

CLASS ACTION

PROBLEMS AND PRACTICAL SOLUTIONS

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INTRODUCTION

In Indonesia, class action mechanism was first introduced by Law No. 23 of 1997 regarding Environmental Management. Yet, there have not been many class actions' cases submitted to the Indonesian Court.¹ Approximately only 15 class actions' cases were filed to the Indonesian court. In general, those cases relate to Environment (7 cases), Civil (6 cases), Consumer Protection (1 case), etc (1 case).

Most class actions' cases in Indonesia dealt with actions or omissions conducted by the Government² and environment problem. Yet, there is still a tendency to file class action lawsuits to all types of civil cases even though there are only 5 (five) Laws that specifically permit people to file class action lawsuits, which are:

- Law No. 23 of 1997 regarding Environmental Management;
- Law No. 8 of 1999 regarding Consumer Protection;
- Law No. 10 of 1997 regarding Nuclear Power;
- Law No. 41 of 1999 regarding Forestry;
- Law No. 5 of 1983 regarding Indonesian Exclusive Economic Zone.

Below are examples of class action cases with regard to civil law submitted by a group people:

¹ Emerson Yuntho, "Guidance on Class Action, Legal Standing, Pre-Trial Hearing and Judicial Review", at <<http://www.antikorupsi.org/mod.php?mod=publisher&op=viewarticle&artid=1374>>, 2004, last visited October 14, 2006.

² Kompas Newspaper, July 18, 2003, "The Government received 29 Class Action Lawsuits."

- Lawsuit on defamation [Lawsuit brought by Didik Hadiyanto and others versus Saleh Ismailo Iskandar SH (member of East Java Parliament) in the case of “Ismailo’s Statement that Surabaya is a city of Whores, Trash, and Flood”; case No. 210/Pdt.G/2001/PN.SBY;

- Tort lawsuits toward government actions or omissions, for example in the lawsuit made by the Timorese refugee toward the Government of Indonesia and lawsuit made by street sellers in Karang Anyer to the Local Government of DKI Jakarta.³

- Lawsuit made by the People’s Lawyers Association toward Former President Megawati Soekarnoputri (1st Defendant), General Endriartono Sutarto (2nd Defendant), and Former Head of Parliament Akbar Tandjung (co-defendant) regarding the military implementation in Nanggroe Aceh Darussalam.⁴

- Tort lawsuits toward parliamentary members, such as in the case of Ali Sugondo and others (10 people), representing 34 million of East Javanese people, toward 18 members of commission B of the East Java Parliament that went abroad for study examination.

- Lawsuit made by the Election Advocation Team in representative of the people in several provinces in Indonesia toward the General Election Commission (KPU), by reason that the KPU had not conducted its duty and had resulted numerous people in Indonesia cannot vote in the election on April 5, 2004.⁵

- Lawsuit made by the Alliance on the Preservation of Cultural Resources (AMPCBI) toward Former President Megawati Soekarnoputri, Former Religion Minister Said Agil Husin Al Munawar and Former Head of Executive at the City of Bogor Iswara Natanegara for giving authorization to excavate and destroy the historical site in Batutulis, Bogor.⁶

³ The street sellers managed to win in the District Court level but were defeated in the High Court and the Supreme Court level. *See* Kompas Newspaper, April 5, 2002, “To Manage the Lawsuit of Street Sellers, the Local Government has to Pay Pricey Lawyer.”

⁴ Kompas Newspaper, October 9, 2003, “The Class Action Lawsuit regarding the Military Implementation in NAD was Dismissed.”

⁵ Kompas Newspaper, April 4, 2005, “KPU Received Class Action Lawsuit since Many Citizens do not Obtain their Right to Elect.”

⁶ Kompas Newspaper, September 27, 2002, “The Trial on Batutulis Class Action Lawsuit was Delayed.”

- Lawsuit made by the People's Lawyers Association and LBH BUMN toward President Susilo Bambang Yudhoyono, Political Parties, and People that became the advertisement model on the raising price of oil.⁷

- Lawsuit by the "victims of stigma" due to G30S/PKI (communist movement on September 30, 1965) toward Government of the Republic of Indonesia due to several actions conducted by the New Regime government that violated their human rights.⁸

From the examples of class action cases with regard to civil law before the Indonesia court, it can be seen that in almost all cases the Government (central or local) acted as the respondent/defendant side, or the side that is thought to be responsible for the loss that encountered a representative group. There is even a case where the Local Government and Parliament of Ambon City sued the Central Government because the Central Government did not succeed in giving protection to the Ambonese people.⁹

Numerous class action lawsuits made toward the government and its institutions must be regarded as a legal education for the people, not as a media to seek for compensation. For the people, the objective sought is for citizens to aware and understand their rights. For Government, these lawsuits can attract attentions and give awareness that the government should be responsible over the actions and omissions conducted.¹⁰

The facts above showed a unique phenomenon in Indonesia, where there is a tendency to generalize class action lawsuits to lawsuits that can be filed to all types of civil cases. This condition resulted in a question whether class action lawsuits can be filed to all types of civil cases, even toward the actions of government in its line of duty and

⁷ Kompas Newspaper, October 18, 2005, "Due to Raising Price of Oil, SBY-JK Received a Lawsuit."

⁸ Kompas Newspaper, August 4, 2005, "Judges in the District Court of Central Jakarta was Asked to Dismiss Lawsuit made by the "victims of stigma" due to G30S/PKI Movement."

⁹ Kompas Newspaper, May 6, 2002, "The Parliament of Ambon City brought a Class Action Lawsuit toward the Central Government"

¹⁰ Kompas Newspaper, February 14, 2002, "Class Action Lawsuit is Hoped to Giver Awareness to Government."

position. This writing is hoped to give solution over the problem and elaborate on the obstacles faced by class action lawsuit in Indonesia.

HISTORY ON CLASS ACTION

Class action is a procedural device used in litigation to determine the rights of and remedies, if any, for large numbers of people whose cases involve common questions of law and fact. The first class action lawsuit in the history of the world happened in England, in the early 18th century. Before the year of 1873, class action lawsuit can only be brought to the Court of Chancery. In 1873, the Supreme Court Judicature act was released. This regulation acknowledged the mechanism of class action lawsuit and was a foundation for class action lawsuit to be filed to the Supreme Court of England.¹¹ The concept inside that regulation was then developed and used in the United States, Canada, Australia, and many countries around the globe.¹²

In the United States, before the year of 1975, class action lawsuit can only be filed to the Federal Court and was prohibited to be filed to the state court. This fact leads to many problems, especially knowing that the federal court is located far away from residencies and knowing the complicated compulsory preconditions required (the Federal Court governed that only cases with the value of loss of minimum US\$ 50,000 and minimum of 100 people representative of the group can bring the claim to the Court).

After President Ford signed the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, a regulation regarding consumer protection, on January 4, 1975, it is regulated that state court has the jurisdiction to examine class action cases.¹³ From the above explanation, it can be concluded that the concept of class action lawsuit

¹¹ Article 10 of the Supreme Court of Judicature Act 1873 states that: "Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued or may be authorized by the court to defend in such action on behalf of or for the benefit of all parties so interested."

¹² Mas Achmad Santosa, Class Action, paper, shown at the Enviromental Law and Enforcement Training, Bali, 2000, p. 1

¹³ "The Magnuson Act Class Action Provision: Consumer Remedy or an Empty Promise?", Statutory Commentary, p. 1.

derived from common law countries; therefore the concept was not found in Indonesia before the year of 1997.

In Indonesia, the first legal basis concerning class action lawsuit is Law No. 23 of 1997 regarding Environmental Management.¹⁴ Before 1997, there were 2 (two) cases that tried to bring a claim on behalf of the public to the government or private sectors, namely: (i) lawsuit brought by RO Tambunan on behalf of Indonesian teenagers toward the Cigarette Company “Bentoel Remaja”, the company that made the cigarette advertising, and Prambors Niaga Radio [1987]; and (ii) lawsuit brought by Muchtar Pakpahan on behalf of the people that suffered from the dengue fever disease toward the Governor of DKI Jakarta and Head of Territory of the Health Department of DKI [1988]. Those two cases were examined yet the panel decided that the lawsuit cannot be accepted because the plaintiff did not have any legal relationship with the respondent.

Article 37 of Law No. 23 of 1997 uses the word “the people has the right”,¹⁵ therefore, most of the time it is interpreted to any kind of people that has interest, without observing whether they have the similar right or not. This concept is not the same with the concept in Article 10 of the Supreme Court of Judicature Act 1873, which is the initial concept of class action.

A more precise concept on class action can be found in Article 46 Law No. 8 of 1999 regarding Consumer Protection, where it is stated that the main prerequisite for a class action lawsuit is “a group of consumers with the same interest”.

Even though, class action lawsuit has been acknowledged in the Indonesian procedural law, the application differs. Some courts accepted this practice while others rejected it by reason that it is not regulated in the Indonesia civil procedural law, namely

¹⁴ Hyronimus Rheti, S.H., LL.M. *Law on Environment Dispute Settlement*. (Yogyakarta: Universitas Atmajaya Yogyakarta, 2006).

¹⁵ Article 37 Law No. 23 of 1997 regarding Environmental Management states that:

“1. The people has the right to file a class action lawsuit to the Court and/or report problems in environment that can caused suffer to the people to the legal enforcers.

2. If it is known that the people suffer from the consequences of pollution and/or environmental damage that influence the life of the people, the government institution that is responsible in environment sector can act on behalf of the people.

3. Further provision as stated in paragraph 2 shall be regulated by a Government Regulation.”

HIR/RBg. Evidence that class action mechanism is not regulated inside HIR can be seen from different terms of class action used under the Law on Consumer Protection and the Law on Environmental Management. The Law on Consumer Protection uses the term “group suit” for class action while the Law on Environmental Management uses the term “representative suit” for class action.¹⁶ Besides that, there are differences of preconditions to submit class action lawsuit in those two Laws. The Law on Consumer Protection determines the precondition that there has to be an evidence of transaction made by the consumer while the Law on Environmental Management determines the precondition there has to be a similarity of problems, facts and suit made by the representative of the people.¹⁷

However, court starts to acknowledge the practice of class action lawsuit. People together with the court start to accept the fact that class action lawsuit has many benefits: it is simple, cost-effective, and transparent, therefore, it develops the community’s access to justice; it increases the efficiency of the legal process; it prevents inconsistent or different decisions; and it support cautious behavior of government organs.

Therefore, in 2002, the Supreme Court of the Republic of Indonesia used its authority to issue a procedural law on class action lawsuit in Indonesia. The Supreme Court Regulation (PERMA) No. 1 of 2002 regarding Class Action regulates the procedure on filing a class action lawsuit. This regulation is considered as guidance for courts in all around Indonesia in cases of class action.

CLASS ACTION AND LEGAL STANDING

In Indonesia, only few class action lawsuits succeeded, for example the class action lawsuit submitted by the train passengers in East Java toward the Indonesia Public Train Company; in that case the passengers had to wait for 8 (eight) hours due to a train accident, and in the class action lawsuit submitted by sellers in Pasar Tanah Abang toward the local government and the developer of that Market. However, in the case of

¹⁶Yusuf Shofie, *The Dispute Settlement According to the Law on Consumer Protection: Theory and Law Enforcement* (Bandung: PT. Citra Aditya Bakti, 2003), p. 81.

¹⁷ Ibid.

class action lawsuit by the consumer of elpiji gas toward Pertamina because of the price raise, the Supreme Court did not accept the lawsuit even though the plaintiff won in the district court level.

The writer is in the opinion that class action lawsuit has many times been regarded the same with legal standing lawsuit. If we see it carefully, there is a resemblance between the two, especially in the number of plaintiffs. However, it can be assured that the abovementioned lawsuits have different characteristics.

The main difference from the abovementioned lawsuit can be seen from the OBJECTIVE of the lawsuit. Class action lawsuit has the objective to ask for compensation due to the suffering and loss experienced by the plaintiff group while the main objective in a legal standing lawsuit is to seek attention or force the government to give their attention and make new regulations concerning a problem in the society. In a legal standing lawsuit, loss is not a factor to be proved of. Therefore, legal standing lawsuits are frequently submitted by NGOs that have the attention on certain sectors. Furthermore, it can be stated that class action lawsuit is the same with a simple civil suit based on Tort Law, which is regulated in Article 1365 of the Indonesian Civil Code.

Mas Achmad Santosa stated that a legal standing lawsuit has an abstract nature since the basis of the lawsuit is not from factual loss but from a certain interest on an abstract situation (e.g. environmental interest), where the situation cannot defend itself (due to its abstract nature) and requires people to fight for them. On the other hand, a class action lawsuit has a concrete nature. The plaintiff is the one that suffer the loss directly because of the actions of the respondent.¹⁸

Consequently, the lawsuit filed by RO Tambunan regarding the making of a cigarette commercial that show cigarette as a life style for teenagers suits the characteristic of a legal standing lawsuit. The reason for this is because the objective of the lawsuit is to ask the attention of the Government of Indonesia in giving a clear limitation on the cigarette commercial in Indonesia. This is similar with the case of other

¹⁸ Mas Achmad Santosa, *op.cit*, p. 4

lawsuits, such as the lawsuit brought by consumers due to the raising price of elpiji gas or the lawsuit brought by people living in Jakarta due to the flood there.

PROCEDURES FOR CLASS ACTION IN INDONESIA

The procedure for class action in Indonesia is governed by PERMA No. 1 of 2002. The inaction of this law is beneficial to the development of law and justice in Indonesia. This regulation has already implemented a simplified procedure in accordance with the social and economic position of the Indonesian people in order to assist them in preventing and claiming for violations of human rights conducted by capitalist and/or government. However, PERMA No. 1 of 2002 does not give explanation on the mechanism process on how to examine a class action lawsuit.

In reality, there are two steps of examination:

1. Preliminary Process or the Class Action Acknowledgment Part.

In this stage, the judges are obligated to examine and consider the criteria and preconditions of class action lawsuit, such as:

a. The quantity of member group. Even though in the preliminary part the defendant(s) do not have to specifically identify names or numbers of member group, the number of quantity of member group is required by the judge in order to determine the amount of compensation. Therefore, in the preliminary stage, the defendant(s) have to specify the number of individuals that are affected and had received loss. In Australia, complete identification of member group is not necessary in the preliminary stage. This policy is made to prevent intimidation from the defendant's side to the plaintiff's side. Therefore, in the preliminary stage, it is sufficient to place general description of the group in the memorial.

b. Group representative has to prove similarity of facts, law, and lawsuits made by the representative and the ones stated by the people that are being represented. In this initial process, the defendant(s) are only given one chance to respond towards the suit. This response is limited only to jurisdiction and preliminary matters, such as: (1) the group representative has conflict interest, therefore he/she is not qualified to represent the group (2) the lawsuit does not qualify a class action lawsuit,

therefore the court has to dismiss the claim (3) there is not similarity between the facts and laws stated by the group representative and the people that are being represented (4) the class action lawsuit is a manipulation made by people to obtain certain interest.

c. Qualification of group representative. Group representative has to have honesty, credibility, and enthusiasm in protecting the members of the group. Even though this is not regulated inside the PERMA, the judges have to pay attention toward these details in order to protect the interes of the group.

d. The preliminary stage shall determine whether the lawsuit can be processed or not. In this stage, the panel of judges are not going to examine the substance of the lawsuit.

e. After being deliberated, the legality of the lawsuit made by the group shall be decided inside a court order.

f. If the panel decides that the court does not have jurisdiction to try the lawsuit, the court shall decide that the lawsuit shall be dismissed and the panel will not examine the substance of the lawsuit.

g. If the panel identifies the lawsuit as a class action law suit, the panel shall instruct the defendant(s) to submit a notification. The panel shall also determine the time limit where the members of the group may submit an opt-out declaration. This declaration shall be made in writing and shall be sent to the Office of the District Court where the lawsuit is submitted.¹⁹

2. After a notification is made, the Panel shall examine the substance of the case. The examination on the substance of the case shall be started as soon as the defendant(s) submit their answer(s). Request for provision decision, for example: to stop the activities of the defendant(s), shall be submitted in a counter-claim or peace proposal, in which will be examined by the Panel in this stage. In this liability stage, the procedural laws of the Civil Law apply. The lawsuit can be accepted or denied or there can also be a peace agreement made by plaintiff and the defendant.

If the lawsuit is accepted, the decree shall declare a specific amount of compensation that has to be paid by the defendant(s), the members of the group that

¹⁹ *See*: Attachment of Perma No. 1 of 2002 regarding Class Action.

have the right to receive compensation, distribution mechanism, and steps that have to be made by group representative in the distribution process.²⁰

In similarity with PERMA I tahun 2002, in Canada, the legality of class action procedure shall be examined first before going to the substance of the case. In Canada, it is hard to predict when a class action lawsuit will come to an end, it all depends on the case. In general, a class action lawsuit required a maximum time of 6 (six) months to finish. However, there are particular cases where needed more than years to finish, especially for cases where the defendant(s) are always arguing in order to release their obligation to pay compensation.

In Australia, the laws on class actions are regulated inside Article 33H of the AFCA, which stated.:

1. A class action lawsuit has to identify the group representative and its members of the group. This is beneficial for the announcement or notification that shall be posted by the Plaintiff. In the identification of the members of the group, the lawsuit does not have to specify the names and numbers of the members.
2. A class action lawsuit has to explain in specific the facts of the case and the claims submitted, which have to accommodate the interest of the members of the group.
3. A class action lawsuit has to explain in specific the legal problems and similar facts experienced by the group representative and the members of the group.

This is also similar with the prerequisites stated inside Rule 23 of The Federal Rules of Civil Procedures of the United States regarding Class Actions, which stated:

“Prerequisites to a Class Action. One or more members of a class may sue or be sued representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.²¹

²⁰ Article 9 of Perma No. 1 of 2002 regarding Class Action.

²¹ Rule 23 of the Federal Rules of Civil Procedure, the United States of America.

According to PERMA No. 1 of 2002, the elements that have to be fulfilled to file a class action lawsuit to the Indonesian court are: the case has to be a civil law case, in which the plaintiff is claiming for compensation; the representative of the group is representing a number of people that have the same interest and have suffered a similar loss (the people that are being represented do not have to give power of attorney to the representative); the members of the group are in a large scale that it will be ineffective and inefficient if the petition is lodged individually or jointly in one petition; the plaintiffs are concrete injured parties with regard to the case; the representative and the members agree on the common facts or occurrence and common legal basis that are being presented to the court.

After fulfilling the abovementioned elements, the plaintiffs shall submit their memorial, as governed by the Indonesian Civil Code that contains: the complete and clear identity of the representative of the group, the definition of the group in detail and specific even without mentioning the names of the members of the group one by one; remarks on the members of the group as required in connection with the obligation to make notifications; the position of the case of the entire group, either the representative of the group or members of the group who are identified or unidentified to be set forth in detail; the claim for compensation must be set forth clearly in detail and contain the proposal of mechanism of or procedure for the distribution of compensation to the entire members of the group including the proposal concerning the formation of a team or panel to assist the acceleration of the distribution of the compensation.²²

At the beginning of the court examination, the judge is obliged to examine and consider the criteria of class action and give advice to the parties concerning the requirements of class action.²³ Furthermore, the judge is also obliged to encourage the parties to settle the case amicably through a compromise, either at the beginning of the hearing or during the court examination.²⁴

²² Article 3 of Perma No. 1 of 2002 regarding Class Action.

²³ Article 5 of Perma No. 1 of 2002 regarding Class Action.

²⁴ Article 6 of Perma No. 1 of 2002 regarding Class Action.

As had been explained in the above, at the preliminary proceeding, the judge in a class action has the authority to determine whether they have a case on class action or not. If the judge then declares the legality of the submission of the procedures for class action, the plaintiffs are then obliged to give notification to the members of the group that can be made through printed and/or electronic media. The notification shall contain: the number of the petition and the identity of the plaintiff or the plaintiffs in his/their capacity(ies) as the representative of the group and of the respondent or respondents; a brief summary of the case; an explanation of the group definition; an explanation on the implication of the participation as the members of the group; an explanation on the possibility of the members of the group being part of the definition of the group to resign from his group membership; an explanation on the timing, i.e., month, date and time of the notification of the resignation statement can be submitted to the court; an explanation on the addressee for the submission of the resignation statement; and an explanation on the amount of compensation to be submitted.²⁵

After the notification is served by the representative of the group by the Judge's consent, the members of the group shall, within the timeframe to be determined by the Judge, be given an opportunity to resign from the group membership by filling out a form of resignation. The party who has declared to resign from the membership of the group of class action shall not, by operation of law, be bound upon by the judgment on the class action concerned.²⁶

CLASS ACTION LAWSUIT FOR CIVIL CASES

As stated in the above, there is a tendency to file class action lawsuits to all types of civil cases. Moreover, in the reformation era, people start to bring class action lawsuit concerning political problems (political class action).

According to Susanti Adi Nugroho, class action lawsuit in Indonesia is only regulated in 5 Laws as had been stated in the above, however, PERMA No. 1 of 2002 does not regulate on the limitation on how to file class action lawsuits. Therefore, in

²⁵ Article 7 of Perma No. 1 of 2002 regarding Class Action.

²⁶ Article 8 of Perma No. 1 of 2002 regarding Class Action.

principal, class action lawsuits regarding any kind of civil cases can be submitted to the court.²⁷

As stated in the above, class action lawsuit is a civil lawsuit which asks for compensation. This type of lawsuit is recognized under the Indonesian legal system, known as Tort which is based on Article 1365 of the Indonesian Civil Code. The difference of it is located in the procedural law, and not the substantive law, namely the number of plaintiffs and the legal relationship between the plaintiff and the respondent.

Therefore, it is clear that a case of a breach of contract cannot be submitted as a class action lawsuit, even though in a case where a company conducted an agreement with hundreds of consumer. For example, in the case of Tsang Chi Ming and Ou Shi Kang versus Ivanna Pty Ltd., Minister for Immigration, Local Government Ethnic Affairs in Australia, the Court rejected the class action lawsuit based on the fact that each member of the group and its representatives conducted conversation and verbally individual transaction. The Court is in the opinion that a promise or a verbal agreement cannot be regarded as a basis of proof, therefore the plaintiff was recommended to file a civil lawsuit, and not a class action lawsuit.²⁸

Since lawsuit asking for compensation usually referred to the Tort law doctrine, there have been many substantive problems in bringing class action lawsuits before the Indonesian court. Those problems shall be elaborated below:

1) Burden of Proof

Proof is frequently a problem for class action lawsuit, because:

- The plaintiffs have to prove that they have commonality, typicality and similarity. Representative from a group that file a class action lawsuit has to explain and proof the fact and legal similarity of the members of his/her group that is violated.

- The plaintiffs have to prove the material breach suffered by the members of the group. There are numerous examples in a class action lawsuit where the effect of the loss is different to one another. For example, in a case of consumer

²⁷ Susanti Adi Nugroho, *The Reflection Practice of Class Action Lawsuit in Indonesia: in accordance with PERMA No. 1 of 2002*, Supreme Court of the Republic of Indonesia, Jakarta, 2006, p. 15.

²⁸ *Ibid.* p. 25-26.

protection: one member of a group bought the medicine in a larger amount/dose than the other, as a result, the effect of that medicine differs from one person to another. Therefore, each member has to submit their complete proof. Even though the essence of a class action lawsuit is on commonality, typicality and similarity between the members of the group, it does not necessarily mean that each member has to have the same amount of loss. Thus, if compensation is granted later on by a Court, the reimbursement will differ in proportion. It will be harder for someone who cured their disease with alternative medication to prove a loss if compared with someone who used modern medication to cure his/her disease. Someone who uses modern medication can submit evidences, such as: laboratories report and medical report. In a class action case, the representative of the group has to be someone with the strongest evidences and not someone who can only talk.

- In frequent times, the plaintiffs rarely can prove the causality between the actions and the material breach. In a lawsuit seeking for compensation, there is an obligation to prove the causality between the action and the material breach. For example, what is the connection between the actions of the members of the Parliament of East Java that went abroad to conduct comparative studies with the material breach existed? In other case, how can you prove a material breach over the statement of a Parliament member that said: "Surabaya is a whore, trash, and flood city."

- It has been proven that the plaintiffs have difficulties in explaining the violation of law and to proof there are mistakes in the action or omission of the Respondent.

2) Doctrine of strict liability

In the United States, class action lawsuit develops at the same time as the doctrine of strict liability. In class action lawsuit, the position of the plaintiffs is weak, especially compared with the position of the respondent, which are mostly the government or businessman. Through the doctrine of strict liability, the plaintiffs do not have to proof the mistakes of the respondent. The plaintiff's duty is only to proof there has been a loss and that loss was as a direct consequence of the actions of the respondent. In Indonesia, environmental law and consumer protection law have developed the application of the doctrine of strict liability. The regular civil liability

doctrine applies for class action lawsuits that do not involve environmental law or consumer protection law. For example, in the case of elpiji gas, the people has to prove that Pertamina violated the law by rising the price of elpiji gas.

CONCLUSION

From the above explanation, it can be concluded that:

1. Filing a class action lawsuit does not violate the civil procedural law in Indonesia.

2. In common law countries, such as in the U.S. or the U.K., a class action lawsuit generally applies to civil suit which ask for compensation, especially in the consumer protection and environment sector.

3. In Indonesia, based on the provisions inside the Law on Environmental Management and Law on Consumer Protection, it is regulated that class action lawsuit is filed due to a loss or damage suffered by a group.

4. PERMA No. 1 of 2002 does no regulate the aspects of class action lawsuits. However, it should be noted that class action lawsuit is lawsuit that seeks for compensation based on article 1365 of the Indonesian Civil Code.

5. Class action lawsuit has a difficult level to prove in comparison to regular civil suit because class action lawsuit required the members of the group to have commonality, typicality and similarity on the facts and on the suit.

BIBLIOGRAPHY

- Emerson Yuntho, “**Guidance on Class Action, Legal Standing, Pre-Trial and Judicial Review**”, at <<http://www.antikorupsi.org/mod.php?mod=publisher&op=viewarticle&artid=1374>>, 2004, last visited on October 14, 2006.
- Federal Rules of Civil Procedure, the United States of America.
- Hyronimus Rhati, S.H., LL.M. *Law on Environment Dispute Settlement*. (Yogyakarta: Universitas Atmajaya Yogyakarta, 2006).
- Kompas Newspaper, February 14, 2002, “Class Action Lawsuit is Hoped to Giver Awareness to Government.”
- _____, April 5, 2002, “To Manage the Lawsuit of Street Sellers, the Local Government has to Pay Pricey Lawyer.”
- _____, May 6, 2002, “The Parliament of Ambon City brought a Class Action Lawsuit toward the Central Government”
- _____, September 27, 2002, “The Trial on Batutulis Class Action Lawsuit was Delayed.”
- _____, July 18, 2003, “The Government received 29 Class Action Lawsuits.”
- _____, October 9, 2003, “The Class Action Lawsuit regarding the Military Implementation in NAD was Dismissed.”
- _____, April 4, 2005, “KPU Received Class Action Lawsuit since Many Citizens do not Obtain their Right to Elect.”
- _____, August 4, 2005, “Judges in the District Court of Central Jakarta was Asked to Dismiss Lawsuit made by the “victims of stigma” due to G30S/PKI Movement.”
- _____, October 18, 2005, “Due to Raising Price of Oil, SBY-JK Received a Lawsuit.”
- Mas Achmad Santosa, Class Action, paper, shown at the Enviromental Law and Enforcement Training, Bali, 2000.
- _____, The Concept and Implementation of Class Action Lawsuits. (Jakarta: Indonesian Center For Environmental Law/ICEL, 1997).
- Susanti Adi Nugroho, The Reflection Practice of Class Action Lawsuit in Indonesia: in accordance with PERMA No. 1 of 2002, Supreme Court of the Republic of Indonesia, Jakarta, 2006.

“The Magnuson Act Class Action Provision: Consumer Remedy or an Empty Promise?”,
Statutory Commentary.

The Supreme Court Regulation (PERMA) No. 1 of 2002 regarding Class Action.

Yusuf Shofie, The Dispute Settlement According to the Law on Consumer Protection:
Theory and Law Enforcement. (Bandung: PT. Citra Aditya Bakti, 2003).