determine the detailed compensation amount, which class and/or sub class is entitled to it, the mechanism of

compensation distribution, and the steps to taken by the class representative in the judgment process and distribution, such as the obligation to notify.

Class Actions Cases in Indonesia

Since 1997 there have been at least 20-30 public interest cases lodged adopting class actions procedure. These cases may be grouped into two periods, before and after Supreme Court Regulation No. 1 of 2002 regarding Class Action Procedures. In the earlier period, three cases may be mentioned. The court refused a class action arising out of an electricity blackout throughout Java and Bali in 1997 because it was not an environmental case as regulated in Law No. 23 of 1997 on Environmental Management.¹³

The court partly accepted a claim by the Exponents of 1966 of North Sumatera against the Indonesian Forest Concession Holders (APHI) and others arising out of residents who had been affected by the thick and choking smoke resulting from forest fire and land fires triggered by the forest concession estates. The court ordered the defendants to jointly pay compensation for rehabilitation of the affected environment and the victims as much as Rp 50 billion.¹⁴ This verdict is interesting because the claimant was a social organization concerned with problems affecting the people, and because the judge's categorizing this case as a class action was perplexing since the verdict failed to prove that the claimant or the people of North Sumatra as the class members had been severely affected. The case would have been appropriately adjudicated using the NGO's legal standing in accordance with article 38 of Law No. 23 of 1997.

In a third case, nine plaintiffs as class representatives for all household liquid petroleum gas users sued the state-owned oil and gas company (Pertamina) and the Government after a sudden price increase up to 40 %. The judge declared the increase unlawful and ordered payment of compensation of Rp 144.000/month pending a final verdict.¹⁵ Interestingly, the judge also ordered the defendant to appoint a Compensation Payment Commission comprising three representatives from the plaintiffs and two representatives from the defendants: there was no guideline for this, but there is now in Supreme Court Regulation No. 1 of 2002. The judge applied both *opt in* and *opt out* without choosing one of the two.

Since the 2002 Regulation, in an action against the President, Governors of & West Java on behalf of victims of the 2002 Jakarta flood (in which 52 residents lost their lives, 22,860 people got sick and 350,000 Jakartans had to evacuate) the class action filing procedure was granted by the judge but the claim was denied as the claimants did not prove any legal breach.¹⁶

Finally, a suit was filed by 8 victims of a landslide that occurred in Mount Mandalawangi, Garut, West Java in January 2003 that claimed 20 lives, 1 person missing, and 165 houses were destroyed and 67 were heavily damaged. Around 1,769 persons had to be evacuated to the refugee center. The case alleged mistake by the forest management (*Perum Perhutani*) in only seeking economic benefit, failing to conserve the forest and ecosystem support, and shifting the land use thus violating the forest laws and regulations. The judge at the District Court of Bandung accepted the plaintiffs' suit in terms of its class action procedure and class action substance,¹⁷ ordering compensation for the class in proportional amounts of Rp 10 billion (US \$

1.1 Million), to be paid to a team to be established under a decree ordered to be issued by the West Java Governor. The judge ordered the defendants to rehabilitate the forest and land condition. The team was responsible for monitoring and taking legal action in case the environmental rehabilitation deviates from the court order, and allocating and compensating the victims identified by the court. If the Team failed, the court said that it would itself conduct forceful execution.

Future Development of Class Action in Indonesia

The increasing number of court decisions on class actions shows improved comprehension by both lawyers and judges. There is a need to pass a law that clarifies the procedure for filing and examining the class action procedure, and the government is drafting this now in a new Civil Law Procedure.

¹ Article 2 of Law No. 4 of 2004 regarding *Judiciary Power*. The Constitutional Court is competent as the court of the first and last instance in cases: (1) which test any Law against the 1945 Constitution; (2) pass judgment on disputes concerning state institutions authority granted by the Indonesia's 1945 Constitution; (3) pass judgments concerning the dissolution of political parties; (4) adjudicate disputes of general election results: Article 24C of the 1945 Constitution and Article 12 of Law No. 4 of 2004 regarding *Judiciary Power*.

² The articles of civil law procedures in HIR are articles 115 to 245, contained in chapter IX entitled "Trying Civil Cases in District Courts".

³ IR was enacted in 1848 and had been amended several times, lastly in 1941 making HIR valid until now. HIR regulated both civil law procedures and also criminal law procedures. However, the criminal law procedures were revoked when the country introduced its own Criminal Law Procedures (Law No.8 of 1981).

⁴ The first class action filed was against *Bentoel Remaja* (Bentoel clove cigarettes ad directed to teenagers in 1986 by lawyer RO Tambunan) to the District Court of Central Jakarta. Tambunan complained against the placement and airing of such ads through public places and the radio. He thought the ads were against the education norms and harmful to the young generation. In filing the suit, Tambunan spoke not only on behalf of his children but also the younger generation throughout Indonesia. Subsequently, the legal practitioner, Muchtar Pakpahan, who suffered from dengue fever, filed class actions against the Governor of the Special Capital Territory of Jakarta (1989) at the District Court of Central Jakarta. Muchtar Pakpahan claimed that as a dengue fever patient, he was acting on behalf of himself and representing all dengue fever patients then in Jakarta. Further, in 1992, nine workers of PT Industri Sandang (textile company) were suing the company on behalf of themselves along with the other 1,200 fellow workers facing job severance to the District Court of South Jakarta. This action was rejected by the court on the basis that Indonesian civil law of procedure did not accommodate this type of claim.

⁵ The claim was brought against the National Investment Coordinating Board (BKPM), the North Sumatra's Governor, the Minister of Industry, the Minister for the Environment, the Ministry of Forestry and Indorayon's Pulp and Paper Company (IIU).

⁶ Under the principle of *point d'interest*, *point d'action*, an individual or organization is considered to be competent and qualified as a plaintiff if he is able to prove having been severely affected, or owns a

proprietary interest. In granting legal standing to WALHI, the District Court of Central Jakarta referred to the enabling provisions contained in Law No. 23 of 1997 regarding Environmental Management, namely the articles on the rights and obligations of individuals towards healthy and sound environment, as well as the right to participate in the environmental management. The judgment was also apparently inspired by the verdict of the Dutch Supreme Court (*Arrest Hoge Raad*) regarding legal standing. One of the landmark cases in granting standing for NGO in Netherlands is *Nieuwe Meer case*, HR 27 June 1986, NJ 1987, No.7430.

⁷ Article 4, paragraph 2.

⁸ Article 5 paragraph 2.

⁹ Article 37, which regulates the class action procedure, was not included in the initial draft proposed by the Ministry for the Environment in 1997, but was proposed at the last minute by a legislative member and supported by the Minister. The formulation was apparently much inspired by Rule 23 of the U.S.A. Federal Rules of Civil Procedure, but with standing for one or more environmental groups. The formulation put forward by the Ministry of Environment formulating team was then reformulated by the special team of the Indonesian Parliament. The Parliamentary members combined the concept with the formulation of “the public right to advocate environmental issues”. These developments happened quickly, and so the resultant wording was not that focused and omits various aspects.

¹⁰ Article 46 paragraph 1.

¹¹ For a more detailed explanation see Indro Sugianto, *Class Actions: Opening Access to Justice for the People*, In Trans Press, 2005.

¹² See the Preamble of Supreme Court Regulation 1/2002, 26 April 2002.

¹³ Decision of the District Court of South Jakarta 134/Pdt.G./1997/PN (Blackout throughout Java and Bali).

¹⁴ Decision of the Medan District Court No. 425/Pdt.G./1997/PN. Medan (Land and forest fires case in North Sumatera).

¹⁵ The Decision passed by the District Court of Central Jakarta No. 550/Pdt.G./2000/PN.JKT.PST. (Household LPG Case).

¹⁶ Verdict of Central Jakarta District Court No. 83/Pdt.G./2002/PN. JKT.PST (Flood Case in Jakarta).

¹⁷ The verdict of the District Court of Bandung No. 49/Pdt.G./2003/PN.BDG (Landslide Case in Mandalawangi) as substantiated by the District Court of High Court of Bandung No. 507/Pdt/2003/PT. Bdg as well as Judgment of the Supreme Court No. 1794 K/Pdt/2004.