



Social control of government policy through the citizen lawsuit mechanism

Paris Hendra Wijaya Sinaga¹, Firdausa Panji Bagas Wiratama², Fransiska Indriati³, Dewi Ayu Rahayu⁴, Sunarjo⁵.

¹ **Paris Hendra Wijaya Sinaga**; Faculty of Law, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang City; 65146; East Java; Indonesia.

² **Firdausa Panji Bagas Wiratama**; Faculty of Law, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang City; 65146; East Java; Indonesia.

³ **Fransiska Indriati**; Faculty of Law, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang City; 65146; East Java; Indonesia.

⁴ **Dewi Ayu Rahayu**; Faculty of Law, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang City; 65146; East Java; Indonesia.

⁵ **Sunarjo**; Faculty of Law, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang City; 65146; East Java; Indonesia.

ARTICLE INFO

Article history:

Received 2022-05-09

Received in revised form
2022-06-22

Accepted 2022-08-01

Keywords:

Social Control; Policy; Citizen
Lawsuit.

DOI: <https://doi.org/10.26905/idjch.v13i2.7875>.

How to cite item:

Sinaga, PHW., Wiratama, FPB., Indriati, F., Rahayu, DA., Sunarjo (2022). Social control of government policy through the citizen lawsuit mechanism. *Jurnal Cakrawala Hukum*, 13(2) 128-134.

doi:10.26905/idjch.v13i2.7875.

Abstract

Social control is a form of monitoring whether or not a public policy is made from the planning and implementation stages in the community. Social control aims to prevent or treat so that the government does not set deviant actions or rules that can harm the community. So it is fitting for community groups to control and supervise the policies made by the government. However, it cannot be denied that there are still many policies that are made detrimental to the community and violate the public interest. This study analyzes inappropriate government policies in the community, using the empirical juridical method with a concept approach, a case approach, and a law approach. The results of this study indicate that several violations occurred due to government policies, so total control from the community is needed that can be carried out using a citizen lawsuit mechanism. The citizen lawsuit is the suitable lawsuit model to demand the Government evaluate and improve all efforts and policies to overcome problems detrimental to the community.

Corresponding Author:

* Paris Hendra Wijaya Sinaga.

E-mail address: parishendra08@gmail.com

1. Introduction

The rule of law is a matter of power. There are two centers of power; on the one hand, there is a state that has absolute power, which is required to govern, and on the other hand, the one that is managed does not want to give up all of its power. The rule of law will be lost if the rulers of a country seek only the most incredible power without regard for the freedom of their people. In this case, the government failed to guarantee human rights as regulated in the Constitution. Decentralization is also carried out so that there is no accumulation of power on one side, which leads to arbitrary or excessive behavior, which in turn tends to limit the rights of citizens by the authorities.

As seen from the concept of the rule of law, the state needs to be regulated by a constitution that guarantees the human rights of its citizens and provides protection from arbitrariness. Therefore, for the law to be obeyed by the community, the direction must be correct and enforced correctly. The constitution becomes the basic norm to protect citizens' human rights, and this basic norm becomes the basis for the government to formulate other government policies. Government policies sometimes violate basic standards, compromising citizens' human rights. This is where public control or supervision is needed so that laws made and enforced by state administrators (in this case, the Government) do not lead to arbitrary actions or even harm citizens.

The state is a large organization with a supervisory system that plays a significant role in ensuring everything goes according to a country's mandate, vision, mission, goals, and targets. From the point of view of accountability, the monitoring system will justify and share information about the consequences of a policy made by the organization. The state, as an organization, also requires supervision of the policies made by the state organ. Government policies, whether contained in central government policies or policy areas in the form of laws and regulations, harm the commu-

nity directly or indirectly. Arbitrary actions from the state to the country's people are not often intertwined. State policies contained in a legal product sometimes take away the human rights of the people of their country, which should be protected, creating injustice.

According to Cholidin Nasir (2017), legal disputes stem from policies made and issued by the Government, which should think about the public interest or the interests of the people and not only specific interests but in reality, many policies harm the public interest, so that public goods are often ignored. In conclusion, the public interest is no longer a top priority. The formation of this law violation has given rise to the impetus for the community to participate in efforts to resolve disputes to enforce the law. Therefore, this study provides an overview of the role of the community in controlling government policies through citizen lawsuits.

The lawsuit made by the community against the Government or the Citizen lawsuit is a suitable lawsuit model to demand the Government evaluate and improve all efforts and policies to overcome problems that harm the community.

2. Methods

This is a type of empirical juridical research, namely legal research on the implementation or implementation of normative legal provisions in action at every specific legal event that occurs in society. The methods used in this study are the concept, case, and law, with inductive analysis using legal material sources of several verdicts and cases.

3. Results and Discussion

3.1 Social control over government policy by society

In the Preamble to the 1945 Republic of Indonesia Constitution, it is implied that the State

of the Republic of Indonesia, which was established on August 17, 1945, is a state based on the law (*rechtsstaat*) in the sense of a governing state (*verorgingsstaat*). This is written in the Preamble to the 1945 Constitution of the 4th Paragraph, which reads as follows: “..... to establish an Indonesian state government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the nation’s life, and participate in carrying out world order based on independence, lasting peace and social justice...” (Agustina, 2014)

The concept of a legal state gives the idea that a state is governed by a constitution that guarantees the independence of its citizens and protects them from arbitrary actions. A management division is required to avoid the accumulation of power that will lead to random behavior in the future, which must be regulated in basic norms or constitutions. Therefore, both governments and citizens all parties must abide by the law. However, the law is a product of state organizers, so it is necessary to supervise or control judicial institutions not to harm citizens’ human rights.

The state derived from the law is characterized by several principles, including the principle that all acts or actions of government or form must be based on specific legal provisions before the show or activities were carried out. Interference with the rights and freedoms of a citizen or group of citizens can only be done based on specific rules of law. This principle is commonly called the principle of legality (legalities begins). To realize this principle of legality, various legal regulations must be made, including laws and regulations.

According to Prof. Mr. Dr. LJ Van Apeldoorn (1950), the purpose of the legal function in his book entitled “Inleiding tot de Studie van het Nederlandse Recht” “the law is to regulate order in society in a peaceful and just manner. A just society must be created to achieve legal peace by balancing conflicting interests. Everyone must

obtain (as much as possible) what is right. (Asikin, 2012)

The *rechtsstaat* requirements put forward by Burkens in his writings on the idea of a legal state in the Indonesian constitutional system are: 1) the principle of legality, every act of government must be based on laws and regulations (*wet-ter like-grondslag*). On this basis, the ceremonial law and the Constitution are the foundation of government actions. In this connection, the framers of the statute constitute an essential part of the state of the law; 2) the division of powers, this condition implies that state power must not rest solely on one state; 3) Basic rights (*grondrechten*), fundamental rights are the object of legal protection for the people and at the same time limit the formation of laws; 4) judicial oversight, for the people there is a channel through the free courts to test the validity of governmental actions (*rechtmatigeidstoetsing*).

One of the conditions of the state of the law is judicial supervision as one of the channels for citizens to test the validity of government actions. This oversight can be said to be a mechanism for guarantees of the constitution. (Kelsen, 1961) The government, in this case, has a legal responsibility to its citizens. According to the theory of legal obligation, everyone, including the government, should be held accountable for his every action, whether by mistake or without error. This legal responsibility of the government is carried out before the court. (Fuady, 2011)

In several of his books, Roscoe Pound, *Law and Morals* (1924), was the first jurist to analyze the jurisprudence and the methodology of the social sciences. He positioned the law as a means of conducting social engineering. Its basis is that social control is derived from facts in society itself. Management continues to proceed in tandem with the emergence of legal behavior in the community, which also continues to move. (Wahidin, 2014) To meet the needs of society, it is necessary to

form a law as social control of society, interpreted as a supervisor by the culture of the course of government. Thus, social control aims to achieve harmony between stability and societal change.

From the point of view of its nature, social control is preventive or repressive; preventative is an effort to prevent the occurrence of disturbances of certainty and justice. While repressive actions aim to restore legal harmony with society, the process of social control can be carried out without violence or coerciveness. Social control functions to form new rules that replace the old rules in completion; a situation is created where a person is forced to obey or change his attitude, resulting in propriety indirectly in pervasion, norms, or values entering the subconscious. (Iriani, 2011)

The existence of social control carried out by the community is an effort so that in the process of making and making policies, it provides justice for the community, not only for the benefit of certain groups or for the interests of policymakers themselves, but in this case, the government. In addition, social control carried out by the community is also a form of evaluating specific policies or even canceling policies and laws that do not meet the sense of justice for the community.

3.2 Citizen lawsuit mechanism as an effort to control government policy

In Indonesia, no legal umbrella specifically regulates this Citizen Lawsuit, either in the Supreme Court Regulation (PERMA), Supreme Court Circular (SEMA), or other laws and regulations. In Indonesia, the Court accepts the Citizen Lawsuit and Judges in deciding and adjudicating cases with the Citizen Lawsuit mechanism because in article 5 paragraph (1) of Law 48 of 2009 concerning the Basic Provisions of Judicial Power that Judges are obliged to investigate, take after, and

get it the values fair values and a sense of equity that live in society and Article 10 section (1) that courts are precluded from denying to look at, listen, and choose on a case that's submitted on the guise that the law does not exist or is vague, but is obliged to look at and attempt it. (Fitriana, 2022)

Although there is no legal basis for citizen lawsuits in Indonesia, the mechanism for citizen lawsuits can still be carried out. Citizen Lawsuits may only be submitted if the Government violates citizens' rights. Violation of the rights of these citizens must be an act against the law. Thus, an unlawful act is one of the requirements in filing a Citizen Lawsuit/Actio Popularis.

A citizen lawsuit is a mechanism for the community to challenge the responsibility of state organizers. In this case, the government commits negligence in fulfilling the rights of citizens. However, the citizen lawsuit mechanism is used in civil law because it is a form of a lawsuit of a public nature. The basis for filing a civil case is that every citizen has equal rights before the law. Article 1 paragraph (2) of the 1945 Constitution states, "Sovereignty is in the hands of the people and is exercised according to the basic law," so the people as the holders of sovereignty should have room to sue the government for the achievement of justice. If a government policy is detrimental or indicated to be harmful to its citizens, citizens have the same right to file a lawsuit against it. The citizen's case can be made alone or by proxy.

These class citizen or vicarious lawsuits are practical and progressive legal actions of citizens to oversee every government policy. They are based not only on the interests of a person but also on the interests of a more significant number of people. These representative suits arise when the community's losses due to enacting such government policies are too substantial to be inefficient when the community groups file a lawsuit individually with the courts. Before the citizen lawsuit mechanism was known, it was typical for citi-

zen lawsuit in groups in Indonesia to use class-action cases. Class action lawsuits were first known in the Indonesian legal system. The action class was first known in the 18th century in England. It then expanded its application in the 19th century in British colonies such as America, Canada, Australia, and other countries that adhered to the standard legal system.

Another mechanism citizens can pursue together to defend their rights in one lawsuit is to use the citizen lawsuit mechanism or citizen lawsuit or Action Popularist. Citizen lawsuits are used by countries that adhere to the standard law system. In the common law system, the principle of citizen lawsuit is the same as the principle of action popularist, for example, in a case against protection by a citizen, regardless of whether the citizen suffers a loss or not. The term citizen lawsuit as a citizen's right to sue is widely known in the United States, India, and Australia legal systems. In the United States, this right was first introduced in 1970 in the Clean Air Act. (Michael, 1995) Citizen lawsuits can also be found in several laws in environmental laws in the United States, such as the Clean Water Act, the comprehensive environmental response compensation and liability act, and the resource conservation and recovery act. In the law, it is stipulated that a lawsuit can be made by any citizen for the protection of the environment, regardless of whether the citizen of the country has experienced its pollution directly. (Santosa, 1997)

Citizen lawsuits (CLS) first developed in America, a country characterized by a standard legal system. A citizen lawsuit is a mechanism for citizens, individuals, and groups to file lawsuits to hold the government accountable as the state organizing organ. As a new type of lawsuit in this global era, citizen lawsuits arise because the government has committed a mistake or mistake so that the rights of citizens are not fulfilled. The error is postulated as an act against the law, and the

state is punished for its oversight of committing specific actions or issuing a general policy. (Sukadi, 2015)

Citizen lawsuit is a mechanism in the Indonesian legal system incorporated in the field of civil law because, in some of its decisions, it is an act of suing for actions against the Government's laws that harm citizens. However, this paper does not discuss citizen lawsuits in the civil law system but sees citizen lawsuits as a form of control or supervision of government policies. Citizen lawsuit is a way in which the legal system in the country that the path takes by citizen lawsuit is a way to guarantee legal certainty. It is known that in enforcing the law, there must be three elements that must be fulfilled, including Legal certainty (*rechtssicherheit*), Expediency (*zweckmassigkeit*), and Justice (*gerechtigkeif*).

Judgment No. 28/Rev.G/2003/PN. JKT. PST is a jurisprudence that first states that civil lawsuits are accepted in the legal mechanism in Indonesia. The state at that time was considered negligent in protecting citizens who became migrant workers abroad. Through this decision, it can be said that the form of supervision of government policies deemed negligent in causing harm to its citizens can be carried out in addition to using leadership through judicial review.

In Decision Number 118/Pdt.G/LH/2016/PN. Polk, which states that the Government as the Defendant, has acted against by allowing forest and land fires to occur, is a good precedent for justice for the people and the environment. The legal consequences for the Government are that the Government must carry out court decisions by what is mandated by the principle of state responsibility contained in the Law of the Republic of Indonesia Number 41 of 1999, Law of the Republic of Indonesia Number 32 of 2009, Law of the Republic of Indonesia. Indonesia Number 26 of 2014 concerning Ratification of the ASEAN Agreement on Transboundary Haze Pollution

(ASEAN Agreement on Transboundary Haze Pollution), Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management. Thus, the State can guarantee the implementation of the rule of law. Namely, the Government must protect and preserve forest functions for the state's welfare so that forest and land fires in Indonesia can be controlled and reduced.

The decision of the Supreme Court of the Republic of Indonesia Number 7 P/HUM/2020 is that with the factual preamble of Presidential Decree No. 75 of 2019, which does not consider the community's spiritual atmosphere in the current economic field. So automatically, the provisions of Article 34 paragraphs (1) and (2), which unilaterally increase the Contribution for PBPU Participants and BP Participants to cover the BJPS fund deficit, are deemed to have violated the principle of giving fair and balanced considerations (*Audi et al. term part*).

Another citizen lawsuit civils Decision Number 230/G/TF/2019/PTUN-JKT states that the government violated the law because it blocked internet access in Papua and West Papua. The President of Indonesia and the Minister of Communication and Information Technology are the defendants in this case. Based on data from the Jakarta Ptun case tracing information system, the government is required to stop and not repeat all acts and actions of slowing down and disconnecting internet access throughout Indonesia, as well as publicly apologizing to the Indonesian people, especially Papua and West Papua and joint responsibility in print, radio, and national television media.

Through these decisions, it can be seen that citizens can carry out supervision in the context of the right to test government policies if indeed the government policies violate the rights of citizens through the courts. The form of care owned by these citizens in practice can not only be done through judicial review but also through judicial

control. Citizen lawsuit is one of the mechanisms that Indonesian citizens can use. (Axline, 1995) Any party, both government and private, related to implementing the public interest can become a Defendant in a civil lawsuit as long as the party commits an unlawful act that meets all the elements of an illegal act. Thus, in filing a Citizen Lawsuit, the object of the lawsuit is a criminal act. (Safar, 2017)

The emergence of the Citizen Lawsuit lawsuit mechanism in Indonesia is a legal transplant process to meet the needs of people seeking justice. The citizen lawsuit mechanism can be accepted through Decision Number 28/Pdt.G/2003/PN.JKT.PST, the first citizen lawsuit at the Central Jakarta District Court. In its stipulation, the Panel of Judges determined that the civil suit filed by the Plaintiffs could be continued. The Panel of Judges accepted the case on the legal basis of the Law of the Republic of Indonesia Number 14 of 1970 concerning the Basic Provisions of Judicial Power which was last amended by Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. This decision then becomes jurisprudence for other citizen lawsuits.

The citizen lawsuit mechanism is not yet regulated in Indonesia; this mechanism is needed as control over government policies that ignore or violate the fulfillment of human rights, especially economic, social and cultural rights. In the development of state life, there are few indications of negligence or neglect by government authorities that can harm citizens. As the holder of sovereignty, the people should have the space to sue the government to achieve justice. Several laws and regulations have mandated the protection of the interests of citizens. (Zulaeha, 2021)

Accepting the citizen lawsuit model in Indonesia is an adaptation to answer various events that develop in society not only limited to the context of material law, but procedural law as a formal law that functions to enforce material law is

also carried out. Law enforcement, in its journey, must dynamically keep up with the development of its environment. (Zulaeha, 2016) Thus, the existence of a citizen lawsuit mechanism is a social control effort that the community can carry out if the policies made by the Government violate the interests of the community or the guidelines have been made do not provide justice.

4. Conclusion

Government policies can be supervised by the public (citizens) other than through a judicial review mechanism. One of the supervisory mechanisms that can be used is citizen lawsuits which are mechanisms for filing lawsuits against unlawful acts from government policies. This mechanism is contained in the civil law system. Hence this mechanism is called a civil lawsuit because it is a lawsuit to seek compensation for government policies that harm citizens. Citizen lawsuits are intended to protect citizens from the possibility of loss due to actions or omissions from the state or state authorities. The mechanism for supervision through citizen lawsuits is through filing lawsuits against government policies, including central government policies as stated in-laws and regulations and local government policies. The citizen lawsuit mechanism has not been regulated in its laws and regulations. Because the citizen lawsuit mechanism is transplanted from the foreign legal system, filing a citicivilsuit and the procedural law generally follows a lawsuit. The difference between a civil lawsuit and another lawsuit is that there is a notification procedure that the plaintiffs must first carry out.

References

- Agustina, S. (2017). Analisis Tentang Pengaturan Oleh Pemerintah Dalam Sistem Pemerintahan Negara Hukum Indonesia. *Jurnal Cakrawala Hukum*, 5(2), 168-179. DOI: <https://doi.org/10.26905/idjch.v5i2.698>.
- Asikin, Z. (2012). *Pengantar Tata Hukum Indonesia*. Jakarta: Raja Grafindo Persada.
- Axline, M. D. (1995). *Environmental Citizen Lawsuits*. Michie: Butterworth Legal Publishers, AA-1, 1-8.
- Fitriana, E. C., & Quraisyta, N. F. (2022). Juridical Review of Citizen Lawsuit in its Application in Indonesia. *Randwick International of Social Science Journal*, 3(2), 420-426. DOI: <https://doi.org/10.47175/rissj.v3i2.443>.
- Fuady, M. (2011). *Teori Negara Hukum Modern (Rechtstaat)*. Bandung: Refika Aditama.
- Iriani, D. (2011). Hukum sebagai alat kontrol sosial dan sistem supremasi penegakan hukum. *Justicia Islamica*, 8 (1). DOI: <https://10.21154/justicia.v8i1.527>.
- Kelsen, H. (1961). *General Theory of Law and State*. 1945. Russell.
- Nasir, C. (2017). Pengawasan terhadap Kebijakan Pemerintah Melalui Mekanisme Citizen Lawsuit. *Jurnal Konstitusi*. Vol 14, No 4. DOI: <https://doi.org/10.31078/jk14410>.
- Safar, A., & Harjono, S. H. (2017). Gugatan Citizen Lawsuit Dalam Perkara Kemacetan Di DKI Jakarta. *Verstek*, 5 (1). DOI: <https://doi.org/10.20961/jv.v5i1.33416>.
- Santosa, A., & Sembiring, S. N. (1997). *Hak Gugat Organisasi Lingkungan*. Jakarta: Lembaga Pengembangan Hukum Lingkungan Indonesia.
- Sukadi, I. (2015). Perlindungan Hukum Terhadap Anak Terlantar Melalui Citizen Lawsuit. *Journal de Jure*, 7 (2), 170-180. DOI: <https://doi.org/10.18860/j-fsh.v7i2.3523>.
- Wahidin, S. (2017). Hakim Agung Sebagai Agent of Change Menuju Law And Legal Reform. *Jurnal Cakrawala Hukum*, 5(2), 157-167. DOI: <https://doi.org/10.26905/idjch.v5i2.697>.
- Zulaeha, M. (2016). Mengatasi kabut asap melalui mekanisme citizen lawsuit. *Jurnal Hukum Lingkungan Indonesia*, 3(1), 87-106. DOI: <https://doi.org/10.38011/jhli.v3i1.35>.
- Zulaeha, M., Ariany, L., Hendryan D. A., Falmelia, R. A., & Ridhani S. M. (2021). Flood Disaster Mitigation Through Citizen Lawsuit. *Prizren Social Science Journal* (3), 93-102. DOI: <https://doi.org/10.32936/pssj.v5i3.276>.