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The Relevance Of Citizen Lawsuit As A Positive Legal Instrument In The Procedural Law Of The State Administrative Court

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ABSTRAK

Citizen Lawsuit is a law enforcement process with a mechanism for filing a lawsuit by citizens. The implementation of Citizen Lawsuit in Indonesia is termed still gray because there are no specific laws or regulations that regulate the mechanism either substantively or procedurally. The basis of the existence of a Citizen Lawsuit is negligence or violation by the state administrator of the laws and regulations and the General Principles of Good Governance (AUPB). The Citizen Lawsuit mechanism deserves a deeper study, because in its development there have been many Citizen Lawsuit lawsuits submitted to the General Court in terms of environmental law enforcement, fulfillment of human rights, violations of the principles of good general governance, and so on. By looking at the essence of the Citizen Lawsuit, the idea emerged that the Citizen Lawsuit must be legally adopted as part of positive law in HAPTUN for the sake of legal enforcement and certainty. The study, entitled the relevance of Citizen Lawsuit as a positive legal instrument in the procedural law of the state administrative court, aims to examine and analyze how the concept of the Citizen Lawsuit mechanism in the perspective of the State Administrative Court and whether it can be adopted as part of its positive law. The author uses research methods with a normative juridical approach or *legal research* as well as scientific literacy literature studies. The author's ideas are expected to provide a more comprehensive view of the perspective of Citizen Lawsuit in State Administrative Procedural Law and the relevance of Citizen Lawsuit to positive law. Citizen Lawsuit in the perspective of HAPTUN relates to the subject matter of the Defendant, the claims in the lawsuit related to the demands of attitudes or actions by state administrators, and their functions or objectives in fulfilling the rights of citizens. The main reason for Citizen Lawsuit can be adopted into positive law is because the concept of Citizen Lawsuit never conflicts with laws and regulations, and in its implementation provides many solutions to existing citizen problems and improves the implementation of the rights of citizens by state administrators. However, it is necessary to review the mechanism of Citizen Lawsuit in making positive law by adapting and adjusting to the Indonesian legal system so that in practice it can run effectively and optimally.

1. Introduction

The urgency of law enforcement in Indonesia cannot be separated from the legal judicial process based on the mandate of the 1945 NRI Constitution and the implementation of laws and regulations. One of the crucial stages in the judicial process is the filing of a lawsuit by a party who feels his rights are violated and feels aggrieved. Basically, a lawsuit is filed by legal subjects (*rechtssubject*), *namely people* (persoon) and *legal entities* (rechtspersoon), which in filing a lawsuit can act individually or in class over a legal dispute. However, for the times, the law is also required to develop always following the situation and conditions of society. Thus, various legal discoveries emerged in terms of judicial processes, dispute resolution options, and others. One example of legal developments in Indonesia is the existence of a citizen lawsuit or what is often referred to as a Citizen Lawsuit. Previously, Indonesia as a legal country that adheres to the Civil Law system does not recognize the existence of Citizen Lawsuit because the term comes from countries with a Common Law system.¹ The implementation of the Citizen Lawsuit process itself has not been clearly regulated in Indonesian laws and regulations, but there are several Citizen Lawsuit cases that have been decided by Judges and become jurisprudence in examining and handling Citizen Lawsuit cases.

Citizen Lawsuit or citizen lawsuit has a

function as an enforcement of citizens' rights to obtain justice and life in accordance with their rights as citizens. In this case, there are rights of citizens who are not fulfilled by the government/officials for negligence or intentional violations. The rights of citizens in question are the entire rights of Indonesian citizens regulated in the 1945 NRI Constitution and the laws that also regulate it.² The case of *the Citizen Lawsuit* that appeared for the first time in Indonesia was a case with Decision Number: 28 / Pdt.G / 2003 / PN. JKT. PST was terminated on December 8, 2003. This case is familiarly called the "Citizen Lawsuit Nunukan" case, a case filed by J. Sandyawan Sumarji and friends (as many as 53 people) with the defendant being the State of the Republic of Indonesia c.q the Head of State (Megawati Soekarno Putri).

Based on its development, in recent years, there have been several *Citizen Lawsuit* lawsuits regarding demands for decent environmental rights for citizens. As in the case of Citizen Lawsuit regarding the high quality of Jakarta's air pollution. For this case, the South Jakarta District Court issued a decision Number: 374 / PDT. G-LH/2019/PN. JAK. The EFA read during the plenary session on September 16, 2021, this ruling has won or granted most of the claims that have been filed by 32 residents in the Jakarta air pollution Citizen Lawsuit (CLS Udara) and sentenced 5 of the 7 Defendants (President, Minister of Environment and Forestry, Minister of Health, Minister of

¹ Angela Kaunang, "CITIZEN LAWSUIT IN POSITIVE LEGAL PERSPECTIVE IN INDONESIA" (2022) 10:3 LEX PRIVATUM, online: <<https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/40846>>.

² "RIGHTS AND OBLIGATIONS OF INDONESIAN CITIZENS WITH CONSTITUTION 45 | Constitutional Court of the Republic of Indonesia", online: <<https://www.mkri.id/index.php?page=web.News&id=11732>>.

Home Affairs, Governor of DKI Jakarta, Governor of West Java and Governor of Banten).³ That in this case reflects the citizen's claim for a decent life in environmental cleanliness, this case does not only harm one person but is felt by most Jakartans. Residents who adhere to this hope that the Defendant (state organizer) will immediately overcome the problem of air pollution in Jakarta by issuing a policy or a regulation.

In several previous studies there have also been discussions about Citizen Lawsuit, for example in the writings of Angela, C.N.K., Harly, S.M., & Renny, N.K., this paper discusses Citizen Lawsuit in a positive legal perspective in Indonesia. The paper contains the background of the existing Citizen Lawsuit as the enforcement and fulfillment of the rights of Indonesian citizens. Then, it contains a description of the concept and characteristics of a citizen lawsuit (Citizen Lawsuit) and an explanation of the basic rules of practice for citizen lawsuits (Citizen Lawsuit).⁴ Furthermore, Kenny.C. & Ardianto, B.R., in their writing discussed the prospects of Citizen Lawsuit in state administrative disputes related to climate change issues in Indonesia (Review of Decision Number 2 / G / LH / 2018 / PTUN. DPS). The article is based on a citizen lawsuit regarding the *theme of* climate change issues, especially in Indonesia. Furthermore, the paper

contains an analysis of Decision Number 2/G/LH/2018/PTUN. DPS is related to citizen lawsuits and the use of citizen lawsuits in cases related to climate change issues in Indonesia, especially regarding the perspective of Citizen Lawsuit in TUN disputes.⁵

In the judicial process, Citizen Lawsuit is handled by the judiciary under the authority of the Supreme Court based on the court that handled previous Citizen Lawsuit cases. Based on the Law on Judicial Power, the scope of justice under the auspices of the Supreme Court consists of the General Court, Religious Court, Military Court, and State Administrative Court.⁶ The State Administrative Court is the judicial power that receives, examines, decides and resolves State Administrative Disputes in the Indonesian state. Based on some basic descriptions of the concept of Citizen Lawsuit, it can be seen that Citizen Lawsuit is related to State Administration disputes. However, there is a legal issue that actually the Citizen Lawsuit case cannot be applied in the Indonesian legal system because Citizen Lawsuit is a derivative concept from a country with a Common Law system. This difference in views occurs because there is no clarity in terms of regulations in terms of legislation that regulates Citizen Lawsuit concretely. Therefore, further research needs to be done on the legal system that applies in the Citizen Lawsuit

³ admin, "Citizens Win Another Appeal on Air Pollution Lawsuit", (20 October 2022), online: *LBH Jakarta* <<https://bantuanhukum.or.id/warga-kembali-menangkan-banding-atas-gugatan-polusi-udara/>>.

⁴ Kaunang, *Op.Cit.*,

⁵ Kenny Cetera & Ardianto Budi Rahmawan, "THE PROSPECT OF CITIZEN LAWSUIT IN STATE

ADMINISTRATIVE DISPUTES RELATED TO CLIMATE CHANGE ISSUES IN INDONESIA" (2022) 15:2 *Judicial Journal* 145–166.

⁶ See more in Article 25 of Law Number 48 of 2009 concerning Judicial Power

Based on the above thoughts, the author is interested in researching in an academic study on legal issues related to Citizen Lawsuit with the title "The Relevance of Citizen Lawsuit as a Positive Legal Instrument in the Procedural Law of the State Administrative Court". In this paper, the author uses a normative juridical approach method that examines and analyzes laws and regulations and conducts literature studies with journal literacy materials, report data, scientific articles, articles on the Internet, and so on. This research is aimed at strengthening the understanding of the concept of Citizen Lawsuit in the Indonesian state and providing a more comprehensive view of how the perspective of Citizen Lawsuit in the Procedural Law of the State Administrative Court and the relevance of *Citizen Lawsuit* is adopted into a positive legal part of the Procedural Law of the State Administrative Court.

2. Results and Discussion

Citizen Lawsuit Perspective in Procedural Law of State Administrative Court

According to Isrok, Citizen Lawsuit is a mechanism for citizens to challenge the State's responsibility for errors or omissions in fulfilling citizens' rights. So that citizens, in this case have the same right and position to file a lawsuit against the state in the judge's office with the intention that the state fulfills the rights that have been violated. Therefore, in proving before the court regarding the legal position in suing, there is no need to postulate individual and real interests (*tangible*). The lawsuit mechanism using Citizen Lawsuit emerged and developed in countries that adopted the Anglo-Saxon

system which was later adopted by countries that adopted the Civil Law System. This Citizen Lawsuit first appeared in a case in the United States which was later accommodated in law, namely the Clean Air Act, Clean Water Act, and other laws.

In its implementation to date in Indonesia and based on existing jurisprudence as a legal basis, the Citizen Lawsuit can be used as a mechanism for citizen claims to the State (government) so that the state fulfills the rights of citizens through certain actions in the form of forming certain policies or regulations. The subject of legal action in this Citizen Lawsuit is the Government / State. In this case, the interest in the Citizen Lawsuit is not a direct interest but rather refers to the rights of citizens in general. What is considered in this case is the "interest to sue" (*Processbelang*) as a citizen (representing all citizens covered by the regulation that will be objectified) and no longer solely as a "value protection interest" (*Het Rechters te Beschermen Belang*).

In the philosophical concept of Citizen Lawsuit, that reviewing the results of Panggabean et al's (2021) research that in terms of regulations, especially in article 15 of Law Number 5 of 1986 concerning the State Administrative Court, describes the Plaintiff as a party who directly has an interest which in the legal context is to experience a loss arising from a dispute (*d'interest points d'action points*). Taking from the context of procedural law, we know that in the context of Citizen Lawsuit, the Defendant is the government/state. The question here is why the government/state can be sued by citizens. This can be reviewed in Supreme Court Regulation Number 2 of 2019 which affirms that citizens may be able to file a lawsuit over government actions for a reason, namely that the actions of the government being sued are contrary to laws and regulations and contrary

to the general principles of good governance.⁷ For this explanation, if it is related to the concept of Citizen Lawsuit, in accordance with its elements, that Citizen Lawsuit arises due to negligence or violation from the government of its obligation to fulfill the rights of citizens as an implementation of the general principles of good governance. It can be known that these two elements are things that refer to the rights of citizens because in the case of legislation, legislation is a legal product that regulates various state lives and the product applies to all citizens of society and the government itself as the maker of legal instruments promulgated.

This is in accordance with Maria Farida Indrati's opinion (Putra A: 2021) that "The drafting and development of laws is basically a political policy of the authorized government institutions, namely the President and the House of Representatives who agree formally between the two institutions to regulate the entire life of the state. So with the aspect of compliance of community citizens to follow directions with state life regulated by laws and regulations".⁸ With this statement, it can be said that this rule is an essential interest of citizens so that if opposed by an official from the government, with this theory, the government has violated the rights of citizens by issuing state administrative decisions that violate, overstep or are not in accordance with laws and regulations. In addition to contradicting the laws and regulations, the government

must also pay attention to the existing appeals to the theory of general principles of good governance. In the regulation, especially in Law Number 30 of 2014 concerning Government Administration, specifically the regulation states that good government must be able to provide legal certainty, expediency, impartiality, accuracy, not abuse authority, openness, public interest and public services.

These eight principles are mandatory to be applied and applied in government agencies in the administration because it is clear in article 7 of the AP Law that the AUPB principle is a principle that must and must be obeyed by government officials. This urgency can be seen from the example given by Khalid Prawiranegara (2021) which shows that the principles of AUPB in its development are empowered by citizens who want to sue if government officials who run government administration are detrimental to citizens with the determination of a state administrative decision such as adverse effects due to the granting of business licenses that are not carried out with full accuracy and proper in accordance with regulations legislation. It can be explained that in issuing a TUN decision, an official can be vulnerable to harming the rights of citizens in general because the principle of AUPB is a principle that prevents errors in terms of government administration performance and also legally has been regulated as an obligation and is a valid reason for the plaintiff and judge to consider the arguments offered by the plaintiff to determine the final decision in the TUN trial.⁹

⁷ Mario Julyano Panggabean, Aju Putrijanti & Lapon Tukan Leonard, "JURIDICAL REVIEW OF CITIZEN LAW SUIT AGAINST UNLAWFUL ACTS COMMITTED BY GOVERNMENT BODIES AND/OR OFFICIALS (ONRECHTMATIGE OVERHEISDAAD) THROUGH THE STATE ADMINISTRATIVE COURT" (2021) AT 378.

⁸ Antoni Putra, "THE ESTABLISHMENT OF GOOD LAWS AND REGULATIONS IN THE REVISION

OF THE LAW ON THE CORRUPTION ERADICATION COMMISSION" (2021) 30 at 113–114.

⁹ Khalid Prawiranegara, "Implementation of General Principles of Good Governance in Dompu Regency Government" (2021) 6:3 JLR, online: <<https://journal.uui.ac.id/Lex-Renaissance/article/view/20453/pdf>> at 598.

Relating to the concept of Citizen Lawsuit in procedural law, state administrative court can be identified by looking at the subjects in the trial, namely the Plaintiff and the Defendant. The Plaintiff in the concept of Citizen Lawsuit is a citizen of the Community and the Defendant is the government. Second, the aggrieved interest is one of the elements in the Citizen Lawsuit, meaning that this concept views that in the point of view of the Plaintiff or community members that because there are provisions or policies from the government administration and the stipulated things cause a detrimental impact on all circles of society who are bound by these provisions. But what is the element of loss that can be said to be a loss that harms the citizens of society at large? So the author takes a quote by the Milky Way (2019) from case No. 228/Pdt.G/2006/PN. JKT. PST dated May 21, 2007, in essence the case has plaintiffs, namely community members who filed a lawsuit against the issuance of policies or regulations that harm students, students who experience losses with the requirement for school graduation or national examinations as the primary requirement, so that there are circumstances where for the student's view this is a condition of inadequate education so that in the context of this case, the plaintiff asks The government for student graduation requirements is also determined by the division between semester 1 and 2 grades in grade 3 which in the end is added to the national examination scores. In this case, the plaintiff's petition was finally granted by the judge and the government was obliged to implement the ruling.¹⁰ From this case, it can be studied that the purpose and

meaning of community losses in question are school students who are bound by government policies, namely the National Examination as a requirement that aims to improve and develop the quality of knowledge at the school level and as a requirement for students' final graduation.

However, these policies in practice have led to the quality of education that harms human rights in students psychologically and mentally. So that citizens as a whole have felt aggrieved by this policy so that based on the procedural law of the state administrative court, citizens have the right to sue because of the losses caused and felt by all citizens who are bound by the government's policy. Reviewing further, according to Panggabean et al (2021), the normative form of citizen lawsuits with the filing of lawsuits can still be allowed to be applied on the basis of the rules in Supreme Court Regulation Number 2 of 2019, especially in article 3 which in essence citizens are given the authority to file lawsuits and not plaintiffs.¹¹ The difference in subject identification in the legal product raises a new understanding, namely the concept of Citizen Lawsuit and Class Action Lawsuit. Reviewing Moch's opinion. Iqbal (Milky Way: 2019) that "in this Citizen Lawsuit the thing brought by the plaintiff is not only his personal interests but all people who will later be bound to the product that is the object of dispute, even the Plaintiff does not need to prove the real loss as it should be in civil lawsuits in general".¹² With regard to class action lawsuits, it can be affirmed that the subject or loss suffered by some people does have elements that are not much different from citizen lawsuits, but the significant difference is that there is an

¹⁰ Muhammad Adiguna Bimasakti, "RECONSTRUCTING THE PARADIGM OF CITIZEN LAWSUITS IN INDONESIA AS ADMINISTRATIVE DISPUTES" (2020) 50:1 JHP 230 at 232.

¹¹ Panggabean, Putrijanti & Leonard, *Supra* note 6 at 381.

¹² Milky Way *Supra* note 9 at 234.

additional object of dispute, namely having interests that are harmed as a result of government actions. Discussing the losses suffered by community members, there is a theory of unlawful acts.

Unlawful acts according to HogeRaad's theory (Kamagi: 2018) states a more specific definition of unlawful acts, namely "unlawful acts not only violate the written law as interpreted at that time (in 1919), but also include the definition in every act that violates the rights of others guaranteed by law or, acts that are contrary to the legal obligations of the perpetrator or, acts that are contrary to decency or, good deeds in society to look out for the interests of others".¹³ If studied further, this civil theory is indeed vulnerable to be interpreted in disputes in state administrative courts, especially in disputes that harm the community with policies or regulations. By taking into account the Indonesian regulatory system that adheres to the principle of legality in article 1 paragraph 3 that Indonesia is a state of law. This interpretation makes regulations that are social control over community behavior and the community must comply with regulations and the government must also be based on the law when issuing a policy. With this situation, if compared in the theory of unlawful acts proposed by HogeRaad, the government as a legal subject whose authority and obligations are regulated by legal products can be vulnerable to also be defined as law violators who commit unlawful acts when their authority (in general) issues a state administrative decision that is not in accordance with laws and regulations and is not in accordance with the general principles of government that good.

In addition, state administrative

decisions that are not properly regulated and not in accordance with regulations will cause losses to parties who are bound by policies issued by government officials, one of which is a citizen of the community. Negligence in the design of this policy is one example where the government can be said to have committed a violation of the law in the form of unlawful acts in civil law theory but in the context of the State Administrative Court because it relates to the object of the dispute, namely the State Administrative Decision. Quoting Nasir's opinion (2017) that based on Decision Number 28/Pdt.G/2003/PN. JKT. PST concluded that "citizen lawsuits are intended to protect citizens from possible harm resulting from acts of neglect of state authorities". It can be related to the concept of state administrative decisions which are legal products of government officials who have the authority to deviate norms from laws and regulations, it can be said that it is an example where the actions of state authorities result in losses. However, Nasir further emphasized that the judiciary in the Citizen Lawsuit is more likely to be reluctant to claim compensation. This means based on Decision Number 28/Pdt.G/2003/PN. JKT. PST that in essence, philosophically citizens are more concerned with legal benefits obtained from decisions such as revamping the government to issue a policy or regulation that is appropriate and in harmony with the general rights of citizens.

In relation to the above assertion, it is clear that there are weaknesses in Citizen Lawsuit as a concept in the context of procedural law of state administrative court. First, citizen lawsuit is more often used in the realm of civil law. This is because unlawful acts are theories developed and categorized as

¹³ Gita Anggreina Kamagi, "UNLAWFUL ACTS (ONRECHTMATIGE DAAD) ACCORDING TO

ARTICLE 1365 OF THE CIVIL CODE AND ITS DEVELOPMENT" 5 at 59–60.

civil procedural law. It can be quoted from Article 1365 of the Civil Code there are several elements including the existence of an act, the act is against the law, there is a mistake on the part of the perpetrator, the loss of the victim and the existence of a causal relationship between the act and the loss. From this element, it can indeed be described for a government action that harms citizens in general in all elements of the norm, but in this element it is not clearly stated where the public interest experienced by citizens lies. But basically the public interest element in Citizen Lawsuit can be interpreted to be the element of "the existence of the law that is opposed and the existence of a causal relationship between the act and the loss". However, according to the author, regarding the use of the theory of unlawful acts in the concept of Citizen Lawsuit, it is slightly inappropriate because there is one element that is not in accordance with the concept of Citizen Lawsuit, namely asserting that the Plaintiff does not need to prove real losses as civil lawsuits in general. While these four elements do not correlate with the interests of citizens in general who are harmed.

Second, the weakness of this Citizen Lawsuit is its correlation with where it is applied in court. In the above argument, it can also be affirmed that the subject of the law is public because it is related to government agencies. Regarding government agencies, of course, officials who violate the law are sued in private civil procedural law, but in the context of state administration, of course, the object of dispute under paragraph 53 of Law Number 5 of 1986 is clearly affirmed in Chapter IV of the Procedural Law, the first part, namely the lawsuit, asserts that the Constitutional Decision is contrary to applicable laws and regulations. In addition, this article in particular also states that the main lawsuit contains a petitum for a disputed state administrative decision with

the aim of being annulled or invalid. This means that it is not certain that the concept of Citizen Lawsuit can correlate with elements of TUN judicial procedural law which are more public in nature and related to elements of citizen interests in general in the concept of Citizen Lawsuit. Basically, according to the author, the concept of citizen lawsuit needs to be reaffirmed how this concept will fit in with elements in state administrative disputes, especially with regard to the object of the dispute and its clarity on the elements of general interest because this public interest can experience scientific errors when this concept is equated with constitutional interest in constitutional review by the Constitutional Court because in language constitutional interest is an interest general for all Indonesian citizens. However, it can be distinguished that the two judicial processes have different objects of dispute but have similarities about the reasons for the lawsuit, namely the general rights of the community.

The Relevance of Citizen Lawsuit Adopted into Positive Law in the Procedural Law of the State Administrative Court

A legal system is a structured set of rules consisting of interrelated entities. Indonesia as a legal country that basically adheres to the Civil Law legal system, namely the legal system of Continental Europe. According to Fajar Hurdianto (2015), countries that adopt Civil Law have several characteristics of their legal system, namely the existence of legal codification, the judicial system implemented is inquisitory, and judges as law enforcers are not bound to the president and are guided by the main source of law,

namely laws and regulations.¹⁴ The Civil Law system is incremental because it is composed in regulations in the form of laws and is systematically regulated in the codification of legislation. This is practiced because the main purpose of law is to ensure legal certainty. Countries that adopt the Civil Law system have a constitutional basis that is used as a guide and reference in making other regulations, in the hierarchy of laws and regulations that the constitution has the highest position in the form of a written constitution.

The implementation of a citizen lawsuit is a derivative of the Common Law legal system. Unlike the Civil Law system, Common Law focuses on court decisions that are the source of law. In this case, the role of judges is crucial for countries with a Common Law system. At first, Citizen Lawsuit was not known in Indonesia with a Civil Law system, but with the development of law and enforcement of citizens' rights, Citizen Lawsuit or known as citizen lawsuit began to enter the realm of Indonesian law. Based on the principle of *Ius Curia Novit* which is an important principle in formal legal practice in Indonesia, citizen lawsuit cases can be examined, handled, and decided by the District Court.¹⁵ The case of the Citizen Lawsuit that appeared for the first time in Indonesia was a case with Decision Number: 28 / Pdt.G / 2003 / PN. JKT. PST was terminated on December 8, 2003. This case is familiarly called the "*Citizen Lawsuit Nunukan*" case. This case was examined and decided by the Central Jakarta District Court

where the Panel of Judges granted the Citizen Lawsuit filed by J. Sandyawan Sumarji and friends (as many as 53 people).

The existence of the Citizen Lawsuit Nunukan case shows that the citizen lawsuit model has existed in Indonesia for a long time and until now there are many lawsuits from citizens regarding cases in various fields including environmental law, human rights enforcement, decent citizen life, lawsuits over the attitude of state administrators, and several other fields. Although in different cases, broadly speaking, the purpose of a citizen lawsuit is to sue government organs or state administrators to take or act in accordance with the problems in the lawsuit. The purpose of the lawsuit is for the Judge to give a decision to the Defendant to immediately issue a policy or regulation to deal with the problems listed in the subject matter of the Citizen Lawsuit.

Indonesia, which adheres to the Civil Law system, certainly has a constitution and laws that have been codified as state guidelines governing all its affairs. Written and codified laws and regulations are a form of positive law in Indonesia. Positive law refers to the principle of *ius constitutum*, which is the rule of law that applies today. According to Bagir Manan (2017): the elements of Indonesia's positive law are in the form of a legal system that is currently in force legally; has both private and public binding force; its implementation is carried out by the Court or through the government; and the legal system as a whole applies and is enforced in Indonesia. In the positive legal system,

¹⁴ See more in Journal Fajar Nurhardianto, "INDONESIA'S LEGAL SYSTEM AND LEGAL POSITION" (2015) 11:1 Jurnal Tapis: Journal of Binoculars of Islamic Political Aspirations 33–44.

¹⁵ Foundation *Ius Curia Novit* or *Curia Novit Juice*: the principle that Judges may not refuse to examine, adjudicate, and decide cases in Court because of legal

vacancies and Judges are considered to always know all laws even though there is no law governing them. Nafiatul Munawaroh MH S H, "The Meaning of the *Ius Curia Novit* Principle", online: [hukumonline.com <https://www.hukumonline.com/klinik/a/ius-curia-novit-lt58dca7c78ab7d/>](https://www.hukumonline.com/klinik/a/ius-curia-novit-lt58dca7c78ab7d/).

Indonesia is divided into sources of Material Law and Positive Law. Material Law refers to a set of rules that describe what actions are considered to violate the law and rules regarding the punishment that applies to these acts, material law focuses on the substance of a legal event. Formal law refers to the material guidelines for law enforcement and judicial procedures, formal law / formal law refers to the procedural procedures of a law implemented / enforced which includes legal procedures, judicial mechanisms, and norms governing procedures for filing lawsuits, adjudicating cases, and carrying out court decisions.¹⁶ Some important formal laws in Indonesia include Civil Procedure Law, Criminal Procedure Law, State Administrative Court Procedural Law and various other laws related to legal procedures.

It has been described that there are several formal legal sectors within the scope of the Indonesian judicial system. One of them is the Procedural Law of the State Administrative Court or abbreviated as HAPTUN. Formal law as the process of implementing material law, therefore HAPTUN is a set of legal rules for the implementation of the State Administrative Court. In its implementation, the State Administrative Court has legal standing with the enactment of Law Number 5 of 1986 concerning State Administrative Court and the legal basis has been updated with Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court. This

¹⁶ Yulies Tiena Masriani, "INTRODUCTION TO INDONESIAN LAW", (2007), online: *Police Science College Library (STIK)* <<http://library.stik-ptik.ac.id>>.

¹⁷ Putu Bagus Dananjaya & Ni Gusti Ayu Made Nia Rahayu, "THE MECHANISM OF CITIZEN LAWSUIT IN THE PERSPECTIVE OF THE

proves that the formal law in PERATUN has an urgency in realizing a prosperous, safe, peaceful, and orderly state life by ensuring the maintenance of a balanced relationship between state administrators and citizens.

The meaning of Citizen Lawsuit as a citizen lawsuit is the rights of citizens to sue state administrators for their obligations in fulfilling the rights for citizens contained in the Indonesian constitution.¹⁷ Responsibility for the negligence of the state administrator, where this negligence is suspected as an unlawful act. According to Abdul Fatah (2013): it is only necessary to give a summons to the state organizer containing a warning that a Citizen Lawsuit will be filed and ask the state organizer to disclose the lawsuit and take a stand. However, if it does not disclose, the Citizen Lawsuit case will be brought to the green table¹⁸. This arrangement is based on the practice of Citizen Lawsuit in Anglo Saxon countries. In its implementation, the Citizen Lawsuit case was submitted to the District Court. Just like in the general case that must be registered and must be accompanied by a lawsuit letter. Then the Judge will examine the case with a trial process and the Judge will pass a decision on the case whether the lawsuit from the Applicant is accepted or rejected. In the event that the lawsuit is accepted, then the Judge will impose penalties on the Defendant (state organizer) such as punishment to quickly issue policies to handle the case filed.¹⁹ Some of the petitions filed by Plaintiffs in Citizen Lawsuit cases are generally in the form of demands to make policies, make laws, issue additional regulations, and take other

JUSTICE SYSTEM IN INDONESIA" (2022) 4:1 Saraswati Law Journal (JHS) 15–30.

¹⁸ Green table is a figurative meaning for judicial proceedings (trials) in Court.

¹⁹ Dananjaya & Rahayu, *Supra* Note 16.

actions that are considered urgent.

Although the Indonesian justice system carries out the practice of Citizen Lawsuit procedurally, there is no procedural substantive mechanism in laws and regulations or formal law (Procedural Law) that regulates more clearly, straightforwardly, and firmly related to Citizen Lawsuit.²⁰ In practice, Citizen Lawsuit cases go to the General Court which is the power of the Supreme Court. That in filing a Citizen Lawsuit in PN it enters the civil realm because it is postulated as an act against the law. However, if reviewed more specifically, the author argues that Citizen Lawsuit is closely related to the state administrative system. In some opinions, the author who reviewed Citizen Lawsuit, argued that the mechanism of Citizen Lawsuit entered the civil realm due to negligence by state administrators postulated as an act against the law. This is also due to the Judge's decision in handling Citizen Lawsuit cases which are classified in the civil realm. The author also argues that he agrees with the argument of the Citizen Lawsuit which is against the law, but the author has an opinion that the Citizen Lawsuit case refers more to the State Administrative Court. The basis of the author's opinion is considering that the Defendant Citizen Lawsuit is an organ of government or state administrator, then the subject matter in the Citizen Lawsuit is related to the government's silence or negligence in fulfilling its responsibility for the rights of citizens, and considering that the demands of the Citizen Lawsuit to urge the government (Defendant) to issue a regulation to deal with problems that occur over the enforcement of the rights of Indonesian

²⁰ *Ibid.*

²¹ See more in Article 3 of PERMA number 2 of 2019

citizens based on the constitution.

Positive law of the State Administrative Court as law enforcement and settlement of cases of state administrative disputes. State administrative disputes are problems that occur between legal subjects (humans / legal entities) and state administrative agencies or officials due to TUN decisions, including personnel disputes based on applicable laws and regulations. When related to the concept of Citizen Lawsuit, there are differences in the absence of state administrative decisions that cause disputes. However, the attitude of the state organizer can be interpreted as a state administrative decision. that in the Citizen Lawsuit the case in question concerns the rights of many people and concrete problems, therefore if the organizer is silent and does not ignore the existing problems then this can be postulated as a decision of TUN. For this attitude, the state administrator has violated the general principle of good governance. Provisions regarding the requirements as a plaintiff in order to be able to file a lawsuit against the law by government bodies / officials are possible, namely citizens / communities on the basis of the lawsuit is a government action that is contrary to laws and regulations and contrary to the general principles of good governance.²¹

With the existence of PERMA Number 2 of 2019, the process of the mechanism for resolving cases of unlawful acts committed by government organs is under the absolute authority of the State Administrative Court so that the formal legal mechanism will follow and be in line with the procedures in the State Administrative Court.²² In the TUN dispute, it is explained

²² Mario Julyano Panggabean, Aju Putrijanti & Lapon Tukan Leonard, "JURIDICAL REVIEW OF CITIZEN LAW SUIT AGAINST UNLAWFUL ACTS COMMITTED BY GOVERNMENT AGENCIES AND/OR OFFICIALS (ONRECHTMATIGE

that those who can file a lawsuit are a person or legal entity whose interests are directly harmed. However, guided by PERMA Number 2 of 2019 that filing a lawsuit by citizens in the event of a Citizen Lawsuit can be possible in the State Administrative Procedure Law because there is a proposition in the PERMA that states the authority to file a lawsuit is a citizen, not a plaintiff. Therefore, this proposition is in accordance with the concept of Citizen Lawsuit whose lawsuit can be filed by anyone in the interest of citizens' rights against the actions of government organs that are contrary to the laws and regulations and the general principles of good governance (AUPB)

The urgency of the Citizen Lawsuit is the enforcement of justice against the law and the enforcement of human rights, especially the rights of citizens with the aim of government administration, both government agencies / officials who have low to high positions such as the president though, if it has violated laws and regulations and general principles of good governance and causes harm to the interests of many people, it must be punished for problems arising by it.²³ Indonesia as a country that adheres to the Civil Law system, a written regulation is needed for the sake of law enforcement and certainty. In the process of exploring the substance and procedural process in the judiciary, special regulations are needed that will explain how the mechanism and procedure of proceedings, in this case it means formal law.

In the author's opinion, the concept of

OVERHEISDAAD) THROUGH THE STATE ADMINISTRATIVE COURT" (2021) 10:2 Diponegoro Law Journal 375–386.

²³ Stefany Ismantara, "CITIZEN LAWSUIT: PROTECTORS OF CONSTITUTIONAL RIGHTS IN THE INDONESIAN LEGAL SYSTEM" (2023) 8:2 JOURNAL EQUITABLE 294–310.

Citizen Lawsuit needs to be adopted in the positive law of the State Administrative Procedure Law, adopted in this case means that there must be special regulations that regulate completely, clearly, and firmly related to the mechanism of Citizen Lawsuit within the scope of HAPTUN both substantively and procedurally. This is because there is still a void of laws (laws and regulations) that concretely regulate Citizen Lawsuit, if this vacuum continues to occur it can cause doubt and confusion for Indonesian citizens, state government organs, and law enforcement officials. There are still those who argue that Indonesia does not recognize Citizen Lawsuit in the Civil Law system because it is a culture / derivative of the Common Law system and rejects the existence of the Citizen Lawsuit mechanism.²⁴

That it is necessary to make positive laws related to the concept and mechanism of Citizen Lawsuit by adapting and adjusting to the Indonesian legal system so that in practice there is no rejection by people who think as described. In addition, the relevance of Citizen Lawsuit is part of HAPTUN's positive law because the concept of Citizen Lawsuit never conflicts with laws and regulations, and in its implementation provides many solutions to existing citizen problems and improves the implementation of the rights of citizens, so this is also the main reason. In addition, considering that not a few Citizen Lawsuit cases are submitted to the District Court, as well as considering the purpose of the Citizen Lawsuit which concerns the interests or rights of many citizens. With the adoption of Citizen

²⁴ Muhammad Adiguna Bimasakti, "RECONSTRUCTING THE PARADIGM OF CITIZEN LAWSUITS IN INDONESIA AS ADMINISTRATIVE DISPUTES" (2020) 50:1, Journal of Law & Development, 230–244.

Lawsuit in the formal law of the State Administrative Court, it will make clear how the absolute and relative competence of Citizen Lawsuit cases, concepts and mechanisms in its implementation will be clear, have a strong legal basis in its implementation, and there is no vagueness of a law in force in Indonesia.

3. Conclusion

It can be concluded that the concept of Citizen Lawsuit is a special concept in the judicial system because this concept prioritizes the interests of citizens who feel their rights are violated by government organs under the pretext of being considered unlawful and detrimental to citizens at large. So in the filing of the lawsuit, it was filed by several citizens who represent the public interest. The basis of the existence of a Citizen Lawsuit is negligence or violation by the state administrator of the laws and regulations and the General Principles of Good Governance (AUPB). Citizen Lawsuit has a function as a tool to uphold the rights of citizens to obtain justice and a life in accordance with their rights as citizens, in this case Citizen Lawsuit concerns the public interest because it has an impact on many people. There are no specific laws or regulations governing the mechanism of Citizen Lawsuit either substantively or procedurally, in its implementation until now in Indonesia based on the previous jurisprudence of Citizen Lawsuit. Indonesia is a state of law with reference to the Civil Law system, so there is a need for systematic and written laws and regulations for the sake of law enforcement and certainty.

4. Although in its study and analysis, the concept of Citizen Lawsuit cannot be equated entirely with the elements of TUN disputes, there are several important elements in the Citizen Lawsuit meknism based on HAPTUN's

perspective. Citizen Lawsuit in the perspective of PERATUN relates to the subject matter of the Defendant, the claims in the lawsuit related to the demands of attitudes or actions by state administrators, and the function or purpose of the Citizen Lawsuit in fulfilling the rights of citizens. In the concept of Citizen Lawsuit, it prioritizes improving the government with a real action in its proposition. The main reason Citizen Lawsuit can be adopted into positive law is because the concept of Citizen Lawsuit never conflicts with laws and regulations, and in its implementation provides many solutions to existing citizen problems and improves the implementation of the rights of citizens. However, it is necessary to reassess positive law making by adapting and adjusting to the Indonesian legal system so that in practice it can run effectively and optimally. That the concept of Citizen Lawsuit needs to be addressed again and conceptually clarified how this concept will be applied in the science of PTUN procedural law because it still has a very broad multiinterpretation and several mechanisms of Citizen Lawsuit that are not suitable in the procedural law of the state administrative court.

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