



## **Renewal Model of Actio Popularis and Class Action Lawsuit in Indonesia Based on Prismatic Law**

### **Bitu Gadsia Spaltani**

Faculty of law, Sebelas Maret University, Surakarta, Indonesia

Email: [bgadsia@gmail.com](mailto:bgadsia@gmail.com)

### **Adi Sulistyono**

Faculty of law, Sebelas Maret University, Surakarta, Indonesia

Email: [Adi-r4@uns.ac.id](mailto:Adi-r4@uns.ac.id)

### **Albertus Sentot Sudarwanto**

Faculty of law, Sebelas Maret University, Surakarta, Indonesia

Email: [alsentotsudarwanto@yahoo.com](mailto:alsentotsudarwanto@yahoo.com)

Received: August 13, 2022; reviews: 2; accepted: November 15, 2022.

### **Abstract**

The purpose of this study is to examine the model of the joint renewal of popularis action lawsuits which are known in the common law and class action legal systems which have received legal protection in the form of Supreme Court Regulation no. 1 of 2002 concerning the Class Representation Lawsuit Procedure. The model combines the two types of lawsuits in order to realize legal justice based on the values of Pancasila or prismatic values, which is a breakthrough and legal reform. The approach method in this research is using a normative juridical method and a library approach. The data used in this research uses secondary data consisting of primary legal materials and secondary legal materials. The findings of this research are based on the doctrine of *injuria sine damno*, where citizens in an *actio popularis* lawsuit can ask the government to issue certain policies, they can also ask for compensation as in a class action lawsuit. The combination of the two forms of lawsuits can lead to the effectiveness of the community, especially justice seekers in realizing legal justice.

### **Keywords**

*actio popularis, class action, prismatic law*

### **A. Introduction**

This study explores a common-law country's model of lawsuit development using prismatic legal studies that use Pancasila as a standard of value. The popularis action and class action (originally governed by Article 23 of the US Federal Rule of Civil Procedure), which both originated from the Anglo-Saxon legal system

or common law, are related to this reform paradigm<sup>1</sup>. Legal justice in Indonesia has been delayed by the lack of progress in these two categories of cases. In order to bring the two litigation models' procedural laws under the purview of the law, Indonesia as a state of law needs to make a distinct breakthrough. Settlement of claims on behalf of the public interest is more successfully accomplished by combining action popularis and class actions since compensation can be included along with citizens who litigate before the court.

In actio popularis and class action litigation, legal construction can fill the moist vacuum<sup>2</sup>. In fact, the government is responsible for the most recent incidence that occurred in Indonesia, when hundreds of kids died from acute kidney failure due to a lack of government oversight of the distribution of sugary medications for kids.<sup>3</sup> along with the COVID-19 case from a few years ago, which severely affected practically all of the world's nations after first emerging in Wuhan City, China, in a case of unexplained pneumonia. Each government, including the Indonesian government, is accountable for the effects and spread of these cases.<sup>4</sup> This is a government tort for which both types of lawsuits are allowed, but they cannot be used because Indonesian judges continue to apply a positivistic mindset and because the popularist and class action lawsuits that originated there cannot be used to handle significant cases that differ from those developed in other nations.<sup>5</sup> Actio popularis lawsuits, on the other hand, are supposed to let people get justice for losses caused by public officials' carelessness or failure to act.

The production of defective pacemakers, breast transplants, HIV transmission through the blood bank system, and other health issues resulting from drug use are examples of violations committed by the private sector where the government is held accountable, as is the case in the United States, Australia, and Canada. The Attorney General's Office or the Attorney General typically brings a class action in matters of public interest, but the requests made are not limited to financial relief; they also include actions to return the situation to its pre-existing condition. The demands sought are related to the rights and obligations of the parties to the dispute, just like in class action lawsuits in the United States where there are not enough funds to pay compensation (declaratory judgment). Class representatives may seek the court's order to compel the defendant to do or refrain from doing something, such as refraining from violating the environment (injunctive relief class).<sup>6</sup>

Because Supreme Court Regulation No. 1 of 2002 Governing Class Action

---

<sup>1</sup> Endang Mustikowati, 'Analisis Normatif Terhadap Pengajuan Gugatan Perwalian Kelompok (Class Action) Di Pengadilan Menurut Hukum Acara Perdata', *Jurnal Yustisiabel*, 3.1 (2019), 62-75 <<https://doi.org/https://doi.org/10.32529/yustisiabel.v3i1.298>>.

<sup>2</sup> Riana Susmayanti, 'Analisis Putusan Tentang Gugatan Citizen Lawsuit Terhadap Pengabaian Jaminan Sosial Oleh Pemerintah', 2017, pp. 462-79.

<sup>3</sup> Yuswanto Setyawan, 'Acute Kidney Injury in Critically Ill Patients with Cancer', *Medical Scope Journal (MSJ)*, 3.1 (2021), 8-15 <<https://doi.org/10.2215/CJN.15681221>>.

<sup>4</sup> Hanxin Lin and Cheryl Xiaoning Long, 'Do Discretion Criteria for Patent Administrative Law Enforcement Encourage Innovation among Firms?', *China Economic Quarterly International*, 1.2 (2021), 160-75 <<https://doi.org/10.1016/j.ceqi.2021.05.001>>.

<sup>5</sup> Yustina Niken Sharaningtyas, 'GUGATAN WARGA NEGARA (CITIZEN LAWSUIT) DAN JUSTICIABILITY PEMENUHAN HAK ATAS LINGKUNGAN HIDUP YANG BAIK DAN SEHAT', *Kertha Patrika*, 38.1 (2016) <<https://doi.org/10.24843/KP.2016.v38.i01.p03>>.

<sup>6</sup> Moch Iqbal, 'Aspek Hukum Class Action Dan Citizen Lawsuit Serta Perkembangannya Di Indonesia', *Jurnal Hukum Dan Peradilan*, 1.1 (2012), 89-112 <<https://doi.org/10.25216/jhp.1.1.2012.89-112>>.

Procedures closely governs the filing of class actions in Indonesia, judges are prohibited from acting outside of it in cases involving more substantial and complex claims of government liability. Additionally, *actio popularis* lawsuits in Indonesia lack a legal foundation, which causes judges to disagree on this type of lawsuit's outcome. *Actio popularis* and class action cases are frequently rejected by judges in Indonesia since the country's judiciary is still heavily influenced by the civil law system, making it challenging to implement legal transplants. The legal system that exists in Indonesia and is solely owned by the Indonesian people themselves, namely a prismatic legal system based on the values of Pancasila, is the basis of the country's legal system, not the civil law system with the concept of *rechtsstaat* or the common law system with the concept of rule of law.<sup>7</sup> The *actio popularis* and class action lawsuits founded on Pancasila prismatic ideals are highlighted in this study as a groundbreaking legal development in Indonesia for achieving access to justice. To protect people's constitutional rights, Indonesia's judiciary, particularly the state administrative court, must in the future accept the litigation model in a responsive manner. In this research study, there are two problem formulations: the first is why it is challenging to transition legal systems in *actio popularis* and class action lawsuits from the common law system to the civil law system, and the second is how the integration of *actio popularis* and class action lawsuits based on Pancasila prismatic values contributes to achieving legal justice.

## **B. Method**

The methodology for this study employs a normative<sup>8</sup> juridical approach as well as a conceptual approach based on the prismatic values of the Pancasila precepts in the precepts of justice concretized through legal norms found in Article 28 D paragraph (1) on guarantees of fair legal certainty. *Actio popularis* and class action lawsuits, which are legal transplants from the common law legal system to the civil law legal system, are based on the idea of *injuria sine damno* as a way of realizing the value of justice. Secondary data in the form of primary and secondary legal materials were the data sources employed in this study. Legal documents are put into groups based on the concepts, doctrines, ideas, and ideals that serve as specific legal rules for the issues being looked into.<sup>9</sup>

## **C. Research Results and Discussion**

### **D. Obstacles to *Actio Popularis* and Class Action Lawsuits' Legal Transplantation from the Common Law System to the Civil Law System**

The codified-law, or positivistic-legalistic, approach is the tradition of the civil law system in Indonesian legal practice. This has an impact on dispute resolution, particularly in the judicial system, which has to be able to ensure the importance of legal certainty and justice in society, as is the case in Indonesia with the use of class action lawsuits and *actio popularis* lawsuits. Class actions and *actio popularis* are two types of lawsuits brought by citizens on their behalf. Both forms

<sup>7</sup> Katherine Paola and Ribero Salazar, 'Rule of Law : The Soul of Transitional Justice in the Rule of Law', 5.3 (2022), 276–83 <<https://doi.org/10.11648/j.ijls.20220503.15>>.

<sup>8</sup> Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201–7 <<https://doi.org/10.1016/j.sbspro.2016.05.006>>.

<sup>9</sup> Ervina Dwi Indriati, Sary Ana, and Nunung Nugroho, 'Philosophy Of Law And The Development Of Law As A Normative Legal Science', *International Journal of Educational Research & Social Sciences*, 3.1 (2022), 425–32 <<https://doi.org/10.51601/ijersc.v3i1.293>>.

of legal action are brought at the general court's civil division. Kontenhagen-Edzes says that article 1365 BW<sup>10</sup> lets anyone file a lawsuit in *actio popularis* on behalf of the public interest. This means that the lawsuit model is still based on private law, even though a lawsuit against the government for negligence should fall under public law if the concept were to be brought back.

The civil law system's history in Indonesian legal practice is focused on The main distinction is that in a class action case, the plaintiffs must experience substantial losses and be numerous in order to create a representative for the entire class, who can then speak on behalf of other members of society under the condition that they share the same legal circumstances and facts. In contrast, in an *actio popularis* case, the plaintiffs do not need to be numerous or to have suffered substantial damages; rather, they can bring a claim on behalf of the public interest to hold the government accountable for negligence or willful disregard of people's rights. In the sense of "point of interest and point of action,"<sup>11</sup> this is related to the principle of *point d'interest point d'action*. The implication is that the class action requires an interest in the form of material loss, but the *actio popularis* litigation is primarily focused on the aspect of public interest.

The next distinction is that while *actio popularis* lawsuits are not at all governed by Indonesian law, they have occasionally been acknowledged in a number of court decisions. This is in contrast to class action lawsuits, which are governed in Indonesia by PERMA No. 1 of 2002. In this case, the Supreme Court has issued KMA No. 36/KMA/SK/II/2013 regarding the implementation of principles for resolving environmental disputes,<sup>12</sup> which are particularly important in environmental issues. It turns out that there is a great deal of legal uncertainty arising in the resolution of class action and citizen law suit conflicts in Indonesia as of its implementation to date. This is because, according to law enforcement officials, particularly judges, cases involving class actions and *actio popularis* litigation models are still decided in a way that is confusing. We cannot deny the influence of reciprocal dominance and overlap between the traditional civil law and common law legal systems, which are used in Indonesia, when it comes to the application of mixed legal systems (Trang, 2021).

Most judges base their decisions in class action and citizen lawsuit settlements in court on the law or the soundness of the applicable legal standards. In truth, the rule of law has never been provided in a complete and detailed building of how all articles obtain formal fulfillment, and legislation as the ground or basis for legal legality in the *Rechtstaats* heritage has always had limitations in controlling all types of legal events.<sup>13</sup> As a result, there are many different interpretations that result from interested parties who interpret it, which ultimately leads to a sea of injustice and legal uncertainty. In Indonesian legal practice, it is common to find

---

<sup>10</sup> E. K. Purwendah and others, 'Public Participation in Environmental Protection: Citizen Law Suits in the Indonesian Civil Justice System', *IOP Conference Series: Earth and Environmental Science*, 1030.1 (2022) <<https://doi.org/10.1088/1755-1315/1030/1/012022>>.

<sup>11</sup> Cholidin Nasir, 'Pengawasan Terhadap Kebijakan Pemerintah Melalui Mekanisme Citizen Lawsuit', *Jurnal Konstitusi*, 14.4 (2018), 906 <<https://doi.org/10.31078/jk14410>>.

<sup>12</sup> Humaira Khoirunnisa, Shafa Amalia Choirinnisa, and Raden Muhammad Arvy Ilyasa, 'Quo Vadis: Penerapan Citizen Lawsuit Sebagai Upaya Perlindungan Terhadap Lingkungan Hidup', *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria*, 1.1 (2021), 117-37 <<https://doi.org/10.23920/litra.v1i1.587>>.

<sup>13</sup> Paris Hendra Wijaya Sinaga and others, 'Social Control of Government Policy through the Citizen Lawsuit Mechanism', *Jurnal Cakrawala Hukum*, 13.2 (2022), 123-34 <<https://doi.org/10.26905/idjch.v13i2.7875>>.

class action lawsuits and citizen law suits, also known as *actio popularis*, whose cases are rejected due to legal standing concerns raised by the plaintiffs. A number of cases are even thrown from the general court's jurisdiction to the administrative court's, or vice versa, and result in the issue of the statute of limitations having expired. The precedent for *actio popularis* lawsuits was set with the Nunukan case with judgment No. 28/Pdt.G/2003.JKT.PST, which was rendered on December 8, 2003, and involved the defendant, the Republic of Indonesia c.q. Head of State, President Megawati Soekarno Putri.<sup>14</sup>

It appears that judges in Indonesia have little discretion in these situations. For instance, there are many citizen law claims, or *actio popularis*, that are hampered by the problem of standing to sue in the district court because they are not governed by positive law in Indonesia. The procedures for litigation have been regulated in such a way, but many judges' decisions still state that class action lawsuits are in the wrong room or under the wrong judicial jurisdiction because of unqualified litigation procedures and are not within the purview of the court in question. In addition, many class action cases encounter legal standing issues.<sup>15</sup>

In order for administrative courts in Indonesia to have complete authority, class action lawsuits and citizen law suits against the government that allege that the government has violated citizens' rights or has acted negligently in carrying out its obligations to the state should fall under public law rather than civil law. This is not solely based on legal interpretation, but also on Law No. 30 of 2014, which contains numerous principles and legal reforms pertaining to Indonesian administrative material law in its articles. The existence of the Government Administration Law has unavoidably strengthened the Administrative Court's absolute competence to handle and resolve issues arising from public advocacy lawsuits, including in this instance class action cases and citizen law litigation. In light of the numerous differences in the decisions of judges and the dissenting opinions that emerge when judges decide the same case, this should be the focus of attention and the encouragement of judicial activism for judges to be able to create law<sup>16</sup>. The common law legal system, often known as judge-made law, must function to close the gaps of legal ambiguity created by the discordance of existing laws and the resulting legal void. In deciding cases of public advocacy lawsuits, such as class actions and citizen law suits, the value and sense of justice in society can be put forward as the reference that forms the basis for the birth of jurisprudence in Indonesia. Legal-oriented rules that have been codified as an influence of the civil law system tradition should not be a rigid boundary line that limits the discretionary space and freedom of judges in developing critical thinking constructs (Trang, 2022).

According to M. Yahya Harahap, jurisprudence serves a variety of purposes, such as establishing legal standards (settling law standards), establishing a common legal framework and legal perception, fostering legal clarity, and preventing inconsistent court rulings. Class action lawsuits from Anglo Saxon nations with a history of the common law legal system have a significant role in

---

<sup>14</sup> Rizky Ramadhani Kurniawan, 'Integrasi Citizen Lawsuit Sebagai Hak Prosedural Atas Lingkungan Hidup Dalam Dimensi HAM', *Pagaruyuang Law Journal*, 1.1 (2017), 92-109 <<https://doi.org/https://doi.org/10.31869/plj.v1i1.272>>.

<sup>15</sup> Anom Wahyu Asmorojati and others, 'The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights', *Bestuur*, 10.1 (2022), 43 <<https://doi.org/10.20961/bestuur.v10i1.60179>>.

<sup>16</sup> Maryana Lestari and Septhian Eka Adiyatma, 'Class Action Lawsuit on Civil Issues in Indonesia as Common Law Adoption', *Indonesian Journal of Advocacy and Legal Services*, 2.2 (2020) <<https://doi.org/10.15294/ijals.v2i2.38171>>.

Indonesian legal reform. Similar to this, any citizen may bring a citizen law suit, also known as an *actio popularis*, to protect the public interest. Even though citizen law suits, which have no legal protection at all, and class action lawsuits, which have legal protection in the form of PERMA No. 1 of 2002 concerning Class Action Procedures and their regulation in several laws in Indonesia, there have been judge decisions that affirm the rights of both in their application. Despite the fact that Law No. 30 of 2014 concerning Government Administration greatly increased individuals' access to justice, it also created loopholes in the law that made it more difficult for people to file cases pertaining to judicial jurisdiction and judges' abilities to conduct legal research. In court rulings from before 2014, citizens' or plaintiffs' ability to initiate a lawsuit was hampered by a number of causes, including judicial jurisdiction issues, issues with judges' lack of comprehension, and procedural issues arising from the presence or absence of a legal shield. Additionally, the existence of the Government Administration Law, which indirectly broadens the State Administrative Court's absolute competence in handling class action and citizen law suit cases, cannot, at the same time, resolve the legal ambiguity of jurisdictional issues, as both types of lawsuits are still frequently filed in general courts under the umbrella of civil cases with the government as the defendant.<sup>17</sup>

Government administration is investigated in terms of how the government functions in achieving its goals as a connecting link that ties the relationship between the state (state) and society (citizens). In this regard, UUAP serves as a legal foundation (*beroeppgronden*) that serves as a sign and primary reference for bureaucrats or government representatives in making decisions and taking actions in the performance of their duties and functions, as well as a legal foundation (*toetsingronden*) for State Administrative Court judges in resolving conflicts that arise between the government and the community.<sup>18</sup> In this scenario, the Law on Government Administration is Material Law, but the Law on State Administrative Courts is Procedural Law (formal law). This suggests that the Government Administration Law is a type of written documentation (codification) of the idea of administrative law relating to standards, demands, and practices for making decisions and or government administrative actions, where one of the objectives is to provide protection to people and the public from bad administration practices as well as all types of authority abuse committed by both institutions and government officials<sup>19</sup>.

Class action lawsuits were originally formed in nations that upheld the common law legal tradition followed by Anglo Saxon nations. They were first introduced in England at the start of the 18th century and later spread to other common law nations. Following that, this litigation model saw major expansion, and nations that uphold the civil law system, including Indonesia, followed suit because of the necessity for law enforcement, particularly in the area of the environment. With the creation of PERMA No. 1 of 2002, which was included in the range of civil cases brought before the District Court because it was a lawsuit that in essence filed an injunction or demanded compensation for material losses suffered by the plaintiffs represented by the class representative, the class action

---

<sup>17</sup> Nurasti Parlina, 'PENERAPAN CLASS ACTION DI INDONESIA STUDI KASUS PUTUSAN NOMOR 1794 K/Pdt/2004', *Jurnal Poros Hukum Padjadjaran*, 2.2 (2021), 237–52 <<https://doi.org/10.23920/jphp.v2i2.377>>.

<sup>18</sup> Aju Putrijanti, 'Jurisprudence of State Administrative Courts in The Development of State Administrative Law', *Jurnal Penelitian Hukum De Jure*, 21.2 (2021), 161 <<https://doi.org/10.30641/dejure.2021.V21.161-174>>.

<sup>19</sup> Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68 <<https://doi.org/10.20961/bestuur.v10i1.59098>>.



lawsuit model was then immediately positively impacted. The development did not end there, though, as it turned out during its implementation that a number of class action lawsuits filed in the District Court were rejected in the judge's verdict because the judge believed that the lawsuit fell under the wrong judicial jurisdiction and should have been brought before the State Administrative Court. While the State Administrative Court's class action lawsuit lacks a legal foundation that governs this issue specifically.<sup>20</sup>

Judges' authority to accept or reject class action cases both at the preliminary examination stage and in the verdict is impacted by developments in Indonesian law, which are indirectly brought on by the lack of a legal foundation for class action submission in the litigation process at the PTUN<sup>21</sup>. When resolving class action lawsuits, judges, particularly state administrative judges, must exercise judicial activism. Judges urgently need to think ahead in order to implement the doctrine of *stare decisis*, which is typically applied in nations with a history of common law legal systems. This is due to the emergence of jurisprudence that simultaneously creates new law on class action cases resolved in the domain of state administrative courts. This is conceivable because Indonesia's legal system is a convergence of civil law and common law rather than a strict adherence to either one. The "ius curia novit principle" and Article 10 Paragraph 1 of Law Number 48 of 2009 Concerning Judicial Power, which states that "The court is prohibited from refusing to examine, hear, and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and hear it," serve as evidence for this. Judges' roles in examining the values that live and evolve in society will become more active as a result of the resolution of class action cases that have no regulation even in the area of state administration or citizen law suit cases that have never even had a legal shield.

The next issue, though, is that we cannot leave the maintenance of legal certainty in the hands of administrative judges and general court judges, as there are still significant discrepancies in their judgments when it comes to class action lawsuits and citizen law suits, and they are unable to ensure legal certainty. Particularly in light of Law No. 30 of 2014, which creates new avenues for access to justice through the expansion of the subject matter of state administrative disputes and creates venues for citizen and class action lawsuits in the context of state administrative courts.

The case of building demolition carried out without a warrant or advance notification letter, where the demolition is included in the realm of factual actions and is not part of the authority of the PTUN in resolving it, is one of the jurisprudences used as a landmark in the handling of legal cases in Indonesia as evidence of the convergence of legal systems. Due to the unlawful activities perpetrated by the authorities, the victim must file a case with the general court (*onrechmatige overheidsdaad*). The Supreme Court's decision No. 144 K/TUN/1998 regarding the demolition of land on other people's property that was carried out without a prior order or notification letter was included in the Supreme Court's Jurisprudence in 1999 and simultaneously became a precedent in subsequent similar cases. This decision established the rule of law. The fact that factual actions are now the sole purview of state administrative courts rather than general courts has caused a problem for future legal harmonization. This is owing to recent

---

<sup>20</sup> Awaludin Marwan, Diana Odier Contreras Garduno, and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <<https://doi.org/10.20961/bestuur.v10i1.59143>>.

<sup>21</sup> Christine Bartholomew, 'Antitrust Class Actions in the Wake of Procedural Reform', *SSRN Electronic Journal*, 97.4 (2021) <<https://doi.org/10.2139/ssrn.3955317>>.

modifications in the procedural legislation at the State Administrative Court.

Even though the judge-made law rule has drawn a lot of criticism from positivists, such as Hans Kelsen and Jeremy Bentham, regarding the legal uncertainty brought on by laws that are passed outside of the legislative process that, according to the common law tradition, should be carried out by parliament. such that the resulting legal goods lack the clarity and documentation of written law. This objection, however, has been disproved because written law also has the capacity to produce legal ambiguity because its sentences might have complex connotations that give rise to various interpretations by judges. This has an impact on judges' interpretation of the law, which can lead to variations in how procedural law is understood and how the law is applied in different courts, which results in legal uncertainty.

### **E. Combined Actio Popularis and Class Action Lawsuits Based on Prismatic Values of Pancasila in Realizing Legal Justice**

The regulation of class actions, which is positivized in PERMA No. 1 of 2002 as a legal framework for class action guidelines for people who will file a lawsuit and also guidelines for judges in deciding the lawsuit model in the civil sphere, is a result of the positivism madhhab, which has a strong influence in Indonesia. Nevertheless, while being controlled, the use and execution of class action lawsuits still results in a great deal of legal ambiguity for both the parties filing the lawsuits and the judges who will adjudicate the case due to a lack of knowledge of the litigation concept.

The Indonesian legal system's actio popularis and class action lawsuit models mandate that a number of citizen law suit requirements that have been known in judicial institutions and class actions that are subject to PERMA No. 1 of 2002 must be satisfied before a new lawsuit can be filed in the area of public law. The Republic of Indonesia's 1945 Constitution's Article 28 D paragraph (1), which guarantees "fair legal certainty resulting from the values enshrined in the teachings of Pancasila," serves as the foundation for the rebirth of the litigation model. The primary requirement in the paradigm of litigation reform for the sake of the public interest is justice.

The results of this study show that the combination model of the two types of lawsuits is based on the legal principle known as *injuria sine damno*, which states that even if no harm has been done, the defendant is still obligated to make up for it. The act of trespassing is one example of how this principle is applied. The doctrine is known as *injuria absque damno* according to Black's Law Dictionary, which translates to: "damage without injury. a wrong that is committed but has no impact on loss or harm; as a result, it cannot be held accountable." This is in contrast to the notion of *damnum sine injuria*, which is an example of an exception, which states that even if damage is committed, the offender is not required to make restitution if the cause is a legal or statutory order.

The plaintiff in an actio popularis lawsuit in the United States, in addition to suing civilly, also seeks compensation related to injunctive relief regarding law enforcement, whereas in Indonesia, the plaintiff only requests the issuance of a policy in the form of *regeling* and makes no claim for compensation to the



government.<sup>22</sup> This is another finding from this research. Additionally, it has the authority to demand dwangsom civil penalties for any time infractions of quality standards are not immediately stopped. The notice of violators is a feature of both the US and Indonesian applications of *actio popularis*. *Actio popularis* lawsuits are common in Anglo-American law, and for good reason—the US Constitution explicitly recognizes the importance of the public in government and the existence of public service positions and a workforce that can be hired on the basis of performance. As previously said, a lawsuit is a crucial component of self-government. It is one of the freedoms guaranteed by the Bill of Rights, which eventually served as the foundation for the Petition Clause of the First Amendment to the Constitution. In Australia, class action lawsuits have also emerged, particularly in environmental disputes.<sup>23</sup>

Model kombinasi gugatan *actio popularis* dan *class action* yang dapat membawa Indonesia mewujudkan keadilan hukum adalah dengan mengkualifikasikan perbuatan melawan hukum (*onrechtmatigheid overheidsdaad*) dalam dimensi hukum publik yang lebih luas, baik bertentangan dengan kewajiban hukum maupun bertentangan dengan keharusan dalam pergaulan masyarakat. Perbuatan (*daad*) yang disebut sebagai melawan hukum menurut M.A. Moegino Djodirdjo, SH., merupakan tindakan apabila dapat memenuhi salah satu dari beberapa pengertian: bertentangan dengan kewajiban hukum, melanggar norma kesusilaan, bertentangan dengan hak orang lain, dan bertentangan dengan keharusan dalam pergaulan masyarakat<sup>24</sup>.

In order to make the filing of an *actio popularis* case more effective, the combined model of the two types of action is founded on the doctrine of compensation. There is no need to file a class action lawsuit and an *actio popularis* lawsuit separately because doing so would render the filing of a lawsuit ineffective and make it difficult to achieve legal justice. Instead, the government is still required to pay damages when it is found to have violated the rights of citizens even though there has been no loss. Of order to prevent a hybridization of the common law system and the civil law system, this better ensures that legal justice is founded on the fifth principle of Pancasila, the state philosophy and legal system in Indonesia.<sup>25</sup>

## F. Conclusion

The influence of positivism in the formation of law in Indonesia with a civil law legal system related to citizen law suit lawsuits which until now have not received juridical recognition of the right to sue in legislation, so that it has an impact on the confidence of judges in granting or rejecting the lawsuit and in some

---

<sup>22</sup> Listyalaras Nurmedina, 'Perbandingan Penyelesaian Sengketa Lingkungan Hidup Melalui Mekanisme Gugatan Warga Negara (Citizen Lawsuit) Di Indonesia Dan Amerika Serikat', *Simbur Cahaya*, 28.2 (2021), 245 <<https://doi.org/10.28946/sc.v28i2.1236>>.

<sup>23</sup> Richard Ryan and Ellen Parry, 'The Montara Class Action Decision and Implications for Corporate Accountability for Australian Companies', *Business and Human Rights Journal*, 6.3 (2021), 599–606 <<https://doi.org/10.1017/bhj.2021.39>>.

<sup>24</sup> Via Melati Sukma, 'GUGATAN CLASS ACTION DALAM KASUS HAM: SEBUAH REVIEW BUKU "STIGMA 65 STRATEGI MENGAJUKAN GUGATAN CLASS ACTION, RESTARIA F HUTABARAT (Ed.)"', YAYASAN OBOR PUSTAKA INDONESIA, JAKARTA 2013', *Lex Scientia Law Review*, 2.2 (2018), 249–55 <<https://doi.org/10.15294/lesrev.v2i2.27584>>.

<sup>25</sup> Arifin Maruf, 'Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <<https://doi.org/10.53955/jhcls.v1i1.4>>.

cases it is not uncommon for judges in Indonesia to have the courage as a form of judicial activism in recognizing the right to sue citizen law suit even though there is no legal umbrella based on the principle of *ius curia novit*. This encourages the spirit and role of judges in making law through the jurisprudence of court decisions in resolving citizen law suit and class action disputes in the PTUN realm as a precedent for the handling of subsequent similar cases. Although this tends to follow the tradition of AngloSaxon countries with the tradition of the common law legal system. However, recognition of the convergence between civil law and common law legal systems has long been a discourse and debate among legal scholars where the two do not negate each other, but rather influence each other and merge with each other in the development of law in Indonesia.

The combination model of the two types of lawsuits is based on the doctrine of *injuria sine damn*, which explains that even if no loss is found, the defendant still has an obligation to compensate for the loss, so that in filing an *actio popularis* lawsuit the plaintiff can not only claim related to the policy or *regeling* that must be issued by the government but can also claim compensation as a requirement for class action lawsuits. In addition to this, the shift in the principle of point d interest point d action after the presence of the Government Administration Law also makes the nature of the two lawsuit models no longer in the realm of civil law but has shifted to the realm of public law and is part of the absolute competence of the State Administrative Court.

### **G. Reference**

- Asmorojati, Anom Wahyu, Muhammad Nur, Indah Kusuma Dewi, and Hezlina Hashim, 'The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights', *Bestuur*, 10.1 (2022), 43 <<https://doi.org/10.20961/bestuur.v10i1.60179>>
- Bartholomew, Christine, 'Antitrust Class Actions in the Wake of Procedural Reform', *SSRN Electronic Journal*, 97.4 (2021) <<https://doi.org/10.2139/ssrn.3955317>>
- Christiani, Theresia Anita, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201-7 <<https://doi.org/10.1016/j.sbspro.2016.05.006>>
- Dwi Indriati, Ervina, Sary Ana, and Nunung Nugroho, 'Philosophy Of Law And The Development Of Law As A Normative Legal Science', *International Journal of Educational Research & Social Sciences*, 3.1 (2022), 425-32 <<https://doi.org/10.51601/ijersc.v3i1.293>>
- Endang Mustikowati, 'Analisis Normatif Terhadap Pengajuan Gugatan Perwalian Kelompok (Class Action) Di Pengadilan Menurut Hukum Acara Perdata', *Jurnal Yustisiabel*, 3.1 (2019), 62-75 <<https://doi.org/https://doi.org/10.32529/yustisiabel.v3i1.298>>
- Iqbal, Moch, 'Aspek Hukum Class Action Dan Citizen Law Suit Serta Perkembangannya Di Indonesia', *Jurnal Hukum Dan Peradilan*, 1.1 (2012), 89-112 <<https://doi.org/10.25216/jhp.1.1.2012.89-112>>
- Khoirunnisa, Humaira, Shafa Amalia Choirinnisa, and Raden Muhammad Arvy Ilyasa, 'Quo Vadis: Penerapan Citizen Lawsuit Sebagai Upaya Perlindungan Terhadap Lingkungan Hidup', *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria*, 1.1 (2021), 117-37 <<https://doi.org/10.23920/litra.v1i1.587>>
- Kurniawan, Rizky Ramadhani, 'Integrasi Citizen Lawsuit Sebagai Hak Prosedural Atas Lingkungan Hidup Dalam Dimensi HAM', *Pagaruyuang Law Journal*, 1.1 (2017), 92-109 <<https://doi.org/https://doi.org/10.31869/plj.v1i1.272>>

- Lestari, Maryana, and Septhian Eka Adiyatma, 'Class Action Lawsuit on Civil Issues in Indonesia as Common Law Adoption', *Indonesian Journal of Advocacy and Legal Services*, 2.2 (2020) <<https://doi.org/10.15294/ijals.v2i2.38171>>
- Lin, Hanxin, and Cheryl Xiaoning Long, 'Do Discretion Criteria for Patent Administrative Law Enforcement Encourage Innovation among Firms?', *China Economic Quarterly International*, 1.2 (2021), 160–75 <<https://doi.org/10.1016/j.ceqi.2021.05.001>>
- Maruf, Arifin, 'Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <<https://doi.org/10.53955/jhcls.v1i1.4>>
- Marwan, Awaludin, Diana Odier Contreras Garduno, and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <<https://doi.org/10.20961/bestuur.v10i1.59143>>
- Mochtar, Zainal Arifin, and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68 <<https://doi.org/10.20961/bestuur.v10i1.59098>>
- Nasir, Cholidin, 'Pengawasan Terhadap Kebijakan Pemerintah Melalui Mekanisme Citizen Lawsuit', *Jurnal Konstitusi*, 14.4 (2018), 906 <<https://doi.org/10.31078/jk14410>>
- Nurmedina, Listyalaras, 'Perbandingan Penyelesaian Sengketa Lingkungan Hidup Melalui Mekanisme Gugatan Warga Negara (Citizen Lawsuit) Di Indonesia Dan Amerika Serikat', *Simbur Cahaya*, 28.2 (2021), 245 <<https://doi.org/10.28946/sc.v28i2.1236>>
- Paola, Katherine, and Ribero Salazar, 'Rule of Law : The Soul of Transitional Justice in the Rule of Law', 5.3 (2022), 276–83 <<https://doi.org/10.11648/j.ijls.20220503.15>>
- Parlina, Nurasti, 'PENERAPAN CLASS ACTION DI INDONESIA STUDI KASUS PUTUSAN NOMOR 1794 K/Pdt/2004', *Jurnal Poros Hukum Padjadjaran*, 2.2 (2021), 237–52 <<https://doi.org/10.23920/jphp.v2i2.377>>
- Purwendah, E. K., Rusito, A. Awaludin, and I. D.S. Triana, 'Public Participation in Environmental Protection: Citizen Law Suits in the Indonesian Civil Justice System', *IOP Conference Series: Earth and Environmental Science*, 1030.1 (2022) <<https://doi.org/10.1088/1755-1315/1030/1/012022>>
- Putrijanti, Aju, 'Jurisprudence of State Administrative Courts in The Development of State Administrative Law', *Jurnal Penelitian Hukum De Jure*, 21.2 (2021), 161 <<https://doi.org/10.30641/dejure.2021.V21.161-174>>
- Riana Susmayanti, 'Analisis Putusan Tentang Gugatan Citizen Lawsuit Terhadap Pengabaian Jaminan Sosial Oleh Pemerintah', 2017, pp. 462–79
- Ryan, Richard, and Ellen Parry, 'The Montara Class Action Decision and Implications for Corporate Accountability for Australian Companies', *Business and Human Rights Journal*, 6.3 (2021), 599–606 <<https://doi.org/10.1017/bhj.2021.39>>
- Setyawan, Yuswanto, 'Acute Kidney Injury in Critically Ill Patients with Cancer', *Medical Scope Journal (MSJ)*, 3.1 (2021), 8–15 <<https://doi.org/10.2215/CJN.15681221>>
- Sharaningtyas, Yustina Niken, 'GUGATAN WARGA NEGARA (CITIZEN LAW SUIT) DAN JUSTICIABILITY PEMENUHAN HAK ATAS LINGKUNGAN HIDUP YANG BAIK DAN SEHAT', *Kertha Patrika*, 38.1 (2016) <<https://doi.org/10.24843/KP.2016.v38.i01.p03>>
- Sinaga, Paris Hendra Wijaya, Firdausa Panji Bagas Wiratama, Fransiska Indriati, Dewi Ayu Rahayu, and Sunarjo Sunarjo, 'Social Control of Government Policy through the Citizen Lawsuit Mechanism', *Jurnal Cakrawala Hukum*, 13.2 (2022), 123–34 <<https://doi.org/10.26905/idjch.v13i2.7875>>

- Sukma, Via Melati, 'GUGATAN CLASS ACTION DALAM KASUS HAM: SEBUAH REVIEW BUKU "STIGMA 65 STRATEGI MENGAJUKAN GUGATAN CLASS ACTION, RESTARIA F HUTABARAT (Ed.)", YAYASAN OBOR PUSTAKA INDONESIA, JAKARTA 2013', *Lex Scientia Law Review*, 2.2 (2018), 249-55  
<https://doi.org/10.15294/lesrev.v2i2.27584>
- Trang, N. H. (2021). Non-English Major Students' Motivation in English Classrooms: Evidence from a University Setting. *International Journal of Educational Technology and Learning*, 11(2), 14-21.  
<https://doi.org/10.20448/2003.112.14.21>
- Trang, N. H. (2022). Students' Attitudes towards Translation, their Difficulties and Use of Strategies in Vietnamese-English Translation. *International Journal of Educational Technology and Learning*, 12(2), 16-25.  
<https://doi.org/10.55217/101.v12i2.523>