



RESEARCH ARTICLE

**DISCOURSES ON CITIZEN LAWSUIT AS
ADMINISTRATIVE DISPUTE OBJECT:
GOVERNMENT ADMINISTRATION LAW
VS. ADMINISTRATIVE COURT LAW**

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ABSTRACT

Citizen lawsuit mechanism has been used several times in Indonesian court procedure, although there is no regulation in this matter. The aims of this study were to determine the characteristic of citizen lawsuit in Indonesia, and the expansion meaning of the state administrative decision after the enactment of government

administration law, as well as the potential for citizen lawsuit as dispute object of the state administrative court with comparison with several countries in order to provide an appropriate legal system of citizen lawsuit as *ius constituendum*. This article used normative legal research with a conceptual approach, legislative approach, and comparative approach. The results indicated that the characteristic of a citizen lawsuit in Indonesia is generally a citizen access to represent the public interest in condition that the state fails to fulfill the rights of its citizen, and the plaintiff does not need to describe the losses he has suffered directly. The expansion of the meaning of state administrative decision under the Government Administrative Law has resulted in the competence of court and the dispute object has been expanded, thus if the citizen lawsuit is viewed from the administrative dispute perspective, it should be included in the State Administrative Court object. However, due to the limited expansion of Article 87 of the Government Administration Law by the Administrative Court Law, both of which are still valid, the State Administrative Court is not authorized to examine and adjudicate citizen lawsuits. Based on comparative data, there are several weaknesses of the citizen lawsuit system such as the legal standing of the applicant/plaintiff which make several countries have changed the provisions of the regulation.

Keywords: *Citizen Lawsuit, Administrative Dispute, Administrative Court Law, Government Administration Law*

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INTRODUCTION

INDONESIA IS A LAW-BASED STATE, it has been regulated by the 1945 Constitution of the Republic of Indonesia in Article 1 Paragraph (3). The consequences of the rule of law definitely, it must guarantee legal certainty for its citizens by implementing good governance principles. Indeed, in Article 1 Paragraph (2) of the Constitution of the Republic Indonesia, it has been regulated that “*Sovereignty is in the hands of the people and is implemented according to this Constitution*”, therefore as the holder of population sovereignty should have space to sue the government in order to achieve justice.¹ A citizen lawsuit or also known as *actio popularis* is a lawsuit model by citizens which is not actually known in the civil law legal system in the world. The citizen lawsuit model is an adoption of the United States legal system and countries that adhere to the common law system. Firstly, the citizen lawsuit was used to deal with environmental problems, however, in its development, this lawsuit model can be used in all fields where the state can be sued for its negligence in fulfilling the rights of citizens.² Citizen lawsuits in Indonesia have developed along

¹ Ridwan Arifin, *Translating the Meaning of Justice and Legal Protection: What exactly is justice?*. 7 JILS (JOURNAL OF INDONESIAN LEGAL STUDIES) i-iv (2022).

² Abdul Fatah, *Gugatan Warga Negara Sebagai Mekanisme Pemenuhan Hak Asasi Manusia dan Hak Konstitusional Warga Negara*, 28 YURIDIKA 293–303 (2013). In fact, in certain cases, the mechanisms for resolving disputes and lawsuits also vary, be it through citizen lawsuits in environmental law cases, class action, civil lawsuits, or related to state administration cases, in principle, all lawsuit processes are regulated in various legal rules in Indonesia to guarantee the principles of justice and legal certainty for citizens. *See also* Hendry Julian Noor, Kardiansyah Afkar, Henning Glaser, *Application of Sanctions Against State Administrative Officials Failing to Implement Administrative Court Decisions*, 9 BESTUUR 53-67 (2021); Seno Adhi Wibowo, Massulthan Rafi Wijaya, *Implementation of the Small Claims Court in Dispute Case Settlement in Indonesia*, 5

with the times and it cannot be denied that problems or disputes have not only come from individuals against individuals, individuals against legal entities, or legal entities against legal entities but it can also come from the state as the organizer of the government because of the policies issued.³

Citizen lawsuits are used to protect citizens' rights from government arbitrariness. Meanwhile, according to the constitution of the 1945 Constitution of the Republic of Indonesia in Article 28 D Paragraph (1) it is regulated that: *"Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law."* In Article 2 of Law Number 39/1999, regulates that *"The Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally inherent in and inseparable from humans, which must be protected, respected, and enforced for the promotion of human dignity, welfare, happiness, and intelligence and justice"*. Therefore, it is important to guarantee legal certainty through the citizen lawsuit mechanism in Indonesia.

Regarding citizen lawsuits, in this study there are several mentions such as citizen lawsuit, citizen suit, and *actio popularis*. *Actio popularis* is a term that has been used in various perspectives and some experts believe this is due to the *de lege ferenda* principle, namely the legal view to the future. The context of *actio popularis* has been used in international courts, outside the judicial context, and is widely used in asking for state responsibility in general as the basis for universal jurisdiction, and actions to protect the public interest.⁴

LEX SCIENTIA LAW REVIEW 165-178 (2021); Abdul Fatah, *Citizen Lawsuit in Environmental Cases*, 6 LENTERA HUKUM 287-306 (2019).

³ Cholidin Nasir, *Pengawasan terhadap Kebijakan Pemerintah Melalui Mekanisme Citizen Lawsuit*, 14 JURNAL KONSTITUSI 906 (2018).

⁴ FARID TURAB AHMADOV, *The Right of Actio Popularis before International Courts and Tribunals* (University of Oxford, 2017).

In this study, the *actio popularis* concept used is related to a citizen lawsuit (citizen suit) which is an access for individual citizens for the benefit of all citizens, to file a lawsuit against the responsibility government of the state for a negligence that has committed or silence of government that can reduce the rights of the community at large. In this case, the negligence is argued as a tort in fulfilling the rights of citizens, so that citizen lawsuits are generally submitted to the scope of the general court in the civil realm.⁵

The State Administrative Court is one of the judicial institutions under the Supreme Court, which is authorized to handle State Administrative disputes, which are caused by the state as the government in the administration of the state. Since the enactment of the Law on State Administrative Courts, the Government Administration Law (*hereinafter* Law Number 30/2014), and the Job Creation Law, which are all still legally valid in Indonesia, the jurisdiction of the state administrative court has shifted in substance. Previously, in the Administrative Court Law, the State Administrative Decision elements can be seen in Article 1 point 3 stipulates that regulates “A *State Administrative Decision* is a written determination issued by a State Administration Agency or Official containing legal actions for State Administration based on applicable laws and regulations, which concrete, individual and final, which has legal consequences for a person or civil legal entity.” However, after the implementation of the Law Number 30/2014, the provision in Article 1 point 7 of the Law Number 30/2014 stipulates that “Government Administration Decisions which are also called State Officials Decision or State Administration Decision, *hereinafter* referred to as Decisions are written decisions issued by Government Agencies and/or Officials in governance”. With this change of meaning, the

⁵ Mulyani Zulaeha, *Mengatasi Kabut Asap Melalui Mekanisme Citizen Lawsuit*, 3 JURNAL HUKUM LINGKUNGAN INDONESIA 87–106 (2017).

state administrative decisions are expanded and excluded from a clause that requires a state administrative decision that is concrete, individual, final and has legal consequences for a person/legal entity. Indeed, the Citizen lawsuit (*actio popularis*) can be relied on to widely hold the state accountable for the public interest.⁶ Therefore, since the shift in meaning as regulated in Article 87 of the Law Number 30/2014 which allows the entry of citizen lawsuits, it has become the authority of the State Administrative Court due to a policy or stipulation that is widely applicable. However, there are provisions in the Administrative Court Law in Article 2 which regulate the limits included in State Administrative Decisions, which raises the question of whether the citizen lawsuit is the competence of the State Administrative Court. Moreover, the citizen lawsuit is a lawsuit model that is generally used in common law system countries so that there is still a norm vacuum in its regulation in Indonesia.

Based on the explanation on the background and from the standpoint of Government Administrative Law, this study addresses citizen lawsuits as a conflict object of State Administrative Court, there are three problem that can raised: *first*, what are the characteristics of a citizen's lawsuit in the Indonesian legal system? *Second*, how is the expansion of the meaning of the State Administrative Decision after the enactment of Government Administration Law? And *third*, how is the potential entry of a Citizen Lawsuit in the perspective of Government Administration Law as a dispute object of the state Administrative Court?

This was normative legal research using several approaches, namely statutory approach, conceptual approach, and comparative approach. This paper uses secondary data and collected by using document study techniques. The results are then classified

⁶ Ahmadov, *supra* note 3.

systematically and analyzed qualitatively, and then compiled in a scientific paper with descriptive analysis. The premiere data used in this study is the Government Administration Act as well as the regulations governing state administrative decision and the State Administrative Court's competences.

Some previous studies used by Authors to analyze and compare some cases related to the topic, such as by Julaidin and Henny Puspita Sari which raised the topic of "*Citizen Lawsuit against state officials in seeking justice*" which focused on citizen lawsuits in achieving justice. Then research by Abdul Fatah in 2013 with the topic "*Citizens' Lawsuits as a Mechanism of Fulfilling Human Rights and Constitutional Rights of Citizens*" which focuses on citizen lawsuits as a mechanism in the constitutional court.

THE CHARACTERISTIC OF CITIZEN LAWSUIT IN INDONESIAN LEGAL SYSTEM & ITS COMPARISON FROM SEVERAL COUNTRIES

CITIZEN LAWSUIT is used to be a lawsuit procedure that has implemented in several countries that adhere to the common law system, which is definitely different from the legal system in Indonesia that follows civil law system (*European continental law system*). With a fundamental difference regarding the legal source of the common law system which comes not from the parliament but legal precedent or unwritten legal sources, while civil law comes from written law so that this citizen lawsuit has no statutory regulation that

regulates it.⁷ The starting point of citizen lawsuits in Indonesia is due to the movement of non-governmental organizations (NGOs) and Legal Aid Institute which are being carried out because of the increasing number of actions from the government that neglect their obligations as protectors and guarantors of the rights of their citizens.⁸ The citizen lawsuit procedure is a manifestation of the access of individuals citizens for the benefit of the entire citizen or the public interest, where every citizen can file a lawsuit against an act or omission by the state against the rights of citizens.⁹ Citizen lawsuit cases have appeared in Indonesian courts several times, some are accepted regarding the right to sue until it has been decided at the Supreme Court and legally binding, it caused citizen lawsuit becomes a living law in Indonesia even though there is no regulation on the procedure for citizen lawsuit. According to Indro Sugianto, the characteristics of a citizen lawsuit must meet the following elements as follows:¹⁰

1. In citizen lawsuit, individuals or citizens have the right to file lawsuits in court for and on behalf of the general welfare of citizens or the public interest.
2. The purpose of a citizen lawsuit is to defend citizens from potential losses in the event of state or state authority acts or inactions.
3. Citizens can sue the state and government institutions if they break the law or failed to carry out their responsibilities in the implementation of the law.

⁷ Faradina Naviah, *Penerapan Mekanisme Gugatan Citizen Lawsuit dalam Hukum Acara Perdata di Indonesia*, 1 JURNAL VERSTEK 1–12 (2013).

⁸ Julaidin & Henny Puspita Sari, *Citizen Lawsuit (Gugatan Warga Negara) Terhadap Penyelenggara Negara Dalam Mencari Keadilan*, 1 SWARA JUSTISIA 13–23 (2019).

⁹ ANONYMOUS, *Class Action & Citizen Lawsuit Laporan Penelitian*, BADAN LITBANG DIKLAT HUKUM DAN PERADILAN MAHKAMAH AGUNG RI (2009).

¹⁰ *Id.*

4. Individual citizens who is plaintiffs in the Citizen Lawsuit should not have to show that they have suffered real, tangible losses.
5. In general, the judiciary tends to be reluctant to the claim for compensation if it is filed in a Citizen Lawsuit.

The citizen lawsuit in its application in Indonesia certainly has special characteristics, although at first glance it seems to intersect with class action lawsuits and also the right to judicial review at the Supreme Court. Citizen lawsuits actually have different characteristics from civil law. Where the citizen lawsuit does not apply the point *d'interet point d'action* principle where the interested party is the party who is suing. This is definitely the difference between a citizen lawsuit and a class action lawsuit in terms of the elements of the argument that the unlawful act of a citizen lawsuit is not material compensation and the party who is suing represents all citizens in general and not a particular group.¹¹ This is in accordance with the Decree of the Chairman of the Supreme Court of the Republic of Indonesia No. 36/KMA/SK/II/2013 of 2013 that prohibits asking for compensation in the *petitum* of Citizen Lawsuit, but can only request that the defendant should issue certain policies or regulations in the environmental cases.

In the context of state administrative law, the government's duties can be divided into two, such as the task of carrying out legislative functions and executive functions.¹² In carrying out the legislative function, it is carried out when the law gives authority by delegation (by designating the type of regulation under it) or attribution (by appointing certain government organs) to make

¹¹ Muhammad Adiguna Bimasakti, *Merekonstruksi Paradigma Gugatan Citizen Lawsuit di Indonesia Sebagai Sengketa Administrasi*, 50 JURNAL HUKUM & PEMBANGUNAN 230 (2020).

¹² Bagus Hermanto, *Deliberate legislative reforms to improve the legislation quality in developing countries: case of Indonesia*. THE THEORY AND PRACTICE OF LEGISLATION, 1-31 (2022).

implementing regulations from a certain norm in the law.¹³ Given the material for implementing regulations made in carrying out the legislative function which is a formal delegation and attribution of the law,¹⁴ then in the event of a dispute, the Supreme Court is the institution authorized to conduct a judicial review of the regulations under the law against the law. In terms of the government's task of carrying out executive functions, it can be seen from the discretionary authority it has in accordance with administrative powers. With the government's discretionary authority, in this context citizen lawsuits should be used in the form of testing the legislation under the law that was formed based on discretionary authority because it is a pure product of the government as the executive.¹⁵ The material legal basis that can be used in testing the government's discretionary authority can be seen in Article 22 paragraph (2) of the Law Number 30/2014 which controls the use of discretion to accelerate state bureaucracy, cover legal voids, offer legal certainty, and solve government stagnation for the benefit and public interest. Certainly, in the implementation of these objectives must always pay attention to the principles of good governance. If the subject of the dispute is the statutory regulations under the law established with the authority of the delegation or attribution of the law, then a citizen lawsuit cannot be sued without going through a judicial review process in the Supreme Court.¹⁶

¹³ Ni Putu Rai Yulianti, Ida Bagus Wyasa Putra, Gede Marhendra Wija Atmaja, Dewa Gede Sudika Mangku, *The Construction of National Legal Systems from Pancasila's Perspective*, 7 JURNAL ILMIAH PENDIDIKAN PANCASILA DAN KEWARGANEGARAAN 479-488 (2022).

¹⁴ S POMPE, *THE INDONESIAN SUPREME COURT: A STUDY OF INSTITUTIONAL COLLAPSE* (Cornell University Press, Ithaca, New York, 2005)

¹⁵ *Id.*

¹⁶ *Id.*

In order to understand the Citizen Lawsuit, it can be seen from the decision of the Central Jakarta District Court No. 28/Pdt.G/2003/PN.JKT.PST which is already legally binding. At the time of the decision, the judge was still using Law Number 14/1970 concerning the Basic Provisions of Judicial Power as amended by Law Number 35/1999 which stipulates that: judges are prohibited from rejecting a case. This jurisprudence is the first case to receive a citizen lawsuit in Indonesia. The legal issue in this case is that the state is considered negligent in providing protection for citizens who become migrant workers abroad.¹⁷ Then as a further example, the decision which has become jurisprudence has permanent legal force can be seen in case No.228/Pdt.G/2006/PN.JKT.PST with the plaintiff Kristianto et al, against the State Government of the Republic of Indonesia with Defendant I, the President of the Republic of Indonesia Susilo Bambang Yudoyono, Defendant II Vice President of the Republic of Indonesia Yusuf Kalla, Defendant III Minister of National Education Bambang Sudibyo and Defendant IV Chairman of the National Education Standards Agency Bambang Soehendro. The legal issue contained in this decision is a citizen lawsuit where the plaintiff fights for the rights of citizens from the defendant's negligence in providing fulfillment and protection of human rights for their citizens who are victims of the National Examination, especially the right to education and children's rights. The basis that can be used in the citizen lawsuit is a "tort" or "act against the law" as regulated in Act 1365 of the Civil Code as the government is considered negligent in fulfilling the right to education in Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the rights of children resulting from the national exam.

¹⁷ Nasir, *supra* note 2.

The panel of judges in the verdict decided six things, as follows; First, granting the claim of a subsidiary of the plaintiffs. Second, stating that the plaintiffs, the President of the Republic of Indonesia, the Vice President of the Republic of Indonesia, the Minister of National Education, and the chairman of the National Education Standards Agency (*hereinafter*: BSNP), have been irresponsible in fulfilling and protecting the human rights of those who are victims of the National Examination, particularly the right to education and the rights of children. Third, before conducting the National Examination, the defendants must enhance the quality of teachers, the completeness of school facilities and infrastructure, and access to information in diverse schools. Fourth, ordering the defendants to take concrete steps to overcome the psychological and mental disorders of students due to the implementation of the National Examination. Fifth, ordering the defendants to review the national education system. Finally, punishing the defendants to pay litigation cost. From this decision, it can be concluded that the citizen lawsuit was filed by Kristianto and friends. Basically, judges that the existing laws and regulations are not in accordance with the rights of citizens to education so that in their decision they ordered the defendant to review the national exam policy and prepare all aspects to improve the quality National Education.

Then as an example of the decision from a citizen lawsuit that already has permanent legal force, it can be seen in case Number 55/Pdt.G/2013/PN.Smda which has permanent legal force with the decision of the Supreme Court through Decision Number 490 K/Pdt/2018 with the Komari and friends against the Republic of Indonesia *cq* the Government of the Republic of Indonesia *cq* the Provincial Government of East Kalimantan *cq* the Samarinda City Government *cq* the Mayor of Samarinda. The legal issue behind the citizen lawsuit in this case is an environmental dispute where the

defendants are considered negligent in carrying out their obligations to create a good and healthy living environment which results in loss of public interest for citizens, especially residents of Samarinda City. The legal basis that can be used in filing the lawsuit is contained in Article 91 of Law No. 32 of 2009 concerning Environmental Protection and Management, and Article 1365 of the Civil Code. Although citizen lawsuits have not been regulated in Indonesia, Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power stipulates in essence that courts are prohibited from rejecting a case because there is no law that regulates it. Regarding the basis for the consideration of the panel of judges at the cassation level, based on the Decision the Supreme Court Chief Justice No. 36/KMA/II/2013 was determined that the CLS (Citizen Lawsuit) lawsuit must be attached to a subpoena by the plaintiff to the government and copied to the Court. local country, and the summons was submitted before the lawsuit was filed in court because the contents of the notification were used as the basis for the lawsuit. In the *a quo* case the plaintiff who was withdrawn by the defendant in the citizen lawsuit never received a subpoena by the plaintiff, therefore the panel of judges at the cassation level granted the petition for cassation to the Government of the Republic of Indonesia and cancelled the decision of the Samarinda High Court Decision No. 138/PDT/2015PT.SMR which strengthen Samarinda District Court Decision No. 55/Pdt.G/2013/PN.Smda. Therefore, in the provisions, the panel of judges rejected the demands of the plaintiffs' provisions, and granted the exceptions of Defendants I, III, IV, V; in the main case stated that the original plaintiff's claim was unacceptable and sentenced the cassation defendants to pay court fees at all levels of the court. Of the many cases that go to the general court using the form of a citizen lawsuit, there are differences of opinion from the judges where on the one hand the judge believes that he accepts the presence of the citizen

lawsuit, but there are judges who cannot accept the citizen lawsuit.¹⁸ This is due to the fact that there are no clear statutory regulations, such as a class action lawsuit which has been regulated in Supreme Court Rules *Perma No. 1/2002*. The general considerations of judges in Indonesia in accepting citizen lawsuits are that judges are prohibited from rejecting a case because there is no legal basis, as well as evidence of an unlawful act committed by the government in accordance with Article 1365 of the Civil Code.¹⁹

The object of a lawsuit in a citizen lawsuit can be divided into two, such as the object of the citizen lawsuit is in the form of a petition for the government to issue a policy. What is meant is that the plaintiff asks the Defendant (State/government) to issue a Policy Regulation (*Beleidsregel*) on the basis of discretionary authority,²⁰ then the judge has full authority to try it. Because this is a purely government authority, so it is the subject of government administration. Second, the object of the citizen lawsuit is in the form of a petition for the government to issue laws and regulations to enforce the law.

In this case the plaintiff requests that the Defendant (government) issue a Policy (*Beleidsregel*) on the basis of discretionary authority, then the judge has full authority to try it. Because this is a purely government authority so that he is the subject of government administration, the judge in the Citizen Lawsuit is only authorized to try him if there is a material judicial review decision that grants the application for norms that are considered contrary to the law, and

¹⁸ Moch Iqbal, *Aspek Hukum Class Action dan Citizen Law Suit Serta Perkembangannya Di Indonesia*, 1 JURNAL HUKUM DAN PERADILAN 89–112 (2012).

¹⁹ Paskalina Emadewani, *Pertimbangan Hakim Mengabulkan Gugatan Citizen Lawsuit dalam Perkara Lingkungan Hidup*, 7 JURNAL VERSTEK 139–145 (2009).

²⁰ Tonye Clinton Jaja & Zaka Firma Aditya, *Promoting the Good Governance by Advancing the Role of Parliamentarians and the Term Offices Limitation (Comparing Nigeria and Indonesia)*, 7 JILS (JOURNAL OF INDONESIAN LEGAL STUDIES) 265–298 (2022).

then a Citizen Lawsuit is filed hence, regulations are issued as substitute in accordance with the rights of the citizen in question, if there is no response from the government administration on the follow-up to the decision that already exists.

The citizen lawsuit in Indonesia has a different characteristic due to comparisons with several countries that follow the common law system as shown on Table 1.

TABLE 1. Comparison of Citizen Lawsuit in Several Countries

No.	Country	Statutes	Special Characteristic	Court Competence
1	Indonesia	There is still not formally regulated in laws and regulation In material it must not conflict with good governance principle in the discretion (Article 22 of Law Number 30/2014) and Article 1365 of the Civil Code (acts against the law)	The contents of the petition against policy regulations (discretion) issued by the government Mandatory to subpoena the competent authority before filing a lawsuit	General court under the supreme court
2	U.S.A	1) 33 U.S. Code § 1365 - Citizen suits 2) Art 505 of Clean Air Act (pasal 304), Clean Water Act 3) Art 310 of Comprehensive Environmental Response Compensation and Liability Act	There is a written notification addressed to the relevant agency before the lawsuit filed	Federal Court

No.	Country	Statutes	Special Characteristic	Court Competence
		4) Art 7002 Resource Conservation and Recovery Act		
		5) Surface Mining Control and Reclamation Act of 1977		
		6) Endangered Species Act of 1973		
		7) Emergency Planning and Community Right to Know Act of 1986- SARA Title III.		
3	Australia	Civil Enforcement Proceedings	<i>Relaxed approach towards constitutional legal standing</i>	The Administrative Appeals Tribunal
4	China	1) Article 41 State Constitution of China	The State Compensation Law was created after the Administrative Litigation Law was enacted, resulting in arrangements where citizens are entitled to compensation in certain circumstances.	Administrative Law Division under Supreme People's Court
		2) Administrative Litigation Law 1989 (ALL)		
		3) State Compensation Law (1994)		
		4) Administrative Review Law (1999)		
		5) Civil Procedures Law China		
		6) China's Consumer Protection Law of 2013 (CPL)		
		7) Environmental Protection Law of 2014		

No.	Country	Statutes	Special Characteristic	Court Competence
		8) (EPL)		
5	Hungary	1) Constitution (Basic Law) 2) Paragraph 21 of Act on the Constitutional Court (Act Number XXXII/1989)	The abolishment of <i>actio popularis</i> and it changed into constitutional complaint	Constitutional Court

America is one of the countries that allows citizen suits, but this is still a controversy regarding its constitutionality regarding legal standing as regulated in Article III Section 2 Clause 1 of the United States Constitution. One of the jurisprudence that sets a precedent for the weakness of the legal standing citizen lawsuit is the Supreme Court's decision in *Lujan vs. Defender of Wildlife* which is a new era in which Article III of the state constitution limits the power of Congress to grant rights to demand to members of the general public.²¹ However, as an argument in favour of citizen suit in the united states, it arises from the way of viewing the scope of decisions as Article I tribunals; “public right case” Citizens' lawsuits against the United States and challenging the validity of executive action or inaction would likely fall under the “public rights” rubric, and thus may accept a decision under Article 1 of the tribunal, although the Supreme Court never clearly defines a public rights dispute which is roughly defined as a non-criminal issue involving government and citizens regarding the exercise of government authority (*Crowell v. Benson*, 285.US22.50 (1932). Almost all major environmental acts in America (environmental acts) such as the Clean Air Act, the Resource

²¹ David Krinsky, *How To Sue Without Standing: The Constitutionality of Citizen Suits in Non-Article III Tribunals*, 57 CASE WEST. RESERVE LAW REV. 1–48 (2006).

Conservation Recovery Act) regulates the provisions of citizen suit. In this Act, it provides the right for individuals or groups of people to act as private attorneys general to enforce the environment against violators. Citizen lawsuits in America are interpreted as mechanisms additional enforcement and not a surrogate mechanism in the government in enforcement efforts such as in environmental prospects.²²

Australia has a similar constitution with the United States, and also has special courts to accommodate opposition to government action, namely the Administrative Court under the Federal Court and The Administrative Appeals Tribunal which provides a citizen suit model.²³ Identical to America, Australia also has a constitutionality problem with a citizen lawsuit against legal standing which allows anyone to sue the state even though they do not feel the loss directly. However, in recent cases the Australian High Court's has carried out a "relaxed approach" to the constitutional standing requirements; for example, the lawsuits by the states of Australia against the constitutionality of existing Commonwealth laws regardless of whether they have any interest or not. As in the United States, Australia also has a significant administrative state, which includes a system of federal courts that was established outside the limits of Chapter III of the Constitution and its jurisdiction to create federal courts, but with the Administrative Appeal Tribunal it is hoped that it can help parties who are harmed by adverse decisions. of several types and allows anyone (whose interests are harmed by certain

²² Ellen Pulver Platt, *Citizen Suits under the Clean Water Act: Post-Complaint Compliance Does Not Moot Requests for Penalties*, *Atlantic States Legal Foundation v. Tyson Foods*, 2 VILLANOVA UNIV. CHARLES WIDGER SCH. LAW DIGIT. REPOS. 1–20 (1991).

²³ David Krinsky, *supra* note 17.

decisions/policies) to make an application to the Administrative Appeal Tribunal.”

China gives its citizens the right to sue the government. Citizens have had the right to sue the government since 1982 in Article 41 of the State Constitution of China, then there are 130 law/regulation until 1988 that provide citizen suit. The Administrative Litigation Law (*hereinafter: ALL*) legislative procedure began in 1987 and finished with its promulgation (promulgation) in 1989. Since then, the Supreme People's Court has created an administrative law section, as well as administrative panels in 1,400 local courts that deal with administrative cases.²⁴ The ALL, which was passed by the National People's Congress on April 4, 1989 and has been in effect since October 1, 1990, regulates citizens' rights to sue the government as well as citizens' and their attorneys' rights to review their documents and cases, conduct investigations, and gather evidence. If a judge or staff person has a genuine conflict of interest, the panel of judges as adjudicators must withdraw themselves from the case. Since the enactment of ALL, the State Compensation Law (1994) has been in effect, providing citizens with the right to compensation if they are victims of illegitimate government activities like wrongful incarceration or property confiscation. For property damage, compensation consists of the return of confiscated assets or their restoration to their former state, whilst for illegal detention, citizens are entitled to receive the previous year's average daily salary for each day spent in detention. For bodily injuries, citizen plaintiffs are entitled to full recompense for medical bills and lost wages. Then compensation for injury resulting in death can be in the form of burial costs, cash payments equivalent to twenty times the annual worker's wages and the costs of care providers. The Administrative Review

²⁴ James W Tong & Yingzhu Snow Zheng, *Citizen Lawsuits Against the Government in China : Twenty Court Cases , 2013 – 2019*, 51 CHINESE LAW GOV. 49–53 (2020).

Law (1999) is a supplement to the ALL and State Compensation Law, allowing citizens to dispute administrative judgments on the grounds that the decision: a.) Evidence-based; b.) Based on a flawed legal premise; c.) Violating legal processes; d.) Abusing or exceeding legal authority; or e.) Involves inappropriate administrative behavior. In early 2012, China's Civil Procedures Law was revised to give "the authorities" or "the relevant organizations governed by law" the capacity to initiate civil legal action against behaviour that pollutes the environment, breaches consumer rights, or otherwise hurts the public interest for the first time (Article 55). It is not necessary for such public interest litigants to suffer direct injury. China's Consumer Protection Law of 2013 (*hereinafter*: CPL) and Environmental Protection Law of 2014 (*hereinafter*: EPL) were amended to allow eligible citizen organizations to launch civil public interest cases against nongovernment defendants for violations of these laws.

Three judicial interpretations have been issued by China's Supreme People's Court to specify the scope among those citizen suits and also provide procedures for their adjudication in CPL and EPL, including legal standing, investigation, settlement and publicity, enforcement, and litigation expenses.²⁵

Moving to a European country especially in Hungary, the citizen lawsuit or in terminology referred to as *actio popularis*, has been applied in the country's law since 1990-2011 before the amendment to the Constitution (Basic Law) which introduced three types of constitutional complaints and resulted in the abolition of *actio popularis*. In contrast to the *actio popularis*, the constitutional complaint system places more emphasis on maintaining constitutionality against "personal injuries" caused by the ordinary court. Prior to the existence of the Basic Law, it is estimated that 1600 cases were brought

²⁵ Su Lin Han, *Background Memorandum Public Interest Litigation in China*, PAUL TSAI CHINA CENT. YALE LAW SCH. 1-24 (2017).

to the constitutional court with a lawsuit against *actio popularis* in 1990-2011.²⁶ According to the Hungarian constitution, the protection of democracy against the protection of democracy against the "rule of law" is in the interest of all members of society. This is the interpretation of the legal instrument regulated in Paragraph 32/A (4) Of Act XX 1949 (The Constitution), which is referred to as *actio popularis*. The provisions in Paragraph 21 of Act XXXII of 1989 (Act on the Constitutional Court) which were previously valid until January 1, 2012, determine who has the right to apply for an *actio popularis* procedure, namely: "*Anyone could propose an action to initiate a proceeding for the ex-post facto review of a law or a public regulatory mechanism, or for the redress of an unconstitutional omission*".

The term of "*anyone*" in this case is defined by the practice of the Constitutional Court of Hungary as "natural persons" and/or "legal persons" who are not limited to citizens only, but also foreign nationals or even stateless persons. Since the Hungarian Constitutional Court was unable to monitor the entire legal system throughout the political transition era due to the *actio popularis*, the cases being tried became random. Therefore, during the transition period, in order to ensure the justice of *actio popularis* in the new constitutional complaint system, for a quarter of a month (first quarter of 2012) in 2012, *actio popularis* can still be submitted as a constitutional complaint, according to the new Act on the Constitutional Court involves an *ex-post facto* assessment of a statute or regulation's constitutionality, and is not presented by someone who is also in a position to do so under the constitution.

This means, since the abolition dated January 1, 2012, the review of *ex-post facti actio popularis* that can be submitted by anyone no

²⁶ Fruzsina Gárdos-Orosz, *The Hungarian Constitutional Court in Transition – from Actio Popularis to Constitutional Complaint*, 53 ACTA JURIDICA HUNGARICA 302–315 (2012).

longer exists. However, the new Constitutional Court Act allows people or legal entities to request an ex-post facto review. In circumstances where the substantive content of the litigation comprises matters that are comprehensive to constitutional law, on a legal motion as a direct constitutional law complaint. The abolition of *actio popularis* has not only occurred in Hungary but also in the Netherlands since July 1, 2005²⁷, which was previously regulated in the Dutch administrative environmental law, abolishing the provision of *indirect actio popularis*.²⁸

Due to the jurisprudence explanation and the object of the lawsuit, the characteristics of citizen lawsuits in Indonesia include:

1. In citizen lawsuit, individuals or citizens have the right to file lawsuits in court for and on behalf of the general welfare of citizens or the public interest.
2. The Citizen Lawsuit is meant to defend citizens against potential losses as a result of governmental authorities' failure to act.
3. Citizen Lawsuit allows citizens to sue the government if it fails to carry out its responsibilities in enforcing the law.
4. Citizens who file lawsuits do not have to show that they have suffered actual losses that are genuine and measurable.
5. In a Citizen Lawsuit, the judiciary is more likely to be hesitant to compel compensation.
6. In practice, a citizen lawsuit must be preceded by a notification in the form of a *subpoena* to state officials stating that a citizen lawsuit will be filed for negligence in fulfilling the rights of citizens. The contents of this notification must contain information on the

²⁷ Herlambang P. Wiratraman, *Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics*. 50 FEDERAL LAW REVIEW 314–330 (2022).

²⁸ J. M Verschuuren, *The Netherlands (Chapter 1)*, ROLE JUDIC. ENVIRON. GOV. PUBL. COMP. PERSPECT. 55–83 (2009).

alleged violation and the relevant institution and the type of violation (the object of the lawsuit).²⁹

7. The petition in a citizen's lawsuit only contains a request for the state to issue a policy that stipulates that negligence in fulfilling the rights of citizens will not be repeated in the future.
8. In a citizen's lawsuit, the petition just demands for the state to issue a policy stating that failure in protecting citizens' rights will not be repeated in the future.³⁰
9. A citizen's lawsuit may not include a request to nullify a law under the constitution since the Constitutional Court has that authority; additionally, a citizen's lawsuit may not include a request to repeal Laws and Regulation under the Law because the Supreme Court has such ability.³¹

EXPANSION OF THE MEANING OF STATE ADMINISTRATIVE DECISIONS AFTER THE LAW ON GOVERNMENT ADMINISTRATION

THE STATE ADMINISTRATIVE COURT is a judicial institution under the Supreme Court which has the competence of the object of dispute, namely the State Administrative Decisions. According to Article 1 point (3) of Law No. 5 of 1986 it is regulated that “*State*

²⁹ Indro Sugianto, *Hak Gugat Warga Negara (Citizen Lawsuit) terhadap Negara-Kajian Putusan No. 28/Pdt.G/2003/PN.Jkt.Pusat*, MAJALAH DICTUM JURNAL KAJIAN PUTUSAN PENGADILAN, 2004, at 41.

³⁰ Ni Luh Ayu Desi Putri Pratami, *Karakteristik Gugatan Warga Negara (Citizen Lawsuit) dan Perbandingannya dengan Gugatan Perwakilan Kelompok (Class Action)*, 06 KERTHA WICARA 1–6 (2017).

³¹ *Id.*

*Administrative Decisions are a written stipulation issued by the State Administration Agency or Official containing legal actions of State Administration based on the applicable laws and regulations, which are concrete, individual and final, which have legal consequences for a person or civil legal entity”.*³² In this norm, State Administrative Decision must contain the elements that has mentioned. Meanwhile, since the enactment of Law No. 30/2014 concerning Government Administration, the State Administrative Decision has expanded its meaning as regulated in Article 87 of the Law No. 30/2014.³³ (Sudiarawan, 2019). In the Article 87, State Administrative Decision must be interpreted as:

- a) A written decree that also includes factual actions.
- b) State administrative official’s decision in the executive, legislative, judicial, and other state organizer.
- c) Based on Laws and Regulations provisions and good governance principle.
- d) It is final in a wider scope.
- e) Decisions that may have legal consequences; and/or
- f) Applicable decision to citizen.

Regarding on the expansion of the meaning, it can be interpreted that the Law Number 30/2014 shifts the concrete, individual, final elements in the Administrative Court Law into a wider it is also not aimed at certain individuals but can be in the form

³² I. G. N. Wairocana, I. W. B. S. Layang, K. Sudiarta, P. A. H. Martana, K. A. Sudiarawan, B. Hermanto, *Kendala dan Cara Hakim Peradilan Tata Usaha Negara Pasca UU Administrasi Pemerintahan: Suatu Pendekatan Atas Penanganan Perkara Fiktif Positif*. 50 JURNAL HUKUM & PEMBANGUNAN 563-585 (2021).

³³ Kadek Agus Sudiarawan, *Rekonstruksi Pergeseran Paradigma Upaya Administratif dalam Penyelesaian Sengketa Pra Pemilihan Kepala Daerah*, 16 JURNAL LEGISLASI INDONESIA 325-343 (2019).

of decisions that apply to citizens.³⁴ The forms of competency expansion regulated in the Law Number 30/2014 that are directly related to the procedural law system applicable to the State Administrative Court including:³⁵

1. Expansion of the scope of State Administrative Decisions as defined by Article 1 point 7, Article 1 point 8, and Article 87.
2. The State Administrative Court's ability to investigate whether there has been an abuse of authority in the issue of State Administrative Decision, as defined in Article 21.
3. The first-level State Administrative Court's ability to adjudicate post-administrative litigation, as defined in Article 75 paragraph (1) jo. Article 76 paragraph (3)
4. The State Administrative Court's authority to adjudicate/grant compensation claims, subject to certain limitations set out in Article 81 paragraph (2)

From the explanation of the expansion of the State Administrative Decision in the Law Number 30/2014, it is known that it results in absolute competence of the judiciary and several procedural provisions that apply to the State Administrative Court.³⁶ It is also not explicitly regulated regarding the invalidation or revocation of several articles in the Administrative Court Law, so it is still a question of which principle of preference is appropriate to use if there are conflicting articles.

³⁴ Kadek Agus Sudiarawan, I Gusti Ngurah Wairocana, Bagus Hermanto, *Are there Obstacles after the Administrative Court Absolute Competence Extension of Indonesia?*, 16 VARIA JUSTICIA 156-169 (2021).

³⁵ I GUSTI NGURAH WAIROCANA ET AL., *DINAMIKA PERADILAN TATA USAHA NEGARA PASCA UU ADMINISTRASI PEMERINTAHAN* (I ed. 2019).

³⁶ Lita Agusetiani Baety, *Dampak Hukum Perluasan Kewenangan Pengadilan Tata Usaha Negara dalam Penyelesaian Sengketa Penyalahgunaan Wewenang Berdasarkan Undang-Undang Nomor 5 Tahun 1986 dan Undang-Undang Nomor 30 Tahun 2014*, THESIS (Semarang, Universitas Negeri Semarang, 2017).

POTENTIAL ENTRY OF CITIZENS' LAWSUITS AS A DISPUTE OBJECT OF THE STATE ADMINISTRATIVE COURT POST GOVERNMENT ADMINISTRATION LAW

CITIZEN LAWSUITS are different from civil cases as mentioned in the previous sub-chapter. In the citizen lawsuit mechanism, the plaintiff against the state as the defendant to issue a policy to restore the rights of citizens who have not been fulfilled. Citizen Lawsuit in this case can be interpreted as an administrative dispute but must also be distinguished from the authority contained in the Supreme Court,³⁷ namely the judicial review of regulations against the law, and the constitutional review in the Constitutional Court.³⁸ The subject matter of the dispute that can be examined by administrative judges in a citizen lawsuit is only legislation that is *beleidsregel* or policy regulations.³⁹

The object of the lawsuit from the citizen lawsuit can be in the form of a petition for the government to issue a policy and/or in the form of a petition for the government to issue laws and regulations to carry out the mandate of the law.⁴⁰ (Wairocana, 2019b). As in the

³⁷ Adrian Bedner, *Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions*, 5 HAGUE JOURNAL ON THE RULE OF LAW 253-273 (2013).

³⁸ I Gede Yusa, Bagus Hermanto, & Ni Ketut Ardani, *Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan*. In INTERNATIONAL CONFERENCE FOR DEMOCRACY AND NATIONAL RESILIENCE (ICDNR 2021) at 1-10. Atlantis Press.

³⁹ Bimasakti, *supra* note 10.

⁴⁰ I. Wairocana, I. K. Sudiarta, I. W. B. S. Layang, W. B. Siki, K. A. Sudiarawan, I. Pramana, & G. Pasek, *The Expansion of Administrative Decision Meaning Based on*

previous Indonesian jurisprudence, the citizen lawsuit was tried and decided in a district court.⁴¹ The basis for the citizen lawsuit in the district court is Article 1365 of the Civil Code, where the rules regulate *“every act that violates the law and causes harm to others, obliges the person who caused the loss because of his mistake to replace the loss”*.⁴² However, regarding to Article 50 of Law No. 2 of 1986 concerning General Courts, the actual authority of the general courts is only civil and criminal cases. If the citizen lawsuit is seen as an administrative dispute, then in Law No. 30 of 2014 Article 1 number 18 Jo. Article 85 then should be the authority of the State Administrative Court. Regarding to the authority of the State Administrative Court, the object of the lawsuit from the applicant must be a State Administrative Decision, in this case the regulation is contained in the Administrative Court Law and its meaning has been expanded by the Law Number 30/2014. In this case, to analyse whether the object of a citizen lawsuit is in the form of a policy, it must meet the elements contained in Article 1 point 3 of the Administrative Court Law which regulates *“State Administrative Decision is a written determination issued by a State Administration Agency or Official containing legal actions for State Administration based on applicable laws and regulations, which are concrete, individual, and final, which have legal consequences for a person or civil legal entity.”*

However, due to the expansion of Article 87 (f), the State Administrative Decision must be also interpreted as decisions that

Government Administration Law: A Dispute Submission Process Approach. 8 JURNAL MAGISTER HUKUM UDAYANA (UDAYANA MASTER LAW JOURNAL) 13-33 (2019).

⁴¹ P.G.A.S. Yasa, K.A. Sudiarawan, A.C.P.N. Pratama & M. D. Pranajaya, *Position of Fictitious Positive Administrative Decisions as Dispute Object of State Administrative Court: Indonesia Omnibus Law Perspective*. 24 JOURNAL OF LEGAL, ETHICAL AND REGULATORY ISSUES 1-12 (2021).

⁴² *Id.*

apply to citizens. As the result of this expansion, based on Article 87 letter (f) of the Law Number 30/2014, it can be assumed that "a decision that applies to citizens" can be filed for a citizen lawsuit in general. However, it should be noted that the object of the lawsuit filed by the citizen lawsuit is a policy (*beleidsregel*) which in this case must also be able to meet the elements of Article 1 point 3 of the Administrative Court Law, namely that the administrative decision must be concrete, individual, final which has legal consequences for a person or entity civil law.

The existence of Administrative Court was upheld by the government especially in the context of public demand on justiciable settlement for any administrative dispute and ensure for justice seekers within mechanism of Administrative Court. In recent, the Administrative Court after issuance of the Government Administration Law has been fundamental and radical reform, especially its competence or authorities that reflected by formal academic research paper and the bill of Government Administration Law that express any argumentation on Administrative Court competence expansion, related with *first*, to strengthen dispute scope that could be enforced at the Administrative Court; *second*, to giving wider access for every people to gain justice; *third*, to strengthen external juridical control function from society towards government apparatus and prevent themselves as object of apparatus obstruction of power especially every apparatus could be controlled; and *fourth*, to strengthen and implement deepen cautionary principle and further responsiveness on government apparatus towards its government administration function.

In accordance with objection of the Government Administration Law, this law was placed with procedural law characters and material law characters, as reflected with formal academic research paper by Ministry of Apparatus and Bureaucracy Reform of Indonesia,

especially in the Elucidation Part I on General Provisions at Fifth Paragraph, that deliberate further protection guarantee towards people (Hermanto & Aryani, 2021). This law was ensure every people could using any settlement form on administrative case towards Government Officers. Every people also could file application for administrative examination on Decision and/or Government Bodies or Officers actions towards Administrative Court,⁴³ especially this law also regulates material law content on Administrative Judiciary System in Indonesia.

Then it also needs to be considered in Article 2 Law No. 9/2004 that regulates the exclusion of State Administrative Decision that does not belong to State Administrative Decision as follows:

- a) State Administrative Decision which is a civil law act.
- b) State Administrative Decision which is a general arrangement.
- c) State Administrative Decisions that still require approval.
- d) State administrative decisions issued based on the provisions of the Criminal Code and the Criminal Procedure Code or other laws and regulations of a criminal nature.
- e) State Administrative Decisions issued on the basis of the results of judicial examinations based on the provisions of the applicable laws and regulations.
- f) State Administrative Decision regarding the administration of the Indonesian National Armed Forces.
- g) Decisions of the General Election Commission both at the center and in the regions regarding the results of the general election.

Given that the Administrative Court Law's restricted expansion of Article 87 of the Law Number 30/2014, both of which are still in effect, the State Administrative Court's absolute jurisdiction is limited, and it is not authorized to examine and adjudicate citizen

⁴³ M Crouch, *The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia*, 7 CONSTITUTIONAL REVIEW 1-21 (2021).

lawsuits, but through the *residual rechtspraak* approach, namely all Disputes can be tried by the general court unless otherwise stipulated by the laws and regulations, the citizen lawsuit can be submitted to the General Court through the local District Court. Therefore, if a citizen lawsuit is to be adopted into the Indonesian legal system, a separate regulation should be made from the Administrative Court Law and the Law Number 30/2014 because of the different characteristics of the lawsuit, and this results in greatly expanding the competence of the State Administrative Court.

CONCLUSION

THE CHARACTERISTICS of citizen lawsuits in Indonesia currently are access for individual/individual citizens for the benefit of all citizens, filing a lawsuit against state responsibility for an omission that is done or not done that can reduce the rights of the community at large. This citizen's lawsuit can be filed by individuals who represent the interests of the wider community, and the plaintiff may not disclose the loss directly. A citizen's lawsuit must be preceded by a subpoena to the relevant officials. The expansion of the meaning of State Administrative Decision must be interpreted as long as, written stipulations include factual actions, consist of decision from state administration officials in the executive, legislative, judicial, and other officials; Based on statutory provisions and good governance principle; it is final in a wider sense; Decisions that have the potential to cause legal consequences; Decisions that apply to citizens. Citizen Lawsuit can be interpreted as an administrative dispute but must also be distinguished from the authority contained in the Supreme Court, namely the judicial review of regulations against the law, and the

judicial review of the Constitutional Court, namely the judicial review of the law against the 1945 Constitution of the Republic of Indonesia. If the citizen lawsuit is seen as an administrative dispute, then according to Law No. 30 of 2014 Article 1 number 18 Jo. Article 85 should be the authority of the State Administrative Court. However, due to the limited expansion of Article 87 of the Law Number 30/2014 by the Administrative Court Law, both of which are still in effect, it also limits the absolute authority of the State Administrative Court so that the State Administrative Court is not authorized to examine and adjudicate citizen lawsuits. Finally, as a suggestion for law-making institutions, it is better if a citizen's lawsuit is adopted by the legal system in Indonesia, a separate rule regarding the procedure should be made and not included in the authority of the State Administrative Court even though after the Law Number 30/2014 there is an expansion of the meaning of the Object of the Dispute. This is due to the differences in the characteristics of the two as well as the Indonesian's State Administrative Court competence which will then become very widespread.

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