A Study of the Application of Citizens' Lawsuit Concept for Environmental Law Enforcement: “Towards Its Integration into Indonesian Civil Procedural Law”

環境法の法執行に関する市民訴訟概念の適用に関する研究

- インドネシア民事訴訟法への統合に向けて -

Ph.D Dissertation

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Author,
Nyoman Satyayudha Dananjaya
ニョマンサティヤユダダナンジャヤ

THE LIFE APHORISMS

"The way things get started is to quit talking and begin doing."

"If you are working on something that you really care about, you don't have to be pushed. The vision pulls you."

"You can't go back and change the beginning, but you can start where you are and change the ending".

"Good things come to those who believe, better things come to those who wait, and the best things come to those who put in effort and don't give up".

"Sometimes life doesn't give you what you want, not because you don't deserve it, but because you deserve so much more."

"Never regret a day in your life; good days give happiness, bad days give experiences, the worst day gives lessons, and the best day gives memories."

STATEMENT OF ORIGINALITY

I do hereby declare that the work presented in this thesis is the result of my study.

I confirm that this thesis has not been previously submitted for the award of a degree by this or any other university.

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A Study of the Application of Citizens' Lawsuit Concept for Environmental Law Enforcement: "Towards Its Integration into Indonesian Civil Procedural Law"

Abstract

The environment is the source of life for humans, animals, plants, and other living things. Therefore, every aspect of development activities and processes must pay attention to aspects of environmental protection and management. Environmental protection is a priority that must be done, in order to maintain the continuity of the living system. Habitable, wholesome, and sustainable environment is an integral part of being fully enjoyed as a constitutional right of citizens. The occurrence of various environmental problems/cases in Indonesia will not only seen from juridical aspect but needs to be viewed from the underlying aspects. The environmental crisis is considered to be occurred because irresponsible, ignorance behavior and only acts selfishly. This causes the exploitation of the environment to meet interests and needs without paying sufficient attention to environmental protection and preservation, even to the occurrence of environmental destruction and pollution. Environmental problems become serious concern for Indonesian citizens. Indonesia faces serious problems such as river pollution, air pollution, forest fires, timber theft, damage to coral reefs, flooding and so on. This is a very detrimental impact due to neglect of environmental aspects of the entire development process. The obligations and responsibilities of state administrators in fulfilling the rights to habitable and wholesome environment are the spotlight and concern of citizens. Negligence/omission committed by state administrators regarding the fulfillment of these rights often occurs in line with the development of the state. Citizens have a role in providing control over state administration. If state administrators commit negligence, omission and violation of laws and regulations that cause citizens' constitutional rights not to be properly achieved, then citizens as holders of sovereignty have the opportunity to sue the government to achieve justice. The unavailability of procedures for citizens who have been harmed either directly or indirectly due to negligence/ omission of state administrators in guaranteeing the constitutional rights of their citizens to habitable and wholesome environment, thus, causing more and more environmental problems to occur in Indonesia. In some countries that adhere to the common law system, citizens' lawsuit is known as the concept of solving environmental problems/cases. Since the implementation of this concept, suing the state on the basis of public interest due to negligence/omission to protect the environment, environmental problems have decreased. However, whether this concept cannot be applied in solving environmental problems in Indonesia and can be applied in the civil justice system in Indonesia? cannot be applied in solving environmental problems in Indonesia or can it be according to civil justice systems in Indonesia.

Questions that arise and will be discussed regarding (1) the acceptance of citizens' lawsuit concept as an access to justice in solving environmental law enforcement problems in Indonesia (2) the citizens' legal standing be an important instrument of citizen lawsuit concept for the basic consideration of the lawsuit acceptance by the court and (3) the importance of applying the citizens' lawsuit concept and opportunities for its application in Indonesia. This study uses the normative legal research method that focus on literature research both books, journals, cases, legislation, and electronic documents. The discussion

will be assisted by relevant theories such as giving legal right to the environment, law enforcement, legal transplants, legal certainty, the structure of law, progressive of law and other theories that support the discussion of the problems in this thesis.

The results of that study show that the citizen lawsuit brings new constituents for law enforcement efforts. The citizens' lawsuit has the intended effect of imposing a new law enforcement regime that is laden with environmental norms. Thus, an important objective of the citizen lawsuit is to promote the enforcement of the right to habitable and wholesome environment. Understanding citizens' lawsuit inherently requires access to address certain environmental problems and this creates an integrated law enforcement system by placing the power of law enforcement in the hands of citizens to increase oversight of state administration which is obliged to provide protection and fulfillment of citizens' constitutional rights. Citizen lawsuit is a form of right of access to justice because it supports law enforcement by citizens, which initially refers to the increasing number of environmental problems that arise due to negligence/omission/silent actions of state administrators in providing supervision/control of people/business activities that have a negative impact on environment and it is detrimental to the public interest. Regarding legal standing, harmonization with the civil law system in Indonesia does not conflict with existing legal principles. Whereas in traditional civil procedural law, legal standing is always associated with the existence of legal interests, understanding the concept of access to justice and environmental protection, legal standing without legal interests and only based on adequate interests not legally deviating. The shift in the concept of traditional legal standing in Indonesia to the modern concept of legal standing needs to be interpreted as a positive development because of the state's factor as the ruler of nature, the environment, and the resources in it as well as the interests of the wider community. In line with the development of public interest law, the concept of legal standing in cases related to the public interest has shifted. A person or group of people or organizations can act as plaintiffs even though they have no direct interest. Changing the procedural dimension for deciding legal standing is necessary in Indonesia by accepting a re-reasoning about the concept of legal standing for citizens. Acceptance of re-reasoning the legal position of citizens in the concept of a citizen lawsuit in Indonesia should reduce restrictions on who can file a civil suit. Courts need understanding to go beyond legal standing requirements which are not necessary to bring cases involving the public interest. The importance of applying the concept of citizen lawsuit in Indonesia because it is related to the constitutional rights of citizens regarding habitable and wholesome environment. The implementation of this concept is urgent in law enforcement and also for the development of the civil justice system in Indonesia. In addition, the requirements for obtaining habitable and wholesome environment are rights related to the public interest mandated by the constitution and environmental laws and regulations, which then become the legal obligations of state administrators. These legal obligations include obligations to recognize and respect, obligations to protect and obligations to fulfill. Citizens' lawsuit that can be developed in Indonesia in an effort to enforce environmental laws are a concept of lawsuits aimed for state administrators. Citizens only demand in the form of orders that state administrators must take certain actions namely restoring and improving the condition/situation without demanding compensation in an amount of money. Therefore, it is clear that the objectives to be achieved in the concept of a citizen lawsuit that can be applied in Indonesia are restoration, protection, and environmental preservation.
Keywords : Application, Citizens' Lawsuit, Environmental Law Enforcement.

LIST OF TABLES

LIST OF ABBREVIATION

ALRC : Australian Law Reform Commission.

BOD : Biochemical Oxygen Demand, represents the amount of oxygen consumed by bacteria and other microorganisms while they decompose organic matter under aerobic (oxygen is present) conditions at a specified temperature. Is a measure of the amount of oxygen required to remove waste organic matter from water in the process of decomposition by aerobic bacteria.

B3 : Indonesian Abbreviation for *Bahan Berbahaya dan Beracun* (Harzardous and Toxic Substance).

COD : Chemical Oxygen Demand **is** the amount of oxygen consumed to chemically oxidize organic water contaminants to inorganic end products.

ESA : The U.S Endangered Species Act of 1973

FOE : Friends of the Earth is an environmental organizations was founded in 1969 in San Francisco by David Brower, Donald Aitken and Gary Soucie after Brower's split with the Sierra Club due to the latter's positive approach to nuclear energy. It became an international network of organizations in 1971 with a meeting of representatives from four countries: U.S., Sweden, the UK and France

HIR : *Herziene Indonesisch Reglement* ("HIR") is derived from the *Inlandsche Reglement* ("IR"), Listed in State Gazette 1848 No. 16, whose full title is *Reglement op de uit oefening van de politie, de Burgelijke rechtspleging en de Strafvordering onder de Indlanders en de Vremde Oosterlingen op Java en Madura* (Reglemen on carrying out police duties, civil cases hearing and prosecution of criminal cases for the Indonesian and the East Foreign People in Java and Madura). Currently what applies is the provision regarding civil procedural law

only. Thus, it is referred to as Indonesian code of civil procedure for Java and Madura area.

ICEL : Indonesian Center for Environmental Law

IDR : Is an international well-known abbreviation for Indonesian currency (Indonesian Rupiah).

IPAL : Indonesian Abbreviation for *Instalasi Pengolahan Air Limbah* (sewage treatment plants).

KMnO4 : Pottasium Permanganate, is widely used in chemical industry and laboratories as a strong oxidizing agent, and also as a medication for dermatitis, for cleaning wounds, and general disinfection. It is on the WHO Model List of Essential Medicines, the safest and most effective medicines needed in a health system.

NGO : Non-Governmental Organization.

NH4 : Ammonium, is a nontoxic salt. It is the ionised form of ammonia.

RBg : An abbreviation of *Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura*. (Regulation of Legal Procedures for Regions Outside Java and Madura). which is often translated by the *Rechtreglement Voor De Buitengewesten*,. Listed in State Gazette 1927 No. 227. currently what applies is the provision regarding civil procedural law only. Thus, it is referred to as the Indonesian code of civil procedure for outside Java and the Madura area.

RCRA : The U.S. Resource Conservation and Recovery Act of 1976

SA : Shareholder Agreement

SOE : State-Owned Enterprise

SPA : Share Purchase Agreement

UNCHE : United Nation Conference on the Human Environmental.

U.S. EPA : The United States of America Environmental Protection Agency

WCED : World Commission on Environment and Development.

TABLE OF CONTENT

CHAPTER I.
INTRODUCTION

The environment is the source of human life, therefore, human needs are related to the environment so that in every aspect of human activities they must pay attention to the aspects of environmental protection and management. As important as the role and function of the environment for human life, the protection of the environment is a priority that must be done. Environmental protection efforts should be implemented because there is disproportion between the need for development on the one hand and the importance of preserving the environment on the other. sustainable development is essential needed if the development carried out has a negative impact on the environment, it will further threaten the survival of living systems.

Sustainable development is a development process that lays down the principle of development without damaging the environment. The WCED brief that sustainable development as the "ability to make development sustainable, to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs".[1] Sustainable development means attaining a balance between environmental protection and human economic development between the present and future needs. It requires an integration of economic, social, and environmental approaches towards development.[2] This is in line with the Rio Declaration[3] of the 3rd Principle[4] often referred to as the Principle of Intergenerational Equity[5]. Leaving a fair share of the benefits and burdens

[1] GRO HARLEM BRUNDTLAND, OUR COMMON FUTURE, 8 (World Commission on Environment and Development (WCED), Oxford: Oxford University Press, 1987).

[2]Vineeta Singh, *An Impact and Challenges of Sustainable Development in Global Era*, 2 JOURNAL OF ECONOMICS AND DEVELOPMENT STUDIES, 327, 332-34 (2014).

[3]The Rio Declaration on Environment and Development, often referred to as Rio Declaration consisted of 27 principles intended to guide countries in future sustainable development. It was a document produced by United Nations Conference on Environment and Development (UNCED) at the 1992 and also known as the Earth Summit.

[4]The 3rd Principle of Rio Declaration is the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

[5]Intergenerational equity is actually an effort to guarantee (at least) the availability of opportunities or equivalent opportunities for future generations to obtain welfare. There must be a kind of justice (equity) that future generations do not bear heavy burdens (low quality of life) because of the unhealthy and

of utilizing natural resources is not the same as leaving the equal share, but it means more than leaving only the minimum resources needed by future generation to stay alive. It has also been said that present generation must provide a reasonable balance between satisfying their own needs and leaving enough natural resources for future generation to meet their needs.[6] The thought and action were based on the interests of the utilization and fulfillment of the needs without thinking about environmental conservation and protection, does not support sustainable development which will ultimately damage the carrying capacity of the environment. This implies that the future generations will have a standard of living that is not supported by a habitable and wholesome environment. Criteria for sustainability assessments include this passage on intergenerational equity favours present options and actions that are most likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably.[7] Therefore, the direction and orientation of the sustainable development concept are assisted and clarified by the existence of rights such as economic, social, cultural, development rights as well as the right to the environment. The importance of sustainable development is closely related to the habitable and wholesome environment as the main means of supporting human life.

All humans depend on the environment as a place to live. Habitable, wholesome, and sustainable environment is an integral part of being able to fully enjoy citizen constitutional rights. Without regard for the environment, we can neither fulfill our dignity, while protecting constitutional rights we are also improving the protection and preservation of the environment to improve human welfare equally for all. Not infrequently, the development in various fields have an adverse impact on the environment. The occurrence of environment destruction or pollution which causes a significant decrease in the quality of the environment required an effective settlement effort through the environmental law enforcement as a legal action that can be taken to penalizes any wrong doers.

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uninhabitable environment left behind by the present generation. See Mas Achmad Santosa, Good Governance dan Hukum Lingkungan [Good Governance and Environmental Law], 163 (JAKARTA, ICEL, 2001).

[6] Otto Spijkers, *Intergenerational Equity and the Sustainable Development Goals*, 10 JOURNAL SUSTAINABILITY, 1, 3 (2018).

[7] See Aaron Golub et.al, *Sustainability and Intergenerational Equity: Do Past Injustices Matter?*, SUSTAINABILITY SCIENCE, DOI 10.1007/s11625-013-0201-0, 274 (2013)

1.1 General Background

The occurrence of environmental cases in Indonesia be viewed from the underlying aspect. The source of environmental destruction and pollution is irresponsible behavior, not caring about the environment and just being selfish. This closely related to the perspective whose adherents of anthropocentrism which merely placing the environment just as it means to meet human needs. The term "anthropocentrism" was first coined in the 1860's, amid the controversy over of Charles Darwin's theory of evolution, to represent the idea that humans are the center of the universe.[8] In anthropocentrism ethics, nature has moral considerations because degrading or preserving nature can in turn endanger or benefit human. [9] Anthropocentrism viewpoint arguing that human beings are the central or most significant entities in the world. Anthropocentrism regards humans as separate from and superior to nature and holds that human life has intrinsic value, while other entities (including animals, plants, mineral resources, and so on) are resources that may justifiably be exploited for the benefit of humankind.[10] Confers intrinsic value on human beings and regards all other things, including other forms of life, as being only instrumentally valuable, i.e., valuable only to the extent that they are means or instruments which may serve human beings.[11] The highest value is human and their interests, only human who have value and get attention. Everything else in the universe will only get value and attention as far as it is and for the sake of human beings. Therefore, environment (nature) is seen as objects, tools, and means for the fulfillment of human needs and interests. Environmental and animal philosophers who consider their views assert that anthropocentrism is most blame-worthy for hierarchically valuing human above nonhuman.[12] Thus, obligations and human moral responsibilities to the environment are solely for the benefit and to meet the interests of fellow human beings.

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[8] See Elisa K. Campbell, *Beyond Anthropocentrism*, 19 JOURNAL OF THE HISTORY OF THE BEHAVIORAL SCIENCE, 54, 54-67 (1983).

[9] Katherine V. Kortenkamp et al., *Ecocentrism and Anthropocentrism: Moral Reasoning About Ecological Commons Dilemmas*, 21 JOURNAL OF ENVIRONMENTAL PSHYCOLOGY 261, 261-63 (2001).

[10]Sarah E. Boslaugh, *Anthropocentrim Philosophy*, available at https://www.britannica.com/topic/anthropocentrism, last visited 2nd July 2018.

[11] J. Baird Callicott, *Non-Anthropocentric Value Theory and Environmental Ethics*. 21(4) AMERICAN PHILOSOPHICAL QUARTERLY, 299, 299-301 (1984).

[12] Kyle Burchett, *Anthropocentrism and Nature an Attempt at Reconciliation*, 18 TEORIA. RIVISTA DI FILOSFIA FONDATA DA VITTORIO SAINATI 199, 121-25 (2014).

Obligations and responsibilities to environment are merely the manifestation of moral obligations and responsibilities to human beings. It is not a manifestation of obligations and human moral responsibilities to environment itself. Environment is valued as a tool for human interests. Even if human beings have a caring attitude towards environment, it is solely done to ensure the needs of human life, not because of the consideration that environment has value to itself so deserve to be protected. On the other hand, if nature itself is useless to human interests, environment will be ignored.

The environmental crisis is perceived to occur because of human behavior that is influenced by an anthropocentrism. This anthropocentric perspective causes humans to exploit environment in order to meet the interests and needs of their lives, without giving enough attention to the protection and preservation of environment and even destruction and pollution of the environment. Different things happen in countries that do not have natural resources rely on the ability of human resources. The biggest challenge lies in the ability of human resources so that the natural resources and wealth contained therein are not massively exploited which will have a negative impact on the environment. The environmental crisis is an impact of many environmental cases that have occurred but not resolved properly, even the left impact can be widespread. Citizens realize that habitable and wholesome environment is a citizens' constitutional right, so the obligation to protect the environment is also the concern of citizens because matters related with the rights to the environment and protection of the environment is elaborated in constitution and laws related to the environment.

1.1.1 Environmental law in Indonesia.

The Indonesian Constitution 1945, in the fourth amendment indicates that human life requires a habitable and wholesome environment. This is stated in Article 28 H paragraph (1) of Indonesian Constitution 1945. The implementation of this article brings Act No.32 of 2009 concerning Protection and Environmental Management (hereinafter referred to as the Environment Act). The Environment Act aims to protect the country from environmental pollution and/or destruction. Realizing sustainable development to anticipate global environmental issues. The Environment Act giving guarantee of legal certainty that provides protection for the constitutional rights of every citizen for habitable and wholesome

environment. Likewise, in general explanation of environment act, especially at point number (1) one firmly states: "The Constitution of the Republic of Indonesia Year 1945 states that habitable and wholesome environment is a constitutional right for every Indonesian citizen. The Constitution has incarnated and functioned as the basic principles in the administration of a state which must always live up to the times of its time. The provisions contained in the constitution have important meanings and great consequences to be implemented in earnest and without exception, either through various policies or laws and regulations. In relation to the protection of the environment, we should also note the benefit would have on the existence of environmental norms and provisions of sustainable development concept in constitution will have a significant legal effect. First, these provisions will influence the development of policies in order to protect the environmental values. Second, the constitutionalizing of environmental principles will create jurisdiction over national law which are applicable in every level of government, both provinces, cities, and regencies. In this context, capacity building and legal commitment of state administrators will be required by the constitution in an effort to manage the functions of the state involving environmental protection. Third, the contents of the constitution will also effect on the connection that will be established between substantive and procedural environmental law that are in line with environmental principles and norms in Indonesia.

The Environment Act has a system to realize the protection of the citizens constitutional rights to have a habitable and wholesome environment that is formed through two efforts, namely: First, preventive efforts in the context of controlling environmental impacts that are carried out, and by maximizing the utilization of monitoring and licensing instruments. Second, repressive efforts in the event of environmental pollution and/or destruction in the form of effective and consistent law enforcement against environmental pollution and/or destruction that has occurred. This law enforcement effort can be done by using civil law and criminal law instruments in resolving environmental cases through courts.

1.1.2 Environmental law enforcement in Indonesia.

In Article 65 and 66 of the Environment Act is defined in detail about the right to habitable and wholesome environment as well as provide protection for someone who takes

a role in environmental protection and enforcement.[13]

In Article 65 paragraph 4 of Environment Act it states that everyone has the right to play a role in environmental protection and management. The understanding of "everyone's role" in protecting and managing the environment here is based on everyone's right to a habitable and wholesome environment, as well as being related to the role that is obliged to maintain environmental functions and control environmental pollution/destruction and to protect the environment through environmental law enforcement. Environmental law enforcement can be implemented by civil, criminal, and administrative law enforcement, as following:

(a) Environmental civil law enforcement, including:

- Individual Ordinary Lawsuit (Article 87): Every person can file a lawsuit to court if there are other parties (a person or legal entities) causing direct harm to his rights to have a habitable and wholesome environment and those who are filing the lawsuit can ask for compensation and restoration.
- Group of People Lawsuit (Class Action) (Article 91):

  (1) Every person has the right to file a class action lawsuit for his own benefit and/or for the benefit of a group of people if he and/or group of people experiences losses due to environmental pollution and or destruction.

  (2) A class action lawsuit can be filed if there are similarities in facts or events, legal basis, and types of claims between group representatives and group members.

  (3) Provisions regarding the class action lawsuit are implemented in accordance with the Supreme Court Regulation No. 1 of 2002 concerning Class Action Procedure. A lawsuit is filed against other parties who commit actions against the law which cause direct losses. For losses suffered, a class action lawsuit can ask for compensation and restoration.
- Environmental Organization Lawsuit (NGO's Lawsuit) (Article 92):

  (1) In the context of implementing responsibilities for the environmental protection

[13] Article 65 (1) Everyone has the right to habitable and wholesome environment as part of human rights.(4) Everyone has the right to play a role in environmental protection and management in accordance with statutory regulations. Article 66 Every person who fights for the right to habitable and wholesome environment cannot be prosecuted criminal or civilly sued.

and management, environmental organizations have the right to file a lawsuit in the interest of preservation of functioning and living environment.

(2) The right to file a lawsuit is limited to demands for certain actions without any claim for compensation. Thus, what is requested by Environmental Organizations in this lawsuit is limited to environmental restoration and reversion to its original state.

(b) Environmental criminal law enforcement can be implemented by filing criminal indictment to the court if there is an action that violates criminal provisions in various laws and regulations related to the environment, causing pollution and/or destruction to the environment. Environmental criminal law enforcement is carried out based on the provisions of Articles 94-96 Environmental Act with the case settlement procedures contained in the Code of Criminal Procedure, where the provisions of the punishment refer to Articles 97-120 of the Environmental Act.

(c) Environmental administrative law enforcement can be implemented by filing administrative lawsuit. The Environmental Act determines in Article 93 that an administrative lawsuits can be filed to the Administrative Court. To file an administrative lawsuit is limited only if a person encounter losses, suffered directly as a result of the issuance of an administrative decision, mentioned as follows:

(1) A person can file a lawsuit against a state administrative decision if:

- State administrative bodies or officials issue environmental permits to businesses and/ or activities that are required to have an environmental impact analysis document but are not equipped with an environmental impact analysis document.
- State administrative bodies or officials that issue environmental permits for activities are not equipped with documents on environmental management and monitoring efforts.
- State administrative bodies or officials that issue business and/or activity licenses that are not equipped with environmental permits.

(2) The procedure for filing a lawsuit against state administrative decisions shall refer to the Procedural Law of the State Administrative Court.

1.1.3 Towards the development of environmental law enforcement to uphold citizens' constitutional right of a habitable and wholesome environment.

It is realized that the environment cannot defend his own rights without the role of a person. In the event of environmental pollution and destruction, a person's role is needed because environment said as an inanimate natural object. As Christopher D. Stone thought, environment (natural objects) would have standing in their own right, through a guardian… to flesh out the "rights" of the environment demands that we provide it with a significant body of rights for it to invoke when it gets to court.[14] In line with that thought, Tom R. Moore said "…then one returns full circle to the criteria for standing, because the most appropriate "guardian" is that party who can show injury in fact and assure the judiciary that he can adequately represent in the interests asserted. Persons with such human interests would be the only proper guardians of natural objects.[15]

In the development process, the negligence of the state administrators (government) can occur and disrupt the lives of its citizens. Citizens conceive that a habitable and wholesome environment is a constitutional right guaranteed by the state. If the government carries out negligent, abandonment and violation of laws and regulations which causes the constitutional rights of citizens are not achieved properly, then citizens as the holders of sovereignty have the opportunity to sue the government to achieve justice. In legislations that mandate the protection of the citizens' interests, as an example on the article 17 of the Act Number 39 of 1999 on Human Rights (hereinafter referred to as the Human Right Act) stipulates that everyone without discrimination is entitled to obtain justice by filing a petition, complaint and suit, in criminal, civil or administrative cases and on trial through impartial process, in accordance with the law which guarantees an objective examination by an honest and fair judge to obtain a fair and right decision.

Related to the environmental problems that occur in Indonesia, nature is part of the environment that is categorized as an inanimate object. As an inanimate object, nature cannot protect itself or even defend itself when there is destruction and pollution. Environment Act

[14] Christoper D. Stone, *Should Trees Have Standing?Towards Legal Rights for Natural Object*, 45 SOUTHERN CALIFORNIA LAW REVIEW 450, 450-58 (1972).

[15] Tom R. Moore, *Book Review: Should Trees have Standing? Towards Legal Rights for Natural Object*, 2(3) FLORIDA STATE UNIVERSITY LAW REVIEW 673, 672-674 (1974).

has clearly regulated the duties and authorities of the government as stipulated in Article 63 and 64 of the Environment Act, starting from the making of regulations, environmental policy. If the government cannot perform its role to give protection and management to the environment based on what has been determined in the law, then the citizens could be disadvantaged because they do not have habitable and wholesome environment. Based on the state constitution, the guarantee of habitable and wholesome environment is a constitutional right, making it possible for citizens to file a lawsuit as one of the environmental law enforcers, also called guardians of the environment.

As mentioned previously, in Environmental Act, there have been several determined efforts in environmental civil law enforcement to solve environmental problems/cases. Merely citizens as individuals, does not specify they can clearly file a lawsuit because of the negligence of the government to fulfill citizens' constitutional right related with habitable and wholesome environment. Whether they can lodge an environmental law enforcement effort due to, on the one hand, in material law (Environment Act) in case of destruction, pollution and inapposite policy of the environment causing enormous losses to the citizens, on the other formal law (Civil Procedure Law) also does not specify clearly about the concept for citizens as individual to be able to file a lawsuit against the government (citizen lawsuit) as a matter of concern and responsibility for their constitutional rights.

Environmental law enforcement efforts, such as those outlined in the Environment Act, determine that the form of environmental dispute resolution settled through the court is conducted to seek compensation and/or restoration of the environment. The absence of the procedures under which citizens who suffer losses directly or indirectly because of negligence/omission of the state administrators/government in providing guarantees to the constitutional rights of their citizens to habitable and wholesome environment, therefore causes more and more environmental problems that occur in Indonesia. Indeed, the concept whereby citizens can file a lawsuit against the government for its negligence/omission to keep the environment safe from destruction and pollution is well known in some countries that embrace the common law system. This concept is known as Citizen's Lawsuit where it was originally used to solve environmental cases. Viewed from the enforceability of this concept to solve environmental cases and will reduce environmental problems, could this

concept be applied and integrated into the civil procedural law in Indonesia that adheres to the civil law system. As a hypothesis, I assume that this concept can be applied considering the existence of Chief of Supreme Court Decree No 36/KMA/SK/II/2013 on Implementation Guidelines for Handling Environmental Cases which mentions citizen lawsuit as one of the efforts to solve environmental problems. Furthermore, there are several civil procedural concepts from the common law system that have been implemented and integrated with the issuance of a Supreme Court Regulation. Given the history of the emergence of the concept of citizen lawsuits from the common law system to overcome environmental problems and to be able to apply this concept by harmonizing with principles in Indonesian civil justice systems, issuing Supreme Court regulations is an attempt to integrate the concept of citizen lawsuit which can contain provisions on settlement procedures that refer to Indonesian Code of Civil Procedure. Therefore, with the application of this concept, environmental damage and pollution will be reduced and increase citizen's awareness of government involved in providing environmental protection and management.

1.2 Current Issues

Environmental issues began to be discussed since the United Nations Conference on Environment was held in Stockholm, Sweden, on 15 June 1972. There were 26 points which then used by many countries as a starting point for environmental improvement by issuing new environmental policies and regulations. In Indonesia, with the enactment of Act No. 4 of 1982 concerning Basic Provisions of Environment Management is a milestone of significant proportions as it was the first Act protecting the environment of Indonesia. The Act has been replaced twice and what is currently in effect is Act No. 32 of 2009 on Environment Protection and Management and as a follow-up to the government's attention to the 1972 Stockholm Conference or the United Nation Conference on the Human Environmental (UNCHE)[16] by seeking to create various laws and regulations. There are

[16] In response to the growing environmental movement of the 1960s, many nations began to take actions to protect the environment within their borders. By the early 1970s, however, governments began to realize that pollution did not stop at their borders. International consensus and cooperation were required to tackle environmental issues, which affected the entire world. In 1972, the United Nations Conference on the Human Environment (UNCHE) was convened to address issues concerning the environment and sustainable development. UNCHE, also known as the Stockholm Conference, linked environmental protection with

several points agreed upon in the Stockholm conference that are closely linked to the latest environmental issues in Indonesia, among others:

a. Natural resources must be maintained
b. The capacity of the Earth to produce renewable resources must be preserved
c. Pollution may not exceed the capacity to clean naturally
d. Defilement must be prevented
e. Development is needed to ameliorate the environment
f. Environmental policies should not hamper a country's development.

This becomes very important as the basis of environmental law enforcement that can be done to ensure a habitable and wholesome environment. Some of the latest issues that occur in Indonesia are:

River Pollution

(a) The Citarum has been called the world's most polluted river. Around 5 million people live in the river's basin, and most of them rely on its flow for their water supply. Heavy pollution of river water by household and industrial waste in the West Java Province is threatening the health of at least five million people living on the riverbanks. The River has a complex problem that is very embarrassing. Till this day, the River is still in a very poor condition. The Citarum River had flourished in the 1970's but now is heavily tainted. The condition is caused by the large amount of industrial waste as well as the household waste directly dumped into the river without being processed first. Every day people dispose of 400 tons of waste from livestock into the River. Every day, as many as 25 thousand cubic of household waste accommodated there and 280 tons of industrial waste flowed the Citarum River. Those things are causing pollution and sedimentation in the Citarum River. The sad thing is there are 46 thousand hectares of critical land in the upper course of Citarum River. It also results in increased sedimentation of the River.

(b) The pollution status of the Ciliwung River which flows through in Depok City is suspected to have been contaminated by household waste. The contamination is thought to be due to the absence of sewage treatment plants (IPAL) in the area. Household waste consists of black water (human waste) and gray water (light household waste) such as detergent water. As a result, from 2015 to mid-2016 the Nitrite content was in the range of 0.70 mg/L and the E-coli bacteria content in the river was the same. It is above the acceptable quality standard. Plastic waste is also a problem of the Ciliwung River. For Total Suspended Solid (TSS) parameters or suspended solids of 20 mg/L and the downstream is getting higher. The TSS concentration of the Condet River that enters the Ciliwung River is very high, namely 474 mg/L. Condet River is a tributary of the Ciliwung River which is surrounded by dense settlements, markets, and small medium industries. Organic materials which are suspended substances consist of various types of compounds such as cellulose, fat, protein floating in water or can also be in the form of microorganisms such as bacteria, algae, and so on. Apart from natural sources, these

sustainable development. The Stockholm Conference also produced concrete ideas on how governments could work together to preserve the environment.

organic materials also come from waste caused by human activities such as industrial activities, agriculture, mining, or household activities. For the parameters of organic matter (KMnO4, COD and BOD) showed almost the same trend. At the Kelapa Dua sampling point, the COD concentration was 27 mg/L and the BOD concentration was 15 mg/L. This has exceeded the quality standard for human consumption. For parameters of ammonia concentration (NH4) between 0.02 mg/L - 0.05 mg/L the downstream is getting higher. A very sharp increase in ammonia concentration occurred in the downstream direction of the Ciliwung River because it was in an area with a high population density. High ammonia levels indicate contamination of organic matter from domestic waste.

(c) Bengawan Solo is the longest river in Java Island which is included in the category of polluted river. Bengawan Solo passes through the densely populated Central Java and East Java Provinces, around 15.2 million people live in the Bengawan Solo River area and there are also many industries. Industrial waste, household waste, and livestock waste, from pig carcasses and chicken carcasses, have polluted rivers and caused thousands of fish to die. These problems can directly affect the life of aquatic organisms. The study of the physical-chemical parameters of the waters is expected to provide information on the status of water quality in Bengawan Solo. The parameters observed in this study were dissolved oxygen, carbon dioxide, pH, phenol, oil-fat, ammonia, Cd, Cr, Zn, Pb, Cu, and CN. There are indications that Bengawan Solo in the Solo-Sragen area and its surroundings has been heavily polluted with poor water quality, namely low oxygen (some locations are less than 2 mg/L, high carbon dioxide (8.8-34.32 mg/L), NH3 - High free N (some locations more than 0.2 mg/L), high COD (1.64-172 mg/L), high phenols (0.087-1,431 mg/L), high fatty oils (2,6-54, 6 mg/L). The concentration of heavy metals in several locations, namely Sewu Village, Bak Kramat, and Tundungan was quite high, namely Cr = 0.180-0.375 mg/L, Cu = 0.026-0.293 mg/L, and Zn = 0.515-2.892 mg/L. Likewise, the heavy metal content in broom fish (Liposarcus pardalis) is quite high in several locations in Sewu Village, Tundungan, Bak Kramat, and Need; Cr = 0.856-2.154 mg/kg, Cu = 3, 69-198.48 mg/kg, Pb = 1,067-2,006 mg/kg, and Zn = 53,516-102,285 mg/kg. Pollution of the Bengawan Solo river occurs every year, which according to residents cannot act alone to deal with the pollution and requires local government action.

Forest fires

Forest fires can occur naturally or be man-made. The impact is contributing the carbon dioxide (CO_2) to the air, loss of biodiversity, the resulting smog can interfere with health and smoke can impact other countries. Forest and land fires in Indonesia, during 2019, until September reached 857,756 hectares. It consists of 630,451 hectares of mineral land and 227,304 hectares on peat. This figure increased by 160% compared to last August's area of around 328,724 hectares. This figure is obtained from Landsat satellite imagery. The burned area, among others, Aceh Province 680 hectares, Bengkulu Province 11 hectares, Bangka Belitung Islands Province 3,228 hectares, and Riau Islands Province 6,124 hectares. Then, Jambi Province 39,638 hectares, Lampung Province 6,560 hectares, Riau Province 75,871 hectares, West Sumatra Province 1,449 hectares, South Sumatra Province 52,716

hectares, North Sumatra Province 2,416 hectares. Then, West Kalimantan Province 127,462 hectares, South Kalimantan Province 113,454 hectares, Central Kalimantan Province 134,227 hectares, East Kalimantan Province 50,056 hectares, North Kalimantan Province 2,878 hectares. When compared to previous years, the area burned has nearly doubled in three years. In 2015, the burned area was 2,611,411 hectares, 2016 was 438,363 hectares, 2017 was 165,484 hectares and 2018 was 510,564 hectares.

This occurs in Sumatra and Kalimantan, every time a forest fire occurs, it will cause smog. The smog will get thicker as the forest area burns wider. This smog causes air pollution and reduces visibility. Reduced visibility can interfere with human activities and can lead to traffic accidents. In addition, smog causes various types of diseases such as respiratory problems, lung blockage, and irritation of the eyes and skin. It is not only humans who feel the consequences of the smog, animals, especially those that live in forests, can die because of smog contamination. The Corruption Eradication Commission highlighted forest destruction, deforestation, and forest fires that continue to occur every year, saying that poor supervision and a lack of government policy and action caused state losses of up to IDR 35 trillion per year. Related to this issue, efforts to resolve it through class action procedures, environment organization lawsuit and even the filing of criminal prosecution have been carried out but the results are still not significant in reducing forest fires. The lack of action taken by the government to combat forest fires be the barrier and has led citizens to ask the government to issue policies to protect citizens who are under threat of bad air conditions because they exceed the health threshold. Urgent action by using citizens' lawsuit is needed regarding prevention, and rapid response to forest fires on in a number of regions in Indonesia.

Floods

In Jakarta, in 2020 there were many floods in several areas. Local government cannot anticipate frequent flooding. The change in leadership of the Jakarta Government changed the flood management strategy and policy carried out by the former leadership of the Jakarta government and as a result, even during a period of 2 months, Jakarta area experienced 6 floods. One of the most important impacts of flooding on the human environment is a health issue. Floods cause risks that threaten human life, ranging from loss of habitat, disease to death. Flooding impact on the human health varies considerably, depending on several factors, such as location, topography, availability of proper medical treatment from various parties. Some of the impacts of flooding on the health and environment that must be considered include:

- Danger of drowning or getting hurt.
- Hypothermia or a decrease in body temperature below 35 degrees Celsius.
- Animal bites and bacteria.
- Infections, poisoning, and some congenital diseases caused by floodwaters.
- Risk of death or injury due to electrical contact.
- Other health risks also arise due to evacuation.

In addition, flooding impact threatens the available infrastructure for example submerged hospitals, damaged medical products, and supplies, plus difficulties in accessing health services. If the impact of flooding on the environment is not immediately addressed,

the after effects on health can also be associated with a decline in mental health, food shortages that result in malnutrition, as well as long-term risks that should not be underestimated.

Flooding impact on Humans Socio-Economic aspect include:

- Damage to residential areas, including land, livestock and other facilities included therein.
- Disruption of smooth communication between people, especially if the impact of flooding on the environment is serious enough to cripple telecommunications infrastructure or general human activities.
- Reduction or loss of access to clean water, electricity, transportation, communication, education, and health services.
- Decrease in human production capacity and productivity, which can have further effects such as shortages of food and medicine.

Flooding impact on environmental conditions itself, such as chemicals or other hazardous substances, can be carried into standing rainwater. The potential for contamination/pollution will be even higher.

Pollution due to oil spills at offshore oil refineries.

A burst of gas and oil in the YYA1 offshore well owned by Pertamina Hulu Energi in the ONWJ oil and gas block occurred on July 12th, 2019. On July 15th, 2019 Pertamina issued an emergency status by writing to SKK Migas and the Ministry of Energy and Mineral Resources. Gas and oil leaks in the Pertamina Hulu Energy Offshore North West Java (PHE ONWJ) project that has been contaminating the Karawang ocean to Bekasi, West Java, and causing the death of fish and shrimp in the area. Every day, residents fill thousands of sacks with oil contaminated sand, the oil spills reached the coast. Fish and shrimp farmers in Cemarajaya Village, Karawang, said that since the beginning of this week, they have been unemployed because the sea is polluted by oil spilled from Pertamina's oil and gas exploration area. Oil and gas spilled from the ONWJ Block managed by PT. Pertamina Hulu Energi on July the 12th, 2019. Since the oil spill tragedy, not a single fisherman has been seen sailing. Fishermen give up because the catch dropped dramatically, not in accordance with the effort that was sacrificed. Oil scattered about 1 to 3 kilometers wide along vast stretches of the west coast. Oil that cannot be fused with water floats in the direction of ocean currents. Close to the oil spill, a lifeless mullet was seen. It is uncertain how many fish have died due to the tragedy of this oil spill.

The coastal communities who live around the Bekasi and Karawang regencies, West Java, have been the most disadvantaged due to the oil and gas bursts belonging to PT Pertamina Hulu Energi Offshore North West Java (PHE ONWJ) in Karawang waters, on July the 12th, 2019 This incident, made them unable to carry out fishing activities. The current oil spill has not only spread from the waters in Karawang to the Muara Gembong coast in Bekasi Regency, but has also reached the waters in the Thousand Islands, DKI Jakarta. The oil spill occurred due to an oil and gas leak in the YYA-1 Block OWJ which experienced a gas wave due to pressure anomaly. There are several coastal villages that have become victims of the oil and gas spill. Among them are Camara Village (Cibuaya District), Sungai Buntu Village (Pedes District), Petok Mati Village (Cilebar District), Sedari Village

(Pusaka Jaya District), Pakis Beach (Batu Jaya District), Cimalaya Village (Cikalong District), Ciparege (Tempuran District), and Tambak Sumur (Tirtajaya District).

Fishermen cannot carry out their activities, damaged aquaculture businesses, damage to mangroves. This fact confirms that the oil and gas waste that spills in these waters contains dangerous and toxic substances. As a result, not only marine life is threatened, but also the marine ecosystem as a whole is also threatened. As a result of exposure to Hazardous and Toxic Substance (*Bahan Berbahaya dan Beracun*: B3) waste entering residential areas, people have started to suffer health problems. Residents only make complaints to the government about the situation that happened to them without ever making an effort through file a lawsuit to the courts. report the incident to the government at the lowest level such as (village government or sub-district government) but there is no follow-up yet on these complaints to solve the problem. Residents began to complain about hot hands, symptoms of dizziness, and nausea. If the oil and gas waste that spills in the sea is not treated immediately, the threat to public health will increase.

From some environmental law enforcement efforts, it seems that the undertaken efforts do not generate a positive response. The environmental problems still occur, especially those related to government negligence in environmental protection and management. As mentioned by Stone and Moore where the environment requires guardian in defending itself, what about citizens (people as individual in a state) as one of the elements of environmental law enforcement which is also mentioned in the environmental act? Citizens' lawsuit is one of the concepts that are well known in the Anglo America Legal System (common law system) which is an appropriate effort in providing opportunities for citizens to give their role in environmental protection especially as environmental guardians. This can be seen from the history of the emergence of citizen lawsuit which indeed stems from cases of environmental problems due to the negligence of the government in providing protection for the environment. It is true that in Indonesian civil justice system has not been clearly regulated, so that the role of citizens that having been given by the environmental law cannot be carried out. In civil justice system in Indonesia, filing a lawsuit through citizens' lawsuit has been heard several times. However, in the application, there has not been a uniform understanding of the use of this concept and how the harmonization into civil justice system in Indonesia especially those related with the access to justice, a comprehension of an action against the law and legal standing of the citizens. Thus, it needs a repressive effort by deregulating and making strategic environmental policy. In addition,

the government as a state administrator who is negligent in administering the state, it is very necessary encouragement and control from the citizens over the state administration conducted by the government. In addressing environmental problems, this is the importance of granting citizens the right to file a lawsuit against the government (which until now has not been clearly specified in the legislation) for the negligence and omission of the government in protecting the constitutional rights of its citizens. This lawsuit is not to ask the government for compensation in amount of money to the citizens as the plaintiffs, but rather to make chamber for the government as state administrators to be more reactive in guaranteeing the constitutional rights of their citizens. In environmental case, the objectives of a lawsuit are more directed to the government in issuing general regulatory policies and regulations to refinement and recovery of the environment.

Research Questions:

Due to the background and the current issues as mentioned above, the questions will addresses as following:

1. Is the citizens' lawsuit concept related to the environmental law enforcement efforts acceptable as an access to justice in solving environmental law enforcement problems in Indonesia?
2. Is the citizens' legal standing (standing to litigate) recognized as an important instrument of citizen lawsuit concept for the basic consideration of the lawsuit acceptance by the court?
3. To what extent is the importance of applying the citizens' lawsuit procedure in Indonesia and how are the opportunities for its application as a law enforcement effort related with environmental disputes/cases occur in Indonesia?

1.3 Methodology of the Research

a. Objectives of the research

Based on research questions, the objectives to be achieved in this research are:

1. Directly examine the juridical concepts of citizens' lawsuit related with the environment protection effort to the natural objects (inanimate object) that can be accepted as an access to justice to find out what constitutes a citizen's constitutional right to the environment.

2. Assessing the legal system in Indonesia in providing the foundation for citizens as an important instrument in citizens' lawsuit concept, as there is currently uncertainty whether citizens can file a citizens' lawsuit to the court. What can be the legal basis for citizens' legal standing in providing protections to the environment through law enforcement efforts? It is necessary to analyze the determination of the law through laws and regulations, court verdicts and the citizens' lawsuit concept which have been enacted in other countries.
3. Reviewing the framework of legal regulatory that should be developed so that the concept of citizen lawsuit can be integrated into civil procedure law in Indonesia that can be applied as an effective law enforcement in solving environmental disputes/cases.

b. Merits of the research

1. Practical merits

   The results of this study are expected to provide input or thought contribution for lawmakers to serve as the foundation in the renewal of civil procedural law and environmental law in Indonesia related to law enforcement efforts. When the integration of the concept of the citizens' lawsuit is actualized in a procedural law, it can guarantee of legal certainty for citizens to law enforcement in order to protect the environment as a repressive effort in solving environmental disputes/cases. It is also very useful for Courts and Judges to nullify doubts in accepting citizens' lawsuit because it has been being regulated normatively.

2. Theoretical merits

   This research is expected to enrich and provide strengthening for the development of legal knowledge in Indonesia, regarding civil procedure law and environmental law. In addition, this study is expected to provide comprehensive understanding to the people as citizens, the government, the judiciary, and judges in order to be insightful of its progressive character. Progressive character is needed because in their view by making comparison to the laws and integrating the concept of law into the laws and regulations to fill the blank of norm becomes very important.

c. Type of the research

The type of the research is a normative legal research, a legal research which placing the law as a building of norm system. The norm system is the principles, rules of legislation, court verdicts and doctrine. Normative legal research includes the study of the principle of the law, the systematic study of the law, research on the level of synchronization of law, research on legal history and comparative law. This type often leaves a positive normative level to reach a level of doctrine.[17] This research was conducted by reviewing the theories and rules relating to the citizens' lawsuit concept. In addition, there is also comparative law in which this research will examine the regulation and enactment of the citizens' lawsuit concept in other countries that adheres to a different legal system than Indonesia legal system. In other words, those countries have first imposed the concept of citizens' lawsuit in environmental disputes/cases.

d. Material of the research

Material of the research is obtained by conducting literature research, therefore, the research is done by literature reviewing which examines the legal material to obtain the data. The legal materials used include:

1. The primary legal materials, which is binding legal material comprising the United Nation Universal Declaration of Human Rights, the 1945 Constitution of the Republic of Indonesia after the amendment, Act No. 32 of 2009 concerning the Environmental Protection and Management, The principle and provision of civil justice system in Indonesian Civil Procedural Law Code *(Het Herziene Indonesich Reglement (HIR) and Reglement to regeling Buitengewesten (RBg))*, cases and civil procedural law and legislations related to the citizen lawsuit concept both national and international.
2. The secondary legal materials, ie. legal materials that provide further explanation

[17] Theresia Anita Christiani*, Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object*, 219 PROCEDIA SOCIAL AND BEHAVIORAL SCIENCE, 201, 202 (2016).

of primary legal materials consisting of books related to the research that would be conducted regarding environmental law, environmental law enforcement, civil procedure law, constitution and human rights, court verdicts and expert opinions are poured in scientific papers in the printed media or electronic media/internet as contained in journals and articles both national and international.

3. Tertiary legal materials, namely legal materials that provide guidance or explanation of primary legal materials and secondary legal materials such as legal dictionaries, the encyclopedia.

For complementing or adding legal materials in normative legal research, debriefing process will be conducted with experts such as Judges, Academicians, Environmentalists, Lawyers or Legislators. The purpose of holding the debriefing process was to provide additional knowledge, understanding, suggestion, opinion and intellection because the experts as mentioned above have scholarly competence that can deliver/transfer their knowledge based on law, experiences and their relevant field of knowledge.

e. Method of Data Collection

The data collection was performed by literature reviewing on the legal materials. The search for legal materials was conducted by reading and searching for primary, secondary and tertiary legal materials not only limited to legal substances within the national scope but also the international scope because the process of data collection on legal materials is also conducted with a legal comparison.

f. Method of Data Processing

Data processing is a way of managing data in such a way that the collection of data obtained from legal materials ware structured with a coherent and systematic to facilitate the analyzing. In the normative legal research, the data has been arranged in a coherent and systematic manner, then, the selection is made and clarified according to the classification of legal materials, so that we get an outline of what will be found in the research.

g. Method of Data Analysis

The legal material obtained in this research is analyzed prescriptively by

using deductive method, ie. general data about legal conception in the form of theory, fundamental, principle and doctrine related with the citizens' lawsuit, environmental law enforcement, civil procedure law, arranged systematically as the composition of legal facts to review the application of the citizens' lawsuit concept into civil procedural law in Indonesia as an effort to environmental law enforcement and also to reviewing the regulatory form that should be developed in Indonesia related to the application of the citizens' lawsuit concept.

1.4 Review of Literature

a. Concept of the Study

The title of this thesis is A Study of The Application of Citizens' Lawsuit Concept for Environmental Law Enforcement "Towards Its Integration into Indonesian Civil Procedural Law". There are two important cores of this thesis. First, concerning litigation process for environmental law enforcement. Environmental cases are quite common in most countries as well as in Indonesia, in general, access to justice related to the settlement of environmental problems appear to be difficult and tends to have a complicated process. Second, the application of citizens' lawsuit concept under the Indonesian civil procedural law. To integrate and apply a legal concept from a different legal system is not as simple as applying the existing legal concepts clearly within the existing regulatory framework. Emphasis will be placed on the entry of a concept and adjusting the concept to the legal system in Indonesia which can be seen from legal substance, legal structure, and legal culture.

The limitation of this research is to find the discussion that will be carried out by looking at the legal history of the concept of a citizens' lawsuit, understanding of the legal standing of the citizens, the right to a habitable and wholesome environment and who is become a guardian of the environment as an inanimate object. The initial difficulty in applying the citizens' lawsuit concept in Indonesia also lies in understanding of the existence of legal principles in the civil justice process in connection with public interest, the progress of civil procedural law in Indonesia seems slow and often the difficulty in applying comparative law in terms of principles, rules and cases.

b. Previous Research

At the time this study was conducted, there was a lack of published studies addressing the application of citizens' lawsuit under the Indonesian civil procedural law related with environmental law enforcement efforts. However, there are few independent unpublished studies and short articles regarding citizens' lawsuit in general. Here are review of those studies for comparison purposes.

- Citizen Lawsuit as a Mechanism for Fulfilling Human Rights and Citizens Constitutional Rights, an Article of Abdul Fatah.

In this article, the author focuses on the use of citizen lawsuit mechanism as an effort to protect the citizens' rights from the arbitrariness of the Government as state administrators. Where in the conclusion stated that this mechanism is an effort to provide longing for the fulfillment of human rights and constitutional rights of citizens by emphasizing the revision of the constitutional court legislation to add the authority of the constitutional court to be able to settle cases on the fulfillment of citizens' constitutional rights by filing citizen lawsuit.

- Juridical Analysis of Citizen Lawsuit based on Actions Against the Law (Tort) in Cases between Parents of the National Examination Victims against the Government of the Indonesian Republic, a Thesis of Devie Nova Dulla.

In this thesis, the emphasis is more on the active role of judges in finding laws to resolve cases submitted using the concept of citizen lawsuit, although this concept has not yet been adopted in the civil justice system in Indonesia. The active role of the judge is the principle of judge progressivity in applying the principles of law that can be adapted to the applicable legal system in Indonesia to protect the public interest. This thesis also emphasizes the essence of actions against the law to be broader to be associated with elements of citizen lawsuit.

Furthermore, throughout the search for papers both in the form of journal articles or thesis that examines the integration of citizen lawsuits concept into civil procedural law in Indonesia related to the process of resolving environmental cases as an effort for environmental law enforcement is not commonly found. There are only few papers based on few cases in Indonesia where filing a lawsuit uses the

citizen lawsuit concept. Most of these papers only explain the general description of citizen lawsuits without further exploring the concepts, character, and mechanisms of citizens' lawsuits when integrated into civil procedural law to resolve environmental cases as efforts to uphold environmental law. In this paper we will find the integration concept into civil procedural law and the basis for filing a lawsuit to the court, therefore, the citizen lawsuit can be applied and adapted to the prevailing civil procedural law system in Indonesia.

c. Theoretical framework

In this dissertation, the theories that used is relevant and non-contradictory theories to construct thought and intellection of finding an ideal order to produce a contribute perspective in the development of legal knowledge in general. The theories used in this dissertation can support in answering the problems to be discussed with the formulation of the problem described earlier, is as follows:

1. Giving the legal rights to nature object.

Recognizing that nature has legal rights and accepting these rights as part of our legal system requires not only the introduction of new laws that observe these rights, but also the paradigm shift so that they are compatible with the contemporary legal puzzle. Referring to the "shift" in the paradigm and not the "introduction" that has just been made is intentional, because the recognition of the right to nature has been more numerous than the customary laws governing native populations around the world in the 20th century. However, these principles have not yet been embedded in the development of modern environmental law, which is based on the anthropocentric paradigm. This paradigm[18] has been proven wrong because humans permanently damage the natural structure on which they depend to survive despite environmental problems. a lot of recent efforts have been made to move away from this approach and to develop sustainably towards a possible shift towards an earth-centered paradigm, where humans are part of nature and aim to live in harmony with

[18] Anthropocentrism means that the world is made for human beings or exists to be used by human beings. See Motohiro Kumasaka, *Extension and Obfuscation: Two Contrasting Attitudes to The Moral Boundary*, 44 HITOTSUBASHI JOURNAL OF SOCIAL STUDIES 21, 21-24 (2012).

it. As mentioned earlier, the idea of making natural rights part of the way humans understand their reality and manage their communities is not new. There was also no attempt to introduce this concept in the modern legal system.

The first scholar to raise the question of whether nature should be recognized the right to stand in court was Professor Christopher D. Stone, who in 1972 wrote his famous essay: "Should Trees Have Standing? Toward Legal Rights for Natural Objects".[19] Professor Christopher D. Stone has offered an entirely new approach to the question of standing to sue. Perhaps the frustration of citizen movements to protect environmental amenities can best be assuaged by an affirmative answer to his question: "Should trees have standing?" Whether one accepts or rejects the proposition that trees or other inanimate objects should have legal standing in the courts of this land, he must admit that the tremendous impact of Professor Stone's essay, now in book form, undeniably is already an accomplished fact. Stone's essay first appeared while Sierra Club v. Morton[20] was pending in the United States Supreme Court.[21] To provide some background on the premises of Stone's essay, the Sierra Club had recently tried to sue Walt Disney Enterprises to prevent the construction of a ski resort in Mineral King Valley (in the Sierra Nevada Mountains). The US Court of Appeals in California responded, pointing out that the Sierra Club itself had not alleged any injury by the project and as a result it had no right to stand in court to file a lawsuit against the corporation.[22]

Christoper D.Stone said:

The fact is, that each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of "us" those who are holding rights at the time. In this vein, what is striking about the Wisconsin case above is that the court, for all its talk about women, so clearly was never able to see women as they are (and might

[19] Lidia Cano Pecharroman, *Rights of Nature: River That Can Stand in Court*, 7 RESOURCES 1, 1-2 (2018).

[20] Sierra Club v. Morton, 405 U.S. 727 (1972).

[21] Tom R. Moore, *Should Trees Have Standing? Toward Legal Rights for Natural Objects by Christopher D. Stone."*, 2 FLORIDA STATE UNIVERSITY LAW REVIEW 672, 672-673 (2014) (book review).

[22] *See* NEIMARK, P. AND MOTT, P.R., THE ENVIRONMENTAL DEBATE: A DOCUMENTARY HISTORY, (Grey House Publishing 2nd ed. 2011).

become). All it could see was the popular "idealized" version of an object it needed. Such is the way the slave South looked upon the Black. There is something of a seamless web involved: there will be resistance to giving the thing "rights" until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it "rights"-which is almost inevitably going to sound inconceivable to a large group of people. The reason for this little discourse on the unthinkable, the reader must know by now, if only from the title of the paper. I am quite seriously proposing that we give legal rights to forests, oceans, rivers and other so-called "natural objects"· in the environment-indeed, to the natural environment as a whole.[23]

Likewise, Christoper D. Stone also believes that:

It is not inevitable, nor is it wise, that natural objects should have no rights to seek redress in their own behalf. It is no answer to say that streams and forests cannot have standing because streams and forests cannot speak. Corporations cannot speak either; nor can states, estates, infants, incompetents, muncipalities or universities. Lawyers speak for them, as they customarily do for the ordinary citizen with legal problems. One ought, I think, to handle the legal problems of natural objects as one does the problems of legal incompetents-human beings who have become vegetable. If a human being shows signs of becoming senile and has affairs that he is de jure incompetent to manage, those concerned with his well-being make such a showing to the court, and someone is designated by the court with the authority to manage the incompetent's affairs. The guardian (or "conservator" or "committee"the terminology varies) then represents the incompetent in his legal affairs. Courts make similar appointments when a corporation has become "incompetent" they appoint a trustee in bankruptcy or reorganization to oversee its affairs and speak for it in court when that becomes necessary. On a parity of reasoning, we should have a system in which, when a friend of a natural object perceives it to be endangered, he can apply to a court for the creation of a guardianship.[24]

2. Standing to litigate.

Before the last three decades, standing to litigate In Indonesia was not a matter in court proceedings. Access to court is determined by the substantive law in question, and the limited number of common legal actions, governed by strict application requirements, makes most of the claims within the limits of what we now regard as cases. Although the initial court, of course, tried to identify the "right party" in the lawsuit before it, and sometimes distinguish between public and private rights,

[23] Christoper D. Stone, *supra* note 14, at 455.
[24] Christoper D. Stone, *supra* note 14, at 464.

they did not use the term standing to litigate, nor did they see the identification of the right party as a requirement.

Based on Black's Law Dictionary, the meaning of standing is as follows:[25]

> Standing is a requirement that the plaintiffs have been injured or been threatened with injury by governmental action complained of and focuses on the question of whether the litigant is the proper party to fight the lawsuit, not whether the issue itself is justiciable. Essence of standing is that no person is entitled to assail constitutionality of an ordinance or statute except as he himself is adversely affected by it.

The term of standing can be interpreted as an access of individual, group, or organization in court as a plaintiff. The concept of standing to litigate is developing rapidly along with the development of law that concerns the lives of many people (public interest law). Conventionally, the rule of standing is based on the old adage of civil procedural law "*point d'interet point d'action*"[26]. Likewise, in Indonesia as contained in Jurisprudence of the Supreme Court of the Republic of Indonesia No. 294/K/SIP/1974. Legal interests are defined here as interests related to ownership or material interests. In other words, the right to sue is usually based on an argument where the plaintiff suffers a real loss. However, in the development of public interest law, the concept of contested rights in cases involving the public interest has shifted. A person, a group of people or an organization can act even if they have no legal interest that is marked by proprietary interest. The need for the development of the rule of standing is based on a need to fight for the interests of the wider community against violations of public rights, such as in the field of environment, consumer protection, and civil rights.[27]

In 1985 the Australian Law Reform Commission (ALRC) reported on the law of standing, the set of rules that determine whether a person is entitled to

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[25] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY: DEFINITION OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN, (6th ed. 1990), p. 1405.

[26] The meaning of this adage is the right or ability to bring a legal action to a court , or to appear in a court. *See* Cambridge Dictionary, available at <https://dictionary.cambridge. org/dictionary/english /locus-standi>, last seen Jan. 12, 2020.

[27] Mas Achmad Santosa, Civil Enforcement (Hak Gugat Organisasi Lingkungan) [Civil Enforcement (Environmental Organization Legal Standing)], COURSE MATERIAL ON ENVIRONMENTAL LAW AND ENFORCEMENT TRAINING IN INDONESIA, Feb.-Oct. 2001.

commence proceedings. The discussions on issues of standing in civil proceedings contained in ALRC Report 27. The report concluded that though the rules of standing should be broadened, standing should be denied to a party if their interest in the action is deliberately meddlesome or if the interest is too minimal. The key recommendation of ALRC Report 27 mentioned that there should be a presumption that a person has standing unless the court is satisfied that the person is 'merely meddling'. Standing should be denied to a plaintiff who has no personal stake in the matter and who clearly cannot represent the public interest adequately.[28]

This matter also expressed regarding the review of the law of standing in Australia, as follows:

> *The rights of a plaintiff to be considered an appropriate party to instigate the particular proceedings. In ruling on the issue of standing the court makes no decision as to whether the rights, duties, or obligations being asserted in the proceedings exist in law, whether the fact alleged are true… The court merely addresses the issue whether a legal remedy should be denied to the plaintiff on the sole ground that he or she is not an appropriate party to have commenced the proceedings.*[29]

The origin of modern standing law in the U.S. begin in the late nineteenth and early twentieth centuries, a plaintiff's right to bring suit was determined by reference to a particular common law, statutory, or constitutional right, or sometimes to a mixture of statutory or constitutional prohibitions and common law remedial principles but no general doctrine of standing existed. Nor, indeed, was the term "standing" used as the doctrinal heading under which a person's right to sue was determined.[30]

> *"As private entities increasingly came to be controlled by statutory and regulatory duties, as government increasingly came to be controlled by statutory and constitutional commands, and as individuals sought to control the greatly augmented power of the government through the judicial process,*

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[28] Australian Government, Autralian Law Reform Commission, *Standing in Public Interest Litigation* (last modified May. 9, 1996), available at <https://www.alrc.gov.au/inquiry/standing-in-public-interest-litigation>

[29] Andrea Durbach and Amanda Cornwall,*Who Can Sue?:A Review of the Law of Standing:PIAC Response to ALRC Disccussion Paper 61*, PIAC Paper No.21, (Dec. 21, 1995).

[30] William A. Fletcher, *The Structure of Standing*, 98 YALE LAW JOURNAL 221,224 (1988).

> *many kinds of plaintiffs and would-be plaintiffs sought the articulation and enforcement of new and existing rights in the federal courts. Beginning in earnest in the 1930's, the Supreme Court began to develop a new doctrine, or perhaps more accurately, a new set of loosely linked protodoctrines, to replace the relatively stable formulations that had previously been used to decide who could sue to enforce various rights…. It was not feasible to infer simply from the existence of an agency's duty that any plaintiff who might benefit from the performance of the duty should have the right to enforce it. In some circumstances, the most desirable scheme might be to permit standing broadly, conferring the right to sue for reasons of public policy, should be permitted to sue as appropriate guardians of the public interest."*[31]

Alan Gilpin stated that what was meant by standing or standing to litigate or locus standi as follows:[32]

> *The right to be heard in court or other proceedings. The word standing has emerged gradually during the twentieth century, coming into common use only from about 1950. The rights to sue means the right to institute legal proceedings against. Legal standing is in many ways' reflection of social conscience, expanding with socially recognizable issues over time, slowly embracing the environment. The concept of standing has also expanded from the individual to a group, and now embraces challenges to government action. Even so, attempts by citizens and organizations to prevent or preclude environmental violation may often be frustrated. Courts tend to disallow actions which present formidable difficulties and cannot be resolved in simple financial terms.*

Although different legal systems organize their concepts somewhat differently, standing to litigate is generally distinguished from other potential restrictions on access to the courts in that standing to litigate focuses on the complaining party, rather than on the nature of the claim, the identity of the defendant, or the merits of the suit (though in practice it is not always possible to draw clean, sharp lines between these different considerations). The basic idea is that there may be limits on which individuals or entities are entitled to invoke the power of the courts to remedy an unlawful activity. Those with a sufficient interest in that allegedly unlawful activity have standing to bring a suit; those without a sufficient interest do

[31] William A. Fletcher, *id.* at 225-226.

[32] ALAN GILPIN, DICTIONARY OF ENVIRONMENTAL LAW, (Edward Elgar Pub. Ltd. UK and Edward Elgar Pub. Inc. USA.) (2000), p.289.

not have the requisite standing, and the courts will not entertain their claims or provide judicial redress, no matter how egregious the alleged violations of the law.[33]

3. Legal certainty

The discussion of the principle of legal certainty, the true existence of this principle is interpreted as a condition where it is certain that the law is due to the concrete strength of the law in question. The existence of the principle of legal certainty is a form of protection for the *justiciabalen* (justice seekers) against arbitrary actions, which means that a person will and can obtain something that is expected in certain circumstances.[34] The statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely the determination of law in concrete terms and legal security. This means that the party seeking justice wants to know what the law in a particular matter is before he starts the case and protects justice seekers. According to van Apeldoorn[35], legal certainty can also mean things that can be determined by law in concrete matters. Legal certainty is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions which means that a person will be able to obtain something that is expected under certain circumstances.

Further related to legal certainty, Lloyd said that "... law seems to require a certain minimum degree of regularity and certainty, for without that it would be impossible to assert that what was operating in a given territory amounted to a legal system".[36] From this view it can be understood that without legal certainty people do not know what to do and finally there is uncertainty which will eventually lead to violence (chaos) due to the indecisiveness of the legal system. So that legal certainty

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[33] MATTHEW C. STEPHENSON, STANDING DOCTRINE AND ANTICORRUPTION LITIGATION: A SURVEY, SERIES NO. 1, LEGAL REMEDIES FOR GRAND CORRUPTION, (Open Society Foundations, New York, Usa, January 2014).

[34] SUDIKNO MERTOKUSUMO, BAB-BAB TENTANG PENEMUAN HUKUM [CHAPTERS ON LEGAL FINDING], (Citra Aditya Bakti Publishing, Bandung, 1993), p.2.

[35] L.J VAN APELDOORN, PENGANTAR ILMU HUKUM [THE INTRODUCTION TO LAW], (Pradnya Paramitha Publishing, Jakarta, 1990), pp. 24-25.

[36] M.D.A FREEMAN, LLOYD'S INTRODUCTION OF JURISPRUDENCE (Thomson Sweet & Maxwell Publisher, 7th ed. 2001) p.55.

refers to the implementation of clear, permanent, and consistent law where its implementation cannot be influenced by circumstances that are subjective.

The principle of legal certainty legitimizes or at least co-legitimizes validity of an extensive catalogue of principles-consequences listed as constitutive features of the idea of the formal rule of law. However, the value of certainty also has a substantive dimension. The aspect of certainty of law which refers to relative stability of legal order in connection with the principle of legality but about the certainty of law understood as certainty that on the base of valid law the citizen may shape his life. In the latter sense certain law (legal certainty) also means just law".[37]

4. Legal transplants.

In 1974, Alan Watson published his short work, Legal Transplants: An Approach to Comparative Law. Argues that laws are borrowed from pre-existing laws in other legal systems without any initial inherent relationship between these laws (transplants) and society. However, once brought over, the interpretation and impact of the law is adapted locally. Alan Watson argued that the proper task of comparative law as an academic discipline was to explore the relationship between legal systems.[38] He claims that there is no need and that there is a close relationship between the law and the communities in which they operate. In fact, laws are usually borrowed from elsewhere, so laws often operate in societies and in places very different from those they originally developed. Laws are often deeply rooted in the past. He argued dan legal transplant is not difficult. All of this has profound implications for our understanding of legal history and the sociology of law. Arguments are developed through detailed historical examples and arguments. He considered Legal Transplants as attempting not "to create an expansive new approach" but instead to bring a "sharper focus and more rigorous analytical approach" to a field hitherto eclectic and narrowly empirical.[39]

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[37] Marzena Kordela, *The Principle of Legal Certainty as Fundamental Elements of the Formal Concept of the Rule of Law*, 110 LA REVUE DU NOTARIAT 589, 604 (2008).

[38] ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW' (University of Georgia Press, 1974). p.6.

[39] Charles Maechling, Book Review, 15 VIRGINIA JOURNAL OF INTERNATIONAL LAW 1037, 1038

He emphasized that the focus in borrowing should be on the system doing the borrowing. The whole thrust of Legal Transplants was to argue in particular that borrowing was the most common mode of legal development, and that it was unnecessary for the borrowing system to have any real understanding of the system from which rules or institutions were borrowed; moreover, Alan argued, the longevity of rules was astonishing. He also concluded that comparative law was properly about the study of the relationships between legal systems forged by such borrowing. Successful legal borrowing could be made from a very different legal system, even from one at a much higher level of development and of a different political complexion. What, in my opinion, the law reformer should be after in looking at foreign systems was an idea which could be transformed into part of the law of his country. For this a systematic knowledge of the law or political structure of the donor system was not necessary, though a law reformer with such knowledge would be more efficient. Successful borrowing could be achieved even when nothing was known of the political, social or economic context of the foreign law.[40]

5. Law enforcement.

Law enforcement is essentially a process to make legal ideas or desires come true. The legal ideas or desires in question are the achievement of law objectives, namely justice, expediency, legal certainty, order, balance, and well-being. Society is very concerned with justice in law enforcement; it must be fair.[41]

According to Soerjono Soekanto, there are several factors that influence a law enforcement[42], as follows:

a. Legal Factor, there are times when there is a conflict between legal certainty and justice, this is caused by the conception of justice as an abstract formula, whereas legal certainty is a normatively determined procedure. Thus, a policy or action that is not entirely based on law is something that can be justified as

(1974–1975). (reviewing ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW' (University of Georgia Press, 1974).

[40] Alan Watson, *Legal Transplants and Law Reform,* 92 LAW QUARTERLY REVIEW 79, 79-80 (1976).

[41] Ratnawati et.al., *Law Enforcement in Indonesia: A Review from Legal Apparatus Roles*, 58 JOURNAL OF LAW, POLICY AND GLOBALIZATION 57, 60 (2017).

[42] SOERJONO SOEKANTO, FAKTOR-FAKTOR YANG MEMPENGARUHI PENEGAKAN HUKUM [FACTORS AFFECTING A LAW ENFORCEMENT], (Jakarta, Raja Grafindo Persada, 2004), p. 42.

long as the policy or action is not contrary to law. Therefore, in essence, the legal factor does not only include the law enforcement process but the harmonization between the value of the method and the pattern of real behavior aimed at achieving peace and order.

b. *Law Enforcers Factor, when carrying out the function of law, the mentality or personality of law enforcers plays an important role. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcers*
c. *Facilities Factor including legal education*
d. *Community Factors, where every citizen or group, more or less has legal awareness, has the level of legal compliance as an indicator of the functioning of the applicable law.*
e. *Cultural Factors, based on the daily cultural concept, culture has a very large function for humans and society such as regulating, so that humans can understand how they should behave, take action, bestir oneself, and determine their attitudes when they relate to others. Thus, culture is a basic outline of behavior that sets rules about what must be done, and what is prohibited.*

Thereby, law enforcement is essentially the process of manifesting legal ideas and concepts to achieve order and prosperity in a state. Law enforcement is the process of carrying out efforts or the actual functioning of legal norms as guidelines for people as well as state administrators in legal relations of the life in society and the state. In a state, there is a legal system that synergizes to provide support in achieving order and prosperity as the goal of the law state. To understand further about a legal system, we must look at the elements contained in it. A legal system has three elements, namely the structure, substance, and legal culture. Lawrence M. Friedman stated: "A legal system in actual operation is a complex organism in which structure, substance, and culture interact. To explain the background and effect of any part calls into play many elements of the system.[43]

[43] LAWRENCE M. FRIEDMAN, THE LEGAL SYSTEM A SOCIAL SCIENCE PERSPECTIF, (New York, Russel Sage Foundation 1975), p. 16.

CHAPTER II.

ACCESS TO JUSTICE: THE NECESSITY OF ACCEPTING THE CITIZENS' LAWSUIT CONCEPT AS LAW ENFORCEMENT EFFORTS IN CIVIL PROCEDURAL LAW RELATED WITH THE ENVIRONMENTAL PROTECTION

Access to justice based upon the basic understanding that people should be able to rely on the applicable law correctly. It is important in civil justice system and related with how people are guaranteed to settle a civil case without a complicated process, time-consuming and affordable. In Indonesia's civil procedural law, the right of access to justice is not restricted, but there are still some conditions that apply even though it does not directly undermine aspects in gaining access to justice. Mainly related to individual restrictions caused by the existence of the "*legitima persona standi in judicio*[44]" and "*point d'interet, point d'action*[45]" legal principle which is the basis for filing a lawsuit to the court, if it is associated with civil justice that concerns to the environmental. Civil Justice becomes a necessity of legal practice that cannot be negated in human life. On a general basis, civil justice is based on conflict of human interest. This principle has consequences in the practice of civil justice as stated in the principles of *"legitima persona standi in judicio"* and *"point d'interet, point d'action"*. In general, this principle emphasizes that anyone can become one of the parties in civil justice, provided he has legal interests.

Such is the importance of legal interest in civil court, making the plaintiff as the party who filed a claim for rights must be able to prove the rights he sued through evidence as a

[44] *See* LAWRENCE G. BAXTER, ADMINISTRATIVE LAW 644-48 (1985) mentioned as capacity to sue. Persona standi in judicio is a right owned by someone in general, to sue or defend action. Someone can appear as a plaintiff because of the Persona standi in judicio. It is very important for someone to prove their rights. In general, everyone has the right to file a lawsuit to seek help for violations of their rights. However, that right may not be owned. A person has no right to sue if it is not based on the interests imposed by the law on him. Therefore, the right to sue must be obtained by someone to initiate certain actions.

[45] SUDIKNO MERTOKUSUMO, HUKUM ACARA PERDATA INDONESIA [INDONESIA'S CIVIL PROCEDURAL LAW], (Yogyakarta, Liberty Publisher, 2006), p. 53. Means that whoever has a legal interest can file a lawsuit or a claim for their rights. This is how to obtain legal standing as the thought of Hoexter in CORA HOEXTER, ADMINISTRATIVE LAW IN SOUTH AFRICA 487 (2nd ed. 2012) "a litigant must meet two overarching requirements: he must have the capacity to litigate, and a sufficient interest in the matter before the court. The sufficient-interest requirement is generally of greater concern to litigation with a public-law dimension".

supporter of rights, through the provisions of (HIR and RBg[46]) in the article 163 HIR and 283 RBg with the principle of "*actory in cumbit probatio*" whoever postulates the rights he must prove the existence of these rights. In its development, the practice of law increasingly dynamically responds to the need for social justice, especially in the globalization of law, starting a new era of adoption of law (in this case the adoption of the Anglo-American legal system) with a model of claims for rights based on sufficient legal interests. This sufficient legal interest is defined as an interest that concerns the wider community and not just personal interests. Environment for example, habitable and wholesome environment not only to be enjoyed individually, but also for every citizen (the wider community). To defend the interests of the wider community (public interest), the concept of citizens' lawsuit emerged. Citizens' lawsuit developed very rapidly since its inception in the USA where this concept is an access to justice that is used to resolve environmental cases due to negligence of the government in protecting the rights to the environment for its citizens.

2.1 An Overview of Citizens' Lawsuit in Common Law System

- **In the U.S.**

The origin of citizens' lawsuit is inseparable from the original lawsuit provision in the U.S due to the application of this concept for the first time from the Clean Air Act[47],

[46] HIR is an abbreviation of "*Het Herziene Indonesisch Reglemen*" which means the regulation for Indonesians that have been renewed. HIR still applies only to the provisions of the civil procedural law which is applied to Indonesian citizens who have domicile in Java and Madura areas. Initially entitled "*Reglement op de Uitoefening van de Politie, de Burgerlijke Rechtspleging en de Strafordering onder de Inlanders, de Vreemde Osterlingen op Java en Madoera*" is a regulation governing the duties of the police, civil procedural law and criminal proceeding in Indonesia for Java and Madura areas which comes into force at 1st of May 1848. For outside of Java and Madura, in 1928, the Dutch Colonial Government issued a procedural law for Indonesians called RBG the abbreviation for "*Reglement tot Regeling van Het Rechtswezen in de Gewesten Buiten Java en Madura*" which means a regulation regarding justice in Indonesia for outside Java and Madura areas.
Both HIR and RBg are still in force in Indonesia based on the Article 1 of the Transitional Rules Section of the Indonesian Constitution 1945 which states that all existing laws and regulations are still in effect as long as the new laws and regulations have not been enacted according to this constitution.

[47] *See* Erin L. Gordon, History of the Modern Environmental Movement in America, available at <https://photos.state.gov/libraries/mumbai/498320/fernandesma/June_2012_001.pdf> (last visited Jan. 12, 2020). The Clean Air Act is the United States federal law focuses on the control of air pollution on a national level. One of the more significant aspects of the law is the ability for the U.S. Environmental Protection Agency (EPA) to establish air quality standards to protect public health and welfare. *See* also the United States Environmental Protection Agency, The Plain English Guide to the Clean Air Act, available at <https://www.epa.gov/sites/production/files/2015-08/documents/peg.pdf> (last visited Jan. 12, 2020). The Clean Air Act also influential modern environmental laws, and one of the most comprehensive air quality

which implemented the first environmental citizens' lawsuit provision in 1970. The United States environmental regulatory regime includes many provisions for "citizen lawsuit" to enforce various environmental laws. Provisions regarding citizens' lawsuit allow citizens, or groups of citizens, to take private or public entities to the court as a law enforcement entities for violations of environmental laws that they have committed.[48] The Clean Air Act citizens' lawsuit was an outgrowth of the successful initiative by Professor Joseph Sax, then at the University of Michigan Law School, to incorporate a citizen's right to litigate to protect environmental and public trust resources into the Michigan Environmental Protection Act of 1969.[49] He who supports the authorization of citizens to sue violators of environmental laws, and initially raised the idea of citizen suit to solve environmental problem and infringement of the environmental law provision. He also argued that the need for environmental citizen suits emerged from the monetary conjuncture and political situation that have debilitated the capability of the governments to successfully enforce environmental laws.[50] Over time, environmental litigators have shown that legal victory in the right case can have profound effects throughout the country. For some environmental activists, "litigation is the most important thing that the environmental movement has done" since the early 1970s.[51] The Clean Air Act citizens' lawsuit itself is made a novelty, even though the citizens' lawsuit will allow citizens to sue the United States Environmental Protection Agency (U.S EPA) to coerce the institutions to bring the enforcement process against violators, however, in the last 1970s provided a direct citizens' lawsuit against violators to coerce compliance and permitted citizens' lawsuit against agencies only in case

laws in the world. As with many other major U.S. federal environmental statutes, it is administered by the U.S. Environmental Protection Agency (EPA) in coordination with state, local, and tribal governments.

[48] *See* Harold Feld, *Saving the Citizen Suit: The Effect of Lujan v. Defenders of Wildlife and the Role of Citizen Suits in Environmental Enforcement*, 19 COLUMBIA JOURNAL OF ENVIRONMENTAL LAW 141, 143-45 (1994).

[49] *See* Karl S. Coplan, *Citizen Litigants Citizen Regulators: Four Cases Where Citizen Suit Drove Development of Clean Water Law*, 25 COLORADO NATIONAL RESOURCES, ENERGY & ENVIRONMENTAL. LAW REVIEW 61, 64-65 (2014).

[50] Peter H. Lehner, *The Efficiency of Citizens Suits*, 2 ALBANY LAW ENVIRONMENTAL OUTLOOK JOURNAL 4, 4 (1996).

[51] *See* TOM TURNER, THE LEGAL EAGLES, IN CROSSROADS: ENVIRONMENTAL PRIORITIES FOR THE FUTURE 53 (P. Borelli ed., 1988).

of failure to perform non-discretionary duties.[52] Citizens' lawsuit brings new constituencies to the regulatory. Citizens' lawsuit has an effect that intended to implement a new enforcement regime which full of environmental norms. Thus, an important objective of citizens' lawsuit is to encourage the enforcement of the Clean Air Act by government agencies. That does not mean, however, that citizens' lawsuit are not desirable as alternative enforcement mechanisms. Those who file citizens' lawsuit will not be treated as nuisances or distraction but rather as welcoming the participants in the justification of environmental interests.[53] Thus, most major federal environmental laws contain provisions regarding citizens' lawsuit. As a result, environmental citizens' lawsuit is now a major element of American environmental law.[54] Likewise, the Clean Water Act, a legislation as environmental law enforcement efforts in overcoming actions that have an effect on water pollution. An understanding of citizens' lawsuit inherently requires access to deal with certain environmental problems. An instance is the citizens' provision of the U.S. Clean Water Act. This gave rise to an integrated law enforcement system by placing the power of law enforcement in the hands of citizens to increase the power of law enforcement agencies in the U.S. Even though the Clean Water Act citizens' lawsuit was not the first environmental citizen lawsuit to be enacted by Congress, but the Clean Water Act citizens' lawsuit provision supports citizen law enforcement initially appointing on the weakness of environmental enforcement by government agencies to justify the inclusion of citizens'

[52] The Full exposure of citizen suits section 304 *see* Clean Air Act, Clean Air Act § 304 Public Law 91-604 (1970), 42 U.S.C. § 7604 (2012); available at <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1676.pdf>. "CITIZEN SUITS " SEC. 304. (a) Except as provided in subsection (b), any person may commence a civil action on his own behalf: (1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

[53] Charles N. Nauen, *Citizen Environmental Lawsuit after Gwaltney: The Thrill of Victory or the Agony of Defeat?*, 15 WILLIAM MITCHELL LAW REVIEW 327, 329 (1989).

[54] *See* George Van Cleve, *Congressional Power to Confer Broad Citizen Standing in Environmental Cases*, 29 ENVIRONMENTAL LAW REPORTER (Jan. 1999). *See also* John D. Echeverria & Jon T. Zeidler, BARELY STANDING: THE EROSION OF CITIZEN "STANDING" TO SUE TO ENFORCE FEDERAL ENVIRONMENTAL LAW at 1 (Envtl. Policy Project, Georgetown University Law Ctr., June 1999), (argue that the concept and procedure of citizen suit is the primary complexion of the U.S A system to the environmental protection and preservation).

lawsuit in federal environmental law. Related to the provisions regarding to those who can file a citizens' lawsuit in both of these regulations, is slightly modified in the Clean Air Act version if compared with the Clean Water Act[55]. As mentioned in Clean Air Act, direct enforcement to the violators of air emission standards or limits can be carried out by any person (anyone can file a lawsuit and the availability of citizens' lawsuit is only conditioned by giving advance notice (60 days) to violators and law enforcement agencies, and the failure of government agencies to enforce).[56] As though the Clean Air Act, the provisions of a citizens' lawsuit in the Clean Water Act initially authorize the direct enforcement of citizens against violators. However, with the incorporating the Supreme Court's recent recognition of constitutional standing on the part of affected individuals to enforce environmental interests as of the case of Sierra Club vs. Morton[57], the Clean Water Act limited its citizens' lawsuit provision to "any citizen," defined as "a person or persons having an interest which is or may be adversely affected.[58] In addition, the citizen lawsuit contained in various statutes on the environment is a philosophical idea that public access to information and participation in environmental decisions is a matter of public rights, it is also a way to ensure that environmental problems can be addressed.[59]

- **In India**

India constitutes as an Asian country that gave rise to the concept of citizens' lawsuit for the first time in a law enforcement process related to the environment. Although there are a number of laws and regulations in India that aim to protect the environment from pollution and maintain ecological balance, the environment has not been considered as a whole. Under article 253 of the Constitution of India[60], to implement decisions made under

[55] *See* Clean Water Act 33 U.S.C. § 1365 (2012); Public Law 92-500 § 505 (a) (1972).

[56] Jonathan S. Campbell, *Has the Citizen Suit Provision of the Clean Water Act Exceeded its Supplemental Birth?*, 24 WILLIAM. & MARY ENVIRONMENTAL LAW & POLICY REVIEW 305, 306-07 (2000).

[57] *See* Justia US Supreme Court, Justia Opinion Summary and Annotation of Sierra Club v. Morton, 405 U.S. 727 (1972) available at <https://supreme.justia.com/cases/federal/us/405/727/> (last visited Jan. 27 2020).

[58] *See* Clean Water Act 33 U.S.C. § 1365(g) (2012), *see* also Karl S. Coplan, *supra* note 49, at 65-67.

[59] William A. Wilcox Jr., *Access to Environmental Information in the United States and the United Kingdom*, 23 LOYOLA OF LOS ANGELES INTERNATIONAL & COMPARATIVE LAW REVIEW 121, 126-32 (2001).

[60] Aims of giving effect to international agreement, in the Article 253 of the Constitution of India stated "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention

the Stockholm Declaration and expected to fill in the blanks and provide a blueprint for progressive policies to protect ecosystems, the Environment and Protection Act 1986 was ratified and enforced. This legislation seeks to supplement existing laws on pollution control by enacting general laws for environmental protection and to fill gaps in regulations regarding major environmental hazards. Before and until the enactment of the Environmental Law, the power to sue under Indian environmental law belongs exclusively to the government. However, after the enactment of the Environmental Protection Act 1986, citizens' suitability provisions in this Environmental Act broadened the concept of locus standi in a lawsuit over environmental issues.

Provisions regarding the permissibility of citizens participating in the enforcement of laws and regulations relating to environmental issues are also found in Section 43 of the Water Act[61] and Section 49 of the Water Act[62], regulating that anyone, other than authorized

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with any other country or countries or any decision made at any international conference, association or other body".

[61] The Republic of India, The Air (Prevention and Control of Pollution) Act No. 14 of 1981, Section 43 regarding cognizance of offences stated:

(1) No court shall take cognizance of any offence under this Act except on a complaint made by-
(a) a Board or any officer authorized in this behalf by it; or
(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorized as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person: Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

[62] The Republic of India, The Water (Prevention and Control of Pollution) Act No. 6 of Year 1974, Section 49 regarding cognizance of offences stated:

(1) No court shall take cognizance of any offence under this Act except on a complaint made by-
(a) a Board or any officer authorized in this behalf by it; or
(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorized as aforesaid, and no court inferior to that 25 of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person: Provided that the Board may refuse to make any such report available to such person if the same is in its opinion, against the public interest.

(3) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any 5 Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

government officials, can submit complaints go to court on charges of violating the law. However, the person must give a notice no less than 60 days of alleged violations and the intention to file a lawsuit against the authorized government official.

Restoration of the environment is a guarantee provided by law available to citizens in connection with water pollution in India is limited and is still under development when compared to countries like the U.S. This occurred in the 1986 after the arrival of environmental protection measures that a citizen has the right to file complaints under section 19 of the Environmental Protection Act 1986 and sue the pollutants. In India, there are procedures for notification within the previous 60 days that must be given before filing a lawsuit,[63] so that this gives enough time for the polluter to resolve the violation and clean up the traces (change the situation so that it does not appear to be polluting). Moreover, we must first complain to the Central Pollution Control Board and cannot simply approach to get an access to the court without going through the Central Pollution Control Board. Therefore, when citizens bring samples of pollution (evidence) will not be accepted and only samples of pollution carried through the pollution control board can be accepted.

- **Situation in Indonesia**

Many problems regarding the environment (including nature) have not been resolved and finished yet to be discussed in finding solutions to what efforts can be used for law enforcement. This can be seen as the times and patterns of community life which are the main modes in the emergence of a legal problem. These problems sometimes do not only come from a person, organization or a legal entity that exists in a country, but also these problems arise and are caused by the government as the organizer of the state in providing protection for its citizens as well as in carrying out the observance of the constitution of the state.

The mechanism of problem solving carried out by a person, group of people and legal entities has been provided normatively determined in positive law as well as procedural

[63] *See* Chapter IV Section 19 of The Environment Act 1986 of the Republic of India.

provisions regarding how to resolve the problem within the scope of use of the judiciary which has been codified in the procedural law. Likewise, the procedure for resolving the case is indicated as an act against the law/unlawful act (negligence, omission and/or carelessness) committed by the government in the sense of failure to carry out its duties for the administration of the state in accordance with the state constitution related to the environment not implemented yet in regulation. In the development of state life, it is often seen that there is an indication of the government's negligence in providing guarantees for a habitable and wholesome environment as (one of the constitutional rights of citizens)[64], where negligence can harm citizens directly or indirectly. The people as citizens who hold sovereignty, should have the space and ways to sue the government[65] with certain procedures in order to achieve justice and guarantee the existence of the citizens' constitutional rights if the government is deemed to have neglected the duties and responsibilities imposed on it. In the realm of fighting for constitutional rights in seeking justice in order to safeguard the public interest, legal norms both within the scope of environmental law and procedurally through efforts to environmental law enforcement, must provide a route to resolve problems that harmonize between the law, the economic interests, and social relations.

In Article 28 letter I paragraph (4) of Indonesian Constitution expressly state that the protection, promotion, enforcement, and fulfillment of citizen rights is the responsibility of the state (notably the government), and also mentioned in paragraph (5) that to uphold and protect the citizen rights in accordance with the principles of a law state, those rights are guaranteed, regulated, and stated in legislation. Thus, to represent the state in managing certain affairs, the constitution and laws appoint state organs or institutions to carry out the

[64] *See* the Article 28 H (1) of the Indonesian Constitution 1945 mentioned that "every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment and shall have the right to obtain medical care".
The Indonesian Constitution 1945 does not provide the meaning/definition of constitutional rights. In Indonesian positive law, the meaning/definition of constitutional rights is determined in Act Number 24 Year 2003 jo. Act Number 8 Year 2011 concerning Constitutional Courts where constitutional rights are "rights that are regulated in the Indonesian Constitution 1945".

[65] Thus, suing the government is not something that citizens can do as easily as possible, there are restrictions imposed. As long as the government is negligent in organizing a country which results in not achieving the objectives of the rule of law outlined in the constitution, then there is a basis for citizens to do so in order to obtain guarantees for the protection of their rights as citizens.

mandate of the constitution and laws in force in Indonesia. This is in corresponding with the constitutional rights that has two functions, substances and structures.[66] The function is limiting government power and protecting the rights of every citizen.[67] Substantially, contain rights such as economic, social, cultural, civil and political rights, besides the protection of minority group rights and environmental protection.[68] In addition, constitutional rights also have structure where there is a distinction between rights that can be restricted (derogable rights) and cannot be restricted or reduced by the element of fulfillment (non-derogable rights).[69]

Environmental problems in Indonesia and even in the world become a frightening specter because the environment must be managed and preserved not only for the current generation but for future generations. Some of the problems that become a challenge that have to addressed and resolved in the future.[70] This problem arises when seen from the role of the state in providing inadequate protection and supervision. regulations (which are regulating, prohibiting and what needs to be done) are seen as decorating the existing regulatory structure so that the role of citizens is needed in law enforcement efforts to control state administration. This will be similar to what ever happened in the U.S. and India when the concept of citizen lawsuit emerged, where for the first time it is used in providing protection to nature and the environment as a result of negligence and omission by state administrators. In Indonesia, which tends to adhere a civil law system that originated come from European continental in the history of the Dutch colonial era in Indonesia, which adhere a civil law system and was later applied and influencing the legal system in Indonesia which

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[66] *See* Stephen Gardbaum, *Human Rights as International Constitutional Rights*, 19 THE EUROPEAN JOURNAL OF INTERNATIONAL LAW 749, 750-51 (2008).

[67] Gerald L. Neuman, *Human Rights and Constitutional Rights: Harmony and Dissonance*, 55 STANFORD LAW REVIEW 1863, 1863-65 (2003).

[68] Stephen Gardbaum, *supra* note 66, at 750.

[69] *See* Stephen Gardbaum, *The 'Horizontal' Effect of Constitutional Rights*, 102 MICHIGAN LAW REVIEW 388, 388-459 (2003). Note: the term derogable rights are defined as rights that can still be deferred or limited (reduced) fulfillment by the state under certain conditions. Meanwhile the term non derogable rights means that there are rights that cannot be deferred or limited (reduced) by the state, even though in an emergency.

[70] *See* Green Peace Indonesia, Tantangan Bersama di tahun 2020 [A Joint Challenges in 2020], available at <https://www.greenpeace.org/indonesia/cerita/4544/tantangan-kita-bersama-di-tahun-2020/>, (last visited March, 3 2020)

at that time was heavily influenced by customary law. In the civil law system, a judge only determines the facts of a case and applies the remedies found in the codified law. As a result, lawmakers, intellectuals, and legal experts have more influence on how the legal system is managed than judges.[71] Because citizen lawsuit is a concept that comes from the common law system, it is needed to harmonize with the existing law system (civil justice system) when it wants to apply in Indonesia. The civil law system, on the other hand, places more emphasis on what is written, what is passed and issued by legislators rather than codifying the law. The civil law system relies on written laws and other legal codes that are constantly updated, and which establish legal procedures, prohibitions, penalties, and what can and cannot be brought to the court. However, the development of law in a state is not static, and Indonesia has some procedural legal concepts that were adopted from different legal systems. It is also believed that, in my opinion, Indonesia is not a state that adheres to one legal system (in absolutely). In a state, it is very common to find the adoption of legal concepts from different legal systems (comparing, adapting, and adopting). The development of the era and dynamics of life in a state that is the driving force for the development of the law to not become static and tends to accommodate the needs of the state in regulating and organizing the state to realize the ideals of a law state.

2.2 The Fundamentals of Citizens' Lawsuit

Citizen lawsuit is a toughness environmental law enforcement mechanism for individuals to protect the environment when the government is negligent and fails to do it. In the absence of environmental citizens' lawsuit mechanism, citizens could have lack of brave and don't have capability to adequately enforce environmental laws and reduce pollutions.[72] Lawsuits related with the public interest, especially citizens' lawsuit concept strongly related with the aspects of how the government implements or does not apply public

[71] An adage from French Philosopher *Charles-Louis de Secondat, Baron de La Brède et de Montesquieu* generally referred to as simply Montesquieu, once said "*La Bouche De La Loi / La Bouche De Droit - Spreekhuis Van De Wet*" (what the legislation says is the law) Judges are mouthpieces or conveyers of the law so that according to this understanding, judges are limited to applying laws outside the applicable laws. *See* PATRICK RILEY, A TREATIES OFLEGAL PHILOSOPHY AND GENERAL JURISPRUDENCE, THE PHILOSOPHERS' PHILOSOPHY OF LAW FROM SEVENTEENTH CENTURY TO OUR DAYS (Damiano Canale, Paolo Grossi, Haso Hoffman Eds. Springer, London 2009), pp. 215-18.

[72] *See* Peter H. Lehner, *supra* note 50, at. 4.

law authorities (government actions to embody the state responsibility to create a just and prosperous state by guaranteeing the rights of citizens as stipulated in the constitution) mandated for it to manage, run and regulate public affairs for citizens (in the wider community).

In the U.S., the Congress enacted the citizens' lawsuits provisions to encourage public participation and give a role to the public in the enforcement of environmental protection laws. The provisions concerning the citizens' lawsuit are designed to complement environmental legislation as a form of enforcement, management, and supervision. In the U.S., the provisions of citizens' lawsuit are mentioned in several laws and regulations, indeed varying in term of languages (phrases) because the designation of each laws and regulations are different. Likewise, the differences in the provisions also occur because of differences in the substantive objectives of the laws and regulations. Such as, the Surface Mining Control and Reclamation Act[73], the Clean Water Act[74], Clean Air Act[75], and the Recourses Conservation and Recovery Act[76] but fundamentally the provisions of citizens' lawsuit have an identical structure and provide analogous procedures. For example, Citizens' lawsuit provisions in Surface Mining Control and Reclamation Act allow to file a lawsuit against government operators suspected of violating any laws or regulations, order or permit issued in accordance with these act. The provision of a citizens' lawsuit in the Clean Air Act allows filing a lawsuit which states a violation of emission standards. The provision of citizens' lawsuit in the Clean Water Act which authorizes to file a lawsuit against to those who alleged to be violated of an effluent standard or limitation or order issued by the administrator with respect to such a standard or limitation. The provision of citizens' lawsuit in the Recourses Conservation and Recovery Act which gives the authority to file a lawsuit to those who are alleged to be violated of any permits, standards, regulations, conditions, requirements, prohibitions, or orders which have become effective pursuant this regulation.

[73] *See* The provisions of citizens' suit in Surface Mining Control and Reclamation Act 30 U.S.C. Ch 25. § 1270

[74] *See* The provisions of citizens' suit in Clean Water Act 33 U.S.C. § 1365 (2012)

[75] *See* The provisions of citizens' suit in Clean Air Act 42 U.S.C. § 7604 (2012)

[76] *See* The provisions of citizens' suit in Resource Conservation and Recovery Act 42 U.S.C. §6972

And also, to those who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

The citizens' lawsuit provisions contained in these regulations, provides two discrepancy of legal actions. Firstly, to legitimize a lawsuit against any person suspected of violating the provisions in the regulations and force any person to comply with the law and regulation or regulations. Secondly, this law authorizes action against government officials, usually the Environment Protection Agency Administrator, where the plaintiff alleges that the agency has failed to carry out non-discretionary duties. These are referred to as "mandatory duty" for any person to file a lawsuit, which some laws and regulation authorize "mandatory duty" lawsuit against state government entities.[77] The importance of integrating the provisions regarding citizens' lawsuit in some of these regulations is due to: first, citizens affected by the environment do not have many alternative solutions to combat pollution; in addition, some solutions that citizens may have, require to prove that citizen have suffered personal injury and not public injury, thus, it is not effectively to overcome pollution.[78] Second, the U.S. Government, sometimes, unsuccessful to enforce environmental laws due to the minimum of financial and human resources.[79] Therefore, without a citizen lawsuit, environmental law violators can more easily avoid the effects of their illegal actions.[80]

From the description above, there are fundamentals of citizens' lawsuits that are applied in the U.S. common law system as an effort to enforce environmental law.

- As an access to justice

A framework wherein oriented to the citizen that requires the conceptualization of the law and justice needs of the community (in a state). Meeting the needs of law and justice is a policy objective that is different from the goal of modernizing life in general where to

[77] Timothy W. Gresham et.al., An Overview of Citizen Suits Affecting the Mineral and Energy Industries 20 ENERGY & MINERAL LAW INSTITUTE 222, 224-25 (2000)

[78] *See* Peter H. Lehner, *supra* note 50, at. 4

[79] Mark Seidenfeld & Janna Satz Nugent, *"The Friendship of the People": Citizen Participation in Environmental Enforcement*, 73 GEORGE WASHINGTON LAW REVIEW 269, 269 (2005).

[80] Peter A. Appel, *The Diligent Prosecution Bar to Citizen Suits: The Search for Adequate Representation*, 10 WIDENER LAW REVIEW 91, 91 (2004).

improve efficiency in the broader justice sector requires a mechanism to encourage access to justice. This diverts attention from identifying the right institutions in the justice system, the emphasis on courts and formal dispute resolution to a focus based on the willingness of citizens to face legal and justice issues that can occur in the nation and state life.

From the very beginning of this concept arise, access to justice for citizens has been the main objective. The fulfillment of the rights of citizens as stipulated in the constitution will not all be perceived when problems arise that have not been resolved properly. There are so many rights that are owned and should be accepted by citizens naturally. One of them is the right to a habitable and wholesome environment. Besides, either being internationally or nationally in each state recognized as a right that is naturally owned by everyone. In a state, of course it has its own procedural law in solving environmental problems whose dimensions of the problem cover the fields of administrative law, criminal law, and civil law. Likewise, in Indonesia, the administrative justice system, the criminal justice system, and the civil justice system already have their own mechanisms in solving environmental problems. In administrative law and the administrative justice system it has clearly determined the characteristics, features, and the framework for solving environmental problems, as well as in the criminal law and criminal justice system. The point of discussion is in the civil law and civil justice system (this is because citizen lawsuit is included in the scope of civil litigation). Indeed, in the civil justice system has provided several procedures for solving environmental problems/cases. Inter alia, an environmental problem that occurs between the subjects of civil law (person and legal entities). The settlement of environmental problems/cases between the subjects of civil law uses ordinary civil case settlement procedures that have been clearly regulated in civil procedural law in force in Indonesia (HIR and RBg[81]). Even this form of civil litigation has already taken place which generally based on the existence of an unlawful act carried out by one of the party (the party being sued). Then the procedure for the settlement of environmental problems/cases involving groups of people and those who commit acts against the law is to use a class action procedure. In the civil justice system, that procedures have been determined through a Supreme Court

[81] Indonesian Code of Civil Procedural Law. *see* the explanation as cited on 46.

Regulation no.1 Year 2002 concerning Class Action Procedure which is in line with the principles of civil justice contained in the HIR/ RBg.[82] Likewise, the existence of NGO's which according to the Environmental Act is given legal standing (NGO's Legal Standing[83]) and the right to sue related to environmental problems and the procedure will also use HIR/RBg. Regarding how to sue state administrators (government) when neglect in fulfilling citizens' constitutional rights to a habitable and wholesome environment, there are no regulations in civil justice system that determine how to sue the government based on this matter as well as clearly regulated in several environmental legislation. In the U.S. what is used as a benchmark for monitoring the government in organizing the state in fulfilling the rights of its citizens.

This cannot be said as an arbitrary action by citizens to sue the government which can interfere the government in running the state or overthrow the legitimacy of the government in front of all its citizens. It is granted to be done for the citizens on behalf of public interest, up to broader public interest to collect the responsibility of the state in providing guarantees to obtain rights that are distributed equally through the state constitution. When reviewing some of the regulations relating to the environment in America,

[82] Basis of the permissibility of a group of citizens filing a lawsuit for group representation (class action lawsuit) can be seen from the provisions of article 91 of Act No.32 of 2009 2009 concerning Environmental Protection and Management (Environmental Act) mentioned:
(1) Citizen shall have the right to filing a class action (lawsuit) for the sake of themselves or on behalf and/or for the benefit of the community in case that there are losses caused by the pollution and/or damage of environment.
(2) A class action (lawsuit) can be filed in case there is similarity of facts or events, and type of claims by the group or the members of group.
(3) The provisions concerning the citizen right to class action (lawsuit) shall be in compliance with the prevailing laws and regulations.

[83] *See* Article 92 of Act No.32 of 2009 concerning Environmental Protection and Management (Environmental Act) mentioned:
(1) In regard of the implementation of the responsibility for the protection and management of environment, any of environmental organizations shall be entitled to filing a lawsuit for the sake of the sustainable functions of the environment.
(2) The right to filing a lawsuit shall be restricted to a claim for taking certain actions without any claim for compensation, except certain cost or real spending.
(3) Any of the environmental organizations shall be allowed to file a lawsuit based on the requirements as follows: a. it is a legal entity; b. it is asserted in the Statute of the environmental organization that it was founded for the sake of sustainable functions of environment; and c. it has been carrying out its real activities based on its Statute for a period of no less than 2 (two) years.

it has been clearly established that citizens have the right to file a lawsuit against the government with the aim that the government can improve the administration of the state in accordance with the constitution. Conceptualizing the need for access to justice includes the ability to obtain legal information, access the court as an effort to disputes settlement and participate effectively in the legal reform process. This is where the role of the court should not turn a blind eye when citizens be anxious on it. Because the conceptions originating from different legal systems can be adopted and integrated into the legal system that we profess not to damage the order of the legal system. Adoption of legal concepts from different legal systems is carried out with the aim of achieving justice as the basis of the existence of law in a state. Access to justice is an irreplaceable complementary right for every citizen. it shows itself as an inevitable legal principle. From an environmental perspective, without law enforcement, environmental law would be "rivers without water and stream". From the perspective of environmental legal policies, access to justice refers to the right of citizen (as society members) to have access to review and access to court procedures where they can challenge decisions, actions, and negligence that have been made by individuals or state administrators.

- As a form of public participation (citizen participation on environmental law enforcement)

Citizens are the main resources for a country to enforce environmental laws and regulations. Every citizen in a state understands the nature and environment in which they live in more than what is generally done by the government. The existence of the following citizens with their daily life activities enables them to understand the importance of a clean and livable environment. Although every citizen has a personal interest in the environment, but most still pay attention to the quality of the environment, motivated to protect it. By the existence of legal regulations that govern and manage the environment, most citizens do not understand what they can do to be called participating in the public interest. The environmental destruction and pollution are often found in Indonesia. Citizens living along the riverside saw pollution of chemical waste flowing along with the river water flow.

Tracing some companies/factories dumping waste into the river.[84] A group of citizens called for the danger of air pollution due to haze that causes respiratory and lung diseases even to death.[85] The citizen notices that city buses emit hazardous fumes, suing bus companies, calling on the government to review bus companies and fleets used if roadworthy, which requires companies to place pollution control devices in bus dump systems.[86] These are just a few examples of the many and varied effects that citizens can have on the process of environmental enforcement.

Citizen participation can enrich and strengthen the process of environmental enforcement in several ways. First, citizen participation in environmental enforcement touches the direct relationship between individuals and their environment. Citizens have knowledges of the environment that they live in. Their daily observation gives them access to information about environmental conditions that might be more difficult for the government to obtain. Involving citizens in environmental enforcement encourages intensive use of information and regulative efforts so as to enable citizens to participate in environmental issues around them, even if in a small scope if environmental problems are not resolved, it will have a negative impact on a larger or even national scope. Citizen participation in environmental enforcement thus broadens access to enforcement resources.

The dynamics between citizens and the state (government as a state administrators) which according to the constitution are equally tasked with enforcing environmental law in the context of environmental enforcement, citizens and government are considered to have the same goal of carrying out compliance to provide the environment not only for the current generation but also for future generations. This assumption of shared interests is referred to

[84] One of many river pollution case is the waste that pollutes the Avur Budug Kesambi River Jombang Regency, East Java Province is thought to originate from a paper mill. Liquid waste from this plant is discharged through two hidden pipes which are planted in the ground.

[85] the government's negligence in overseeing the enforcement of regulations in taking over the function of forests as plantation land which is often done by clearing forests through burning (which caused thousands of hectares burned). as well as the government's negligence in anticipating the possibility of a haze that is repeated every year in Riau Province.

[86] As well as air pollution caused by the exhaust of busses fumes (and also other public transportation) that occurs in the Capital City of Jakarta. Where the government must play an active role in providing supervision of vehicle emission tests together with the supervision of companies/ workshops that conduct emissions tests in order to have emission test equipment in accordance with the appropriateness of standards and quality.

as interests referring to citizens involved in public and government interests that formulate public policies and implement so as to guarantee public interests for citizens and add to the potential effect of citizen participation on the implementation of what the government does. Public participating in this matter is intended in addition to applying the prohibition, can increase compliance, prevent violations, this also contributes to a more realistic and responsive strategy to the enforcement of the right to habitable and wholesome environment by exercising control over the implementation of what the government has done.

But sometimes there is a lack of harmony between citizens and the government. because they assume that if a legitimate government is sued, the government's legitimacy to the public will decrease. The government may be concerned that citizen involvement in environmental enforcement will disrupt its own enforcement efforts and will reduce its flexibility to adjust law enforcement decisions to certain circumstances. Citizens, on the other hand, often find that government institutions do not fulfill their enforcement responsibilities properly as mandated by the constitution and. Citizens can see the government as being too vulnerable to the influence of the business interests they regulate. This is where the importance of putting a provision for people participation in environmental regulations that the government might not passionately implement certain laws could encourage the legislature to give citizens the legal right to file a lawsuit that requires the government to perform the assigned regulatory tasks. And in a condition where when the government does not act or is negligent, citizen have an effort which can replace it. Not only can compliance be achieved, but the government can be forced to take public responsibility for its own inaction.

Public involvement in law enforcement is a logical step to form a responsive justice system. Enabling citizens to have a concrete role in implementing the authority given to them. In the U.S. it has been more successful in implementing environmental law rules through the role of citizens in the process of environmental enforcement. Public participation by citizens has played an increasingly important role in the U.S. in forcing industry and government to comply with environmental laws, since the beginning of the modern environmental movement in the late 1960s with citizen enforcement mechanisms have shared some principles that might be applicable in other countries as well. In India, it has

made considerable strides in environmental protection since the 1980s. Many procedures have been introduced such as polluter pays principle and public interest litigation which are popular in India which is an extension of the active "*locus standi* [87]" to encourage citizens to play a role in environmental protection which is in the public interest of everyone. The court also has a role in encouraging the formation of environmental regulations. Thus, in the 1980s too, the court in India really showed its concern for everything about environmental protection and became actively in forcing environmental cleanliness protection and preservation to achieve livable environmental standards[88]. The success of environmental protection in India also through public interest litigation is indicated because the existence of judicial activism is a response by Indian courts to call on every concerned Indian citizen. A procedure that is known and developed with the aim of providing full justice for disillusioned personas such as the poor, depraved, illiterate, unorganized urban and rural labor sector, women, children, disabled and illiterate and others who are oppressed have no access to justice or have been denied justice. find justice for ordinary people necessary for those who want to get through real problems because of lack understanding of the procedural law. Courts provide procedures with a much greater responsibility for making the concept of justice available to disadvantaged sections of society. Public interest litigation has persisted, and its need cannot be overemphasized. Courts develop compassionate jurisprudence. Procedural compliance will replace substantive concern with the deprivation of rights. The *locus standi* rules were diluted. The court initiated a disinterested and impartial judge to become an active participant in the dispensation of justice. Therefore, the judiciary in India is taking proactive steps to correct violations of the basic rights of citizens and non-citizens caused by the state. In addition, the Supreme Court in India adopted certain legal transplants from common law (such as expanding *locus standi*), but the transplants were guided by local needs and knowledge. Its success was predicted upon strong and independent

[87] A latin phrase of the right or ability to bring a legal action to a court of law, or to appear in a court. *See* locus standi in HENRY CAMPBEL BLACK, BLACK'S LAW DICTIONARY (4th ed. 1968), p. 1080 means a place of standing, standing in court. A right of appearance in a court of justice, or before a legislative body, on a given question.

[88] M.C. Mehta, *The Accountability Principles: Legal Solution to Break Corruption's Impact on India's Environment*, 21 JOURNAL OF ENVIRONMENTAL LAW AND LITIGATION 141, 142-45 (2006).

court although the standard would be ideal to have been set at the legislature level, from the capacity determines that the court is the best institution of providing environmental protection.[89]

2.3 The Circumstances of the Application of Citizens' Lawsuit in Indonesia.

It cannot be denied that environmental destructions and pollution have a devastating effect on human life and directly harms the citizens constitutional rights. Most of the environmental destruction and pollution are known as a result of behavior that does not seat the environment as the most important part in the lives of all humans. Starting from the liberalization of pro-capitalist economic development policies that have a negative effect on other aspects of life, the granting and implementation of environmental permit that is not within the framework of supervision, and various acts of omission and neglect that may be carried out by the state governing authorities, those things can be said as backgrounds behind the environmental destruction and pollution nowadays. The presence of the State as a protector of citizens needs to be improved both in terms of the responsibility and provide guarantees for the protection of the citizens constitutional rights. As is known that the impact of environmental destructions and pollutions directly dives into the issue of citizens' constitutional rights. Eventually, there is a view of how to sue a State which is assumed to have been negligent in carrying out its obligations and provide guarantees to the constitutional rights of its citizens and ensure that state administrators do not repeat their negligence.

In Act No. 32 of 2009 concerning Environmental Protection and Management, the article provisions in this act have been regulating regarding the rights, obligations, and prohibitions both for every citizen, business performer and the government. However, if we look further into the provisions regarding the environmental problems settlements where it has not been determined whether the government can be sued for its responsibility in providing guarantees for the protection of habitable and wholesome environmental standards.

Responding to this, in countries adhering to the common law system, they already own and implement or have even been regulated in the regulation of a procedure for filing a

[89] MICHAEL G. FAURE AND ROY A. PARTAIN, ENVIRONMENTAL LAW AND ECONOMICS THEORY AND PRACTICE 310-14 (Cambridge University Press, 2019).

lawsuit against the state administrators. This procedure was once a concept which later became jurisprudence and regulated in the codification of state law which was intended to solve the problem of the right to the environment which, when seen from what happened in Indonesia, it seems to have the same dimension. In countries like the U.S. and India, this concept is used and tried as an alternative to solving environmental problems related to citizens' constitutional rights. This procedure came to be known as the citizen lawsuit, a lawsuit mechanism directed against state administrators in the public interest, not for personal or individual interests. This element of public interest makes it not the same as the administrative lawsuit[90], although both of these mechanisms are equally suing state administrators. Furthermore, the focal point is how to make demands for State administrators to try to solve a problem by issuing a general governing policy (*regeling*[91]) so that the violation of the citizens' rights does not occur again. The citizens' lawsuit function as described above cannot be found in the case settlement procedures provided in Indonesian civil justice system so that the application of citizens' lawsuit will cause uncertainty.

Indeed, citizens' lawsuit was not appearing from the civil law system as applied in Indonesia. Historically, citizens' lawsuit was born in countries that adhered the common law

[90] Referring to the administrative lawsuit in Indonesia, it has been regulated in Act Number 51 of 2009 concerning Second Amendment of the Act Number 5 of 1986 concerning Administrative Court, where the administrative lawsuit was filed due to an administrative dispute. Based on Article 1 number 10 of Act Number 51 of 2009, Administrative dispute is defined as "disputes arising between person or legal entity against state administrator agency or officials, as a result of the issuance of administrative decisions (administrative decree)". Based on Article 1 number 9 of Act Number 51 of 2009 the administrative decree is defined as "a written stipulation issued by a state administrator agency or officials containing legal actions based on applicable legislation, which is concrete, individual, and final, which results in legal consequences for a person or legal entity".
This administration decree is the object of the dispute that will be sued due to:
a. The sued administrative decree is contrary to the applicable laws and regulations.
b. The sued administration decree is contrary to the general principles of good governance.
So that the plaintiff, through an administrative court, requested that the administrative decree be declared null or invalid, with or without a claim for compensation and/or rehabilitation.

[91] *Regeling* is a government action in public law by making a general and abstract regulation. The intended regulation can be in the form of Act, Government Regulations, Ministerial Regulations, etc. Through regulation, the will of the government together with the legislature is realized, or by the government itself. Government action is carried out in the form of issuing regulations, intended with legal duties undertaken by the government. The purpose of the words "general and abstract" of the regulation means that the government or state administration officials are in an effort to regulate all citizens without exception or in other words these regulations are addressed to all people without exception,

system. As explained earlier that the U.S. became the first country to use this type of lawsuit concept in responding to environmental problems that occur in its jurisdiction. Furthermore, citizens' lawsuit has a clear legal position in the state because it starts to be contained in various laws and regulations that give citizens rights of access to the court. The provisions of the articles in the legislation essentially provide a legal guarantee that citizen can sue the government in court to carry out the obligations ordered by law. In its development, moreover, currently in a country that recognized the types of citizens' lawsuit and mentioned in the legislation, this procedure is not only for cases involving the environment, but also in all fields where the state is considered negligent in fulfilling the constitutional rights of its citizens. The application of the citizens' lawsuit concept is different from what is occur in Indonesia due to there are no rules and procedures, but in civil court practice it has occurred.

- **Case Studies and The Problem Why Citizen Lawsuit Has Not Been Thoroughly Applied in Indonesia.**

The citizens' lawsuit in Indonesia is not something new. It can be said as elaboration/expansion of the Indonesian civil justice system. The initial problem of how the citizens' lawsuit will be used is regarding the procedure for filing a lawsuit which is known in the common law system adhered by the *Anglo Saxon* countries, but Indonesia which adheres to the civil law system, does not recognize yet the citizens' lawsuit mechanism that was apparently used to resolve civil cases. Moreover, code of civil procedural law in Indonesia are imperative, which means that it is coercive, cannot be distracted and judges must obey the regulations. Likewise, judges cannot create rules that bind everyone in general.

(a) Case of Migrant Worker Deportation in Nunukan.

The judge at the Central Jakarta District Court who examined the case number 28/PDT.G/2003/PN.JKT.PST, the court decision accepted partly of this citizens' lawsuit. This is where an urgent point is found in how this case can be used as a starting point for the emergence of the use of citizens' lawsuit. Therefore, it is necessary to find out about the basis for proceedings and the basis for the judgments used in examining and deciding citizen lawsuit in this case (Nunukan case) as well as the judge's way of assessing the legal standing of the Plaintiffs. This is necessary because it relates to the legal basis of judges in examining citizens' lawsuit cases in Indonesia. Reviewing decision number

28/PDT.G/2003/PN.JKT.PST, it is known that the filing of citizen lawsuit in the Nunukan case originated from the opening of jobs since the exchange of diplomatic notes in July 1998 between the Government of Indonesia and the Government of Malaysia. As of January 2002, there were 1,046,983 Indonesians who had become migrant workers in Malaysia, and around 480,000 of them were found to have no official documents. The statement in the note regarding the employer's obligation to keep and return the passport to the Indonesian embassy if the worker runs away, results in documented migrant workers who are in Malaysia becoming undocumented, making migrant workers vulnerable to being targets of exploitation. This condition is illustrated by the investigation report of the Volunteer Network Team for humanity on September 12, 2002, which found the fact that wages were not paid as promised and they worked and lived in poor and restricted conditions. Since the end of 2001 there have been cases of violence perpetrated by the Malaysian Government against migrant workers on the grounds that migrant workers who work without documents are illegal immigrants. Since early 2002, the Liaison Office of the Consul General of the Republic of Indonesia noted that the mass deportations of Indonesian migrant workers were getting bigger. Prior to the passing of the Malaysian Immigration Act in 2002, 179,904 Indonesian migrant workers sent amnesty to the Malaysian government which stated that they were willing to voluntarily go to Indonesia without imprisonment first. After the passage of the Malaysian Immigration Act on May 20, 2002 which came into effect on August 1, 2002, there were repeated actions of violence against Indonesian migrant workers in Malaysia. The enactment of the Malaysian Immigration Act has legitimized the arrest of Indonesian migrant workers by deploying military, police, and paramilitary officials. The Malaysian Government’s policy led to a large flow of deportation of migrant workers to points of return, including, Belawan (North Sumatra), Batam, Dumai, Tanjung Pinang, Tanjung Balai (Riau), Kuala Tungkal (Jambi), Entikong (West Kalimantan), Nunukan (East Kalimantan), and Pare-Pare (South Sulawesi). Points of return such as Medan and Batam strongly reject the presence of deportants, which causes most migrant workers to be deported through Nunukan. Seeing the seriousness of the mass deportation situation for Indonesian migrant workers in Malaysia, Munir, an activist and with the Nunukan Tragedy Advocacy Team brought forward a lawsuit for citizens' lawsuit, which urged the Indonesian

government to provide protection for migrant workers who experience violence and the Indonesian Government (the defendant) did not make any diplomatic efforts with the Malaysian government to prevent the deportations from harming the repatriated Indonesian migrant workers.

Case number 28/Pdt.G/2003/PN.JKT.PST, which is a citizens' lawsuit filed for the first time at the Central Jakarta District Court, in the application of citizens' lawsuit mechanism in civil procedure law in Indonesia, the Panel of Judges determined that the citizens' lawsuit filed by the plaintiffs was accepted and stated that the case investigation could be continued. The Panel of Judges considers the provisions of Act Number 14 of 1970 Concerning Basic Provisions of Judicial Power as amended by Act Number 35 of 1999, in Article 14 paragraph (1) and Article 27, which is now amended by Act Number 48 of 2009 concerning Judicial Power Article 10 paragraph (1) and Article 5. With this stipulation, the Panel of Judges launched a transplant process from the common law system, namely the citizen lawsuit into the Indonesian procedural law. In appeal court decision number 480/ PDT/2005/PT.DKI on case of migrant workers Number 28/PDT.G/2003/PN.JKT.PST stated that the defendant was not proven to have committed an action against the law. Likewise, on that appeal court decision, the plaintiff's lawsuit was completely rejected. However, the decision of the court of first instance at the Central Jakarta District Court Number 28/PDT.G/2003/PN.JKT.PST has been used as a measure to defend the public interest through citizen lawsuit. In their consideration, the panel of judges acknowledged the concept of a citizen lawsuit as follows: "... every citizen without exception has the right to defend the public interest (in the name of the public interest), can sue State Administrators or the Government who have committed acts against the law which are clearly detrimental to the public interest and society welfare ".

(b) Case of Share Holder Divestment of Indosat Ltd.Co

The Central Jakarta District Court is examining Citizens' Lawsuit for the second time after the case regarding the deportation of migrant workers in Nunukan. In the case number 178/PDT.G/2003/PN.JKT.PST. there were 133 people who signed the lawsuit through their lawyers present to represent the plaintiffs, namely Prof. Remy Sjahdeini of the Law Office of Remy & Darus. This citizens' lawsuit was filed against the Government of the Republic

of Indonesia through the Ministry of State-Owned Enterprises, STT Communications Limited Singapore, and Indonesia Communication Limited. The plaintiffs requested that the court declare null and void by the SA (Shareholder Agreement) and SPA (Share Purchase Agreement) agreements, as well as any form or type of agreement related to the transaction.

The plaintiffs also requested that the actions of the defendants in the Indosat divestment be declared as an action against the law. The legal position of Indosat must be returned to its original position. The plaintiffs consider that Indosat's sales are nothing but the sale of state sovereignty in the telecommunications sector. It can be seen that the Government's control over Indosat is very weak because the Government's shares are only 15 percent. Indosat is no longer owned by the state and nation of Indonesia because based on the Extraordinary General Meeting of Shareholders on December 27, 2002, Indosat was transformed into a foreign investment company. The defendants were deemed to have committed a serious and disgraceful mistake because they had the courage to openly violate the prohibition of various provisions of the law. such as article 33 of the 1945 Constitution, TAP No. IV/MPR/1999 concerning Outlines of State Policy 1999-2004, Act No. 1 of 1967 concerning Foreign Investment and Act No. 1 of 1995 concerning Limited Liability Companies.

The release of Indosat's shares to a Singaporean telecommunication company is considered not just a privatization or divestment, but as a policy that poses a threat to the security of the Republic of Indonesia. The divestment of Indosat's shares to other countries is very detrimental and hurts the hearts of the people. Indosat satellites that were originally the eyes, ears and hearts of the nation and state are no longer owned by Indonesia. Moreover, Indosat was sold when it was in good health and gained huge profits for the country. The release of shares of the majority of strategic assets of the caliber of Indosat is deemed to violate the Article 33 of the Indonesian Constitution 1945. Strategic assets relating to the interests of the state and the people must still be controlled by the state. Apart from violating the constitution, the sale of Indosat's majority share also violates the People's Consultative Assembly Decree and the Statutory Legislation. There were seven violations in the divestment of Indosat's shares, as follows:

First, People's Consultative Assembly Decree No. IV/1999 that State-owned

Enterprises/Regional-owned Enterprises must be efficient, transparent, and professional. SOEs that are not directly related to the public interest are encouraged to be privatized through the capital market. Second, People's Consultative Assembly Decree No. VIII/2000 that the State-owned Enterprises restructuring, and privatization program is carried out transparently in accordance with the targets set in the 2000 State Budget. Privatization must be carried out selectively and first consulted with the People's Representative Council. Third, based on People's Consultative Assembly Decree No. X/2001, a comprehensive "action plan" must be formulated, including a sectoral regulatory framework agreed with by the People's Representative Council. Fourth, People's Consultative Assembly Decree No.VI/2002 also emphasized that the privatization of State-owned Enterprises must be carried out very selectively, transparently, and carefully after consultation with the People's Representative Council. Fifth, the Act No.25 of 2000 concerning the National Legislation Program emphasizes that the criteria for privatization are applied to business activities that are not very strategic public interests. Sixth, the Act No. 1 of 2002 State Budget emphasizes that the target for State-owned Enterprises privatization set by the People's Representative Council is 6.5 trillion rupiah. Seventh, Act No.36 of 1999 concerning Telecommunication outlines that the telecommunications sector becomes a competitive business sector.

It must be understood that Indosat is a state-owned telecommunications company which is engaged in production or services which controls the lives of many Indonesian people. This is in accordance with Article 6 paragraph (1) of Act No.1 of 1967 concerning Capital Investment as amended by Act No.11 of 1970. The business sector which dominates the lives of many people is telecommunications so that it must be controlled by the state and closed to Foreign Investment Company in full. In addition, Article 4 paragraph (1) of Act No.36 of 1999 on Telecommunications confirms that telecommunications are controlled by the state and its guidance is carried out by the government. This case reached the cassation level in the Supreme Court where the Supreme Court rejected the cassation of Indosat divestment. The Supreme Court stated that the Petitioner does not represent the public interest. The petitioners for cassation did not fulfill and explain which public interest represented, and which public interest was violated. The Supreme Court judge explained that the petition from petitioner was included in the material of the case, however, according to

the Judge, a lawsuit can be said to be included in the citizen lawsuit because anyone can file it without having to suffer losses, but it is emphasized that it must clearly represent which public interest and which public interest will be harmed. This case is more likely to be an action of detrimental to state finances which is included in the category of corruption cases. So that, reflecting on the case of Indosat divestment, the meaning and elements of public interest need to be emphasized so that the use of the citizen lawsuit concept is not simply rejected due to the limited understanding of the public interest.

(c) Case of Social Security

The Citizens' lawsuit filed by 120 Indonesian citizens with case number 278/PDT.G/2010/PN.JKT.PST. In this citizens' lawsuit, the President and the other defendants were deemed to have committed an illegal act because they neglected their obligation to fulfill the right to social security for citizens. In fact, according to the plaintiff, the right to social security is a constitutional right that guarantees that the plaintiffs and other Indonesian citizens can live with dignity. The six actions against the law against of the defendant are:

(1). Not implementing Article 28H paragraph (3) of the Indonesian Constitution 1945 and Article 34 paragraph (2) of the Indonesian Constitution 1945. The Government and the House of Representatives do not develop a social security system for all the people and do not fulfill the right to social security that allows full self-development as a dignified human beings.

(2). Not making technical regulations to regulate the administration of social security. The Government and the House of Representatives did not carry out the 22 delegation orders contained in 22 articles of the National Social Security System Act.

(3). Did not organize health insurance programs for all Indonesian people without exception for life. The Government and the House of Representatives were accused of violating Article 34 paragraph (3) of the Indonesian Constitution 1945 and Article 19 of the National Social Security System Act.

(4). Not implementing the National Social Security System until the transitional deadline ends on 19 October 2009. Article 52 paragraph (2) of the National Social Security System Law is interpreted as an order to complete the establishment of a social security

administering body and all implementing regulations no later than five years after the enactment of the National Social Security System Act on 19 October 2004.

(5). The Government and the House of Representatives did not guarantee social security rights and did not carry out the duty of the State to take adequate steps as mandated in Article 9 and Article 11 of the International Covenant on Economic, Social and Cultural Rights. In fact, this convention has been enforced in all regions of Indonesia with Article 2 of Act No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights.

(6). Particularly for the Government, general principles of good governance were neglected. The government did not enforce social security legal certainty by not establishing a Social Security Administering Body Act and implementing regulations for the National Social Security System Act.

The Panel of Judges in case No. 278/PDT.G/PN.JKT.PST regarding the implementation of the National Social Security System, partially granted the plaintiff's claim. Several points were granted, First, to immediately enact the Act on Social Security Administering Bodies, in accordance with the order of Article 5 paragraph (1) of the Act on the National Social Security System. Second, establish government regulations and presidential regulations as mandated by Law no. 40 of 2004 concerning the National Social Security System. Third, adjust 4 national social security administering bodies to be managed by a trustee agency according to National Social Security System Act. Fourth, to sentence the defendant to directly paying the court fee of IDR. 2,381,000. Meanwhile, one point was rejected by the court, namely, to sentence the defendant jointly and severally to pay a loss of IDR. 1 (one rupiah) to the Indonesian people due to the failure to realize the National Social Security System.

(d). Case of Rotating Power Outage

The Case No. 476/PDT.G/2009/PN.JKT.PST was filed with the defendants are the Government of the Republic of Indonesia, the Minister of Energy and Mineral Resources and the State Electricity Company. This case occurs because the fire incident at the Cawang Substation had reduced the supply of electricity in several regions of Indonesia, especially Java and Bali. Whereas, because of the fire at Cawang Substation, the Defendant as the

electricity provider had unilaterally cut electricity in several regions in Indonesia, including Jakarta area (Blackout). Accordingly, the State Electricity Company has neglected the operation of the equipment or instruments used to support the flow of electricity from the State Electricity Company to the Electricity Consumers, including the Plaintiffs. Previously, the State Electricity Company also did not make efforts such as technology audits so that this event would not occur.

That it turned out to be negligent in operating the supporting equipment, the flow of electricity from the State Electricity Company to electricity consumers did not only occur at the Cawang Substation but also at the Kembangan and Gandul Substation. Whereas, due to the damage to the electrical substation, the Defendant carried out a power cut which was carried out in rotation on several areas including Jakarta. Because of the blackout, most of them were electricity consumers including the Plaintiffs were unable to obtain rights to continuous electricity of good quality and reliability.

Article 29 paragraph (1) letter b of the Electricity Act mentioned "Consumers have the right to receive electricity continuously with good quality and reliability". That the result of the electric extinguisher carried out by the State Electricity Company has caused material and immaterial losses experienced by most electricity consumers. The State Electricity Company did not provide good services to electricity consumers, the State Electricity Company only pays attention to what it is entitled to, namely receiving payments for the flow of electricity. However, when the State Electricity Company neglects its obligation to supply electricity such as carrying out a power cut, the State Electricity Company arbitrarily and never takes responsibility for any losses that the customer has suffered electricity due to a power cut. There have been many complaints from the electricity consumer community due to the poor service they have received, but these complaints have never been responded to by the Defendants either directly by providing compensation or by forming a consumer complaint team. The fire incident at the Cawang Main Substation was the result of the negligence of the State Electricity Company in carrying out the operation and management of electricity, and therefore the Electricity Act has stipulated that the consumers are entitled to get compensation due to the actions of the State Electricity Company.

The Defendants openly violated the subjective rights of the consumers of electricity,

including the Plaintiffs, namely by not providing a continuous flow of electricity to the consumers of electricity and resentment of not giving compensation to electricity consumers due to a blackout caused by negligence. In carrying out operations, the State Electricity Company has clearly regulated in Article 29 paragraph (1) letter b and letter c of the Electricity Law. The demands put forward by the plaintiffs in this citizen lawsuit are:

- Granted the Plaintiffs' claim in full.
- Stated that the Defendants had committed an action against the law.
- To order State Electricity Company to pay material compensation and immaterial to the Plaintiffs, which number is not less than IDR. 1,000, - (one thousand rupiah) or other amount deemed fair .
- Order the Defendants to form a Team or Commission Compensation Payment.

However, the panel of judges in their decision rejected the Plaintiff's claim in its entirety Judges consideration to give that decision is comprehending the application of citizens' lawsuit from precedent that the plaintiffs should file a lawsuit that aims to ask the defendants issuing regulations or policies that may apply generally if the plaintiffs believes that the events occurred were the result of a policy error or lack of regulations which should be the authority of the Defendants, not to demand for monetary compensation. The judge also considered based on the evidence that the substation fire incident was caused by an *overmacht* situation that was outside of the defendant's ability because the defendants had made maintenance efforts and *overmacht* condition it is not categorized as an action against the law.

(e) Case of General Election

Case No. 145/PDT.G/2009/PN.JKT.PST occur when on April the 9th, 2009, the General Election Commission conducted a general election for members of the House of Representatives. There are many citizens who have voting rights but are unable to exercise their voting rights because they are not registered in the Permanent Voters List (DPT), the number of which is estimated at 45 million citizens spread across the territory of the Republic of Indonesia. The Plaintiffs are also millions of citizens who have experienced themselves and become victims of violations of the right to vote in legislative elections. Whereas the Defendants themselves admitted that indeed many citizens lost their right to vote in the April

the 9th, 2009 Election, as it was the Defendant's (General Election Commission) authority to update voter data so that every citizen could exercise his right to elect legislative members. The non-registration of a citizen in the Permanent Voters List is certainly not the citizen's fault.

That it is the responsibility of the Defendant (General Election Commission) to conduct General Elections as confirmed in Article 1 paragraph (6) of Law no. 22/2007 concerning Election Implementation is an Election Management Institution that is national, permanent, and independent. The Defendant (General Election Commission) is an institution that has the obligation to hold elections so that citizens' rights to elect members in the House of Representatives are fulfilled. In the event that tens of millions of citizens have lost the right to vote, the Defendant (General Election Commission) is obliged to hold a follow-up election for the fulfillment of citizens' rights. It is possible for a follow-up election to be held, for example, there are 150 polling stations in three districts in Papua Province that carry out additional voting due to bad weather. In Bandar Lampung voting in 13 (thirteen) polling stations In Donggala Regency, Central Sulawesi, there were follow-up elections held in three polling stations. The follow-up elections which are the demands of the citizens are strengthened on the basis of Article 229 paragraph (1) of Law no. 10/2008, namely: "In the event that in an electoral district there is a riot, security disturbance, natural disaster or other disturbance which results in the inability to carry out all stages of the election administration, a follow-up election will be held". And asking to hold a follow-up election within 7 days as a notification before this citizen lawsuit is filed. However, the Defendant (General Election Commission) did not implement it.

According to the Plaintiff, it is not impossible for a follow-up election to be carried out to fulfill the rights of the 45 million citizens who cannot vote, if the Defendant (General Election Commission) does have good intentions to fulfill the citizens' right to vote. However, the Defendant (General Election Commission) clearly said that it would not fulfill the rights of citizens in the election to elect members of the House of Representatives. The Defendant's intention (General Election Commission) to not fulfill the right of every citizen to vote in elections, as guaranteed in the Indonesian Constitution 1945 and the prevailing laws and regulations or in other words the Defendants have shown willful misconduct and

deliberately did it so that there was a massive violation (gross violation). Violation of the rights of every citizen to vote in the General Election was clearly committed by the Defendant (General Election Commission) because they deliberately did not restore the rights of citizens to enjoy their rights in the election to elect members of the House of Representatives. That the Defendant's (General Election Commission) intention not to restore the rights of millions of citizens including the Plaintiffs was a failure to promote, guarantee fulfillment, respect and protection (obligation to promote, secure the fulfillment of, respect, ensure respect of and protect) the rights of everyone. to vote (right to vote), which is contained in:

a. Article 28 I paragraph (4)of the Indonesian Constitution 1945 namely: "Protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government".
b. Article 43 paragraph (1) of Act No. 39 of 1999 on Human Rights namely: "Every citizen has the right to be elected and to vote in general elections on the basis of equal rights through direct, general, free, secret, honest and fair voting in accordance with statutory provisions." Article 43 paragraph (2), namely: "Every citizen has the right to participate in government directly or by means of a representative who is freely elected, according to the manner prescribed in the laws and regulations".
c. Article 25 of Act No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights namely: "Every citizen has the right and opportunity, without distinction" as referred to in Article 2 and without undue restrictions, to (1) Participating in government administration, either directly or through freely elected representatives (2) To vote and be elected in periodic elections that are honest, with universal and equal voting rights and carried out by secret ballot which guarantees the freedom of the voters to express their wishes (3) Obtaining access, based on the same conditions in general, to government services in his country.
d. General Comment ICCPR No 25: The right to participate in public affairs, voting rights and the right of equal access to public service. Paragraph 10: The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable

to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

The claims in this citizen lawsuit,

1. To accept and grant the Plaintiff's claim in its entirety.
2. Declare that the Defendants have acted against the law.
3. Order the Defendants to apologize to the Plaintiffs through (twelve) print media, 6 (six) TV electronic media and 5 (five) radio electronic media, as well as online media for 7 consecutive days, with the following sentence editor; "The General Election Commission and the President of the Republic of Indonesia apologize to all citizens who could not enjoy the right to vote in the April the 9th ,2009 legislative elections. Therefore, The General Election Commission and the Government will hold and facilitate a follow-up election to ensure that every citizen who has the right to vote can enjoy human rights that are these fundamentals without exception".
4. Instructing the Defendants to conduct a follow-up election.

The panel of judges examining this case decided to reject this lawsuit on the basis that the issue was "how much time was reasonable for the Defendants to fulfill the demands of the notice made by the Plaintiffs", so that the Defendants could be declared negligent in having omission (omission) of the statutory obligations imposed on him Judges see the basis for applying the notification procedure applicable to the common law system in the United States provisions for notification initially required 30 days for advance notification as a requirement to take action law enforcement by citizens, then amended and regulated in the Resources Conservation and Recovery Act, notification must be sent no later than 60 days before the lawsuit is filed. Thus, the Panel of Judges opinion that the time given by the Plaintiffs to the Defendants is not reasonable, because the Defendants may not be able to respond or conduct a "Follow-up Election" within 7 working days. Therefore, for reasons and legal considerations, the Panel of Judges opinion that the Citizen Lawsuit filed by the Plaintiffs does not meet the requirements of the "notice period for filing a citizen Lawsuit".

(f) Case of Traffic Congestion in Jakarta

The case No. 53/PDT.G/2012/PN.JKT.PST is a case where the plaintiff felt

uncomfortable with the traffic congestion that occurred every day in Jakarta. This is due to the disproportionate number of vehicles with available roads in Jakarta, which in the end resulting in tremendous congestion and also air pollution. Congestion on all roads in Jakarta occurs almost every working hour and this can interfere with safety in driving because the congestion causes extreme fatigue in driving. The congestion will also get worse if Jakarta is under rain. Thus, it can be ascertained that almost all roads in Jakarta will be totally jammed. The large number of vehicles in Jakarta at this time, is not followed by the addition of adequate road sections, lack of control of roadside traders who do not have permits, lack of control of roadside parking and the use of roads to stop passengers, so that congestion can be ascertained on roads in the Jakarta area occurs almost all the time. Therefore, congestion in all roads in Jakarta does not only interfere with the physical and psychological health of the residents, but also causes tremendous waste in the use of vehicle fuel, in which the Government of the Republic of Indonesia calls for saving fuel use. It would be impossible to follow the Jakarta Government's call to "save fuel" when such terrible traffic congestion persists. In this citizens' lawsuit, the demands are the government issue policies immediately to overcome congestion in Jakarta, including (a). Increase the number of existing public transportation. (b). Increase the tax on motorized vehicles very high, be it four-wheeled or two-wheeled private property. (c). Increase parking rates on roadside areas in Jakarta and prohibit parking of all vehicles on the road (d). Regulating (road sterilization) of illegal parking on roads in Jakarta, prohibiting all street vendors from selling on the sidewalk or on the side of main roads in Jakarta (e). Prohibiting public transportation from temporarily stopping on the side of the road to pick up and drop off passengers unless a designated place is available. (f). Restrictions on motorized vehicles based on vehicle age and (g). The moratorium on new vehicles in Jakarta area for the next 6 (six) to 12 (twelve) months.

The panel of judges in its decision rejected the lawsuit and all of the plaintiff's demands in this traffic congestion case on the basis that the plaintiff did not have legal standing, the plaintiff did not describe the elements of illegal acts committed by the defendant, besides that the plaintiff also did not make notification as a preliminary condition for filing citizens lawsuit.

(g). Case of Drinking Water Management

Case No. 87/PDT.G/2014/PN.JKT.PST started where the Governor of Jakarta recommended to the Jakarta Regional Drinking Water Company which is a regional-owned company to cooperate with the private sector in controlling water by making and signing a cooperation agreement dated 6 June 1997 amended on 22 October 2011 with a private sector which is a foreign company. Based on the cooperation agreement, the foreign company controls and manages the water supply in Jakarta area. Thus, the State, in fact does not control and manage water supply, moreover, to use it for the maximum benefit of the people. Thus, as a result of the cooperation agreement the State does not carry out its constitutional obligations as referred to in the provisions of Article 33 paragraph (3) of the 1945 Constitution.

Whereas in addition to this, the corporation agreement clearly violates the subjective rights of the public interest, namely violating the provisions of Article 28 C and Article 28 I of the Indonesian Constitution 1945, Article 9 paragraphs (1) and (2) and Article 11 of Act No.39 of 1999. By signing the cooperation agreement, the welfare of the residents and/or the public interest in obtaining water is not fulfilled. The people of Jakarta do not easily use water and can use water with the obligation to pay the foreign companies. Thus, the State has lost the income/taxes that should have been received from the people who pay for water use. The foreign company also charges very high tariffs, which benefits the foreign company. Whereas the fact, that Jakarta residents often cannot enjoy clean water due to water that does not flow, or there is no water supply, the pipes are leaking, water is shrinking, illegal pipe connections, poor water quality and meters water that is not recorded according to the use of water. That it is clear the Plaintiffs and/or the public interest of the people Jakarta suffered losses due to water mismanagement based on the cooperation agreement. Whereas even though the Governor, the Regional Drinking Water Company and the Jakarta People's Representative Council as the defendant knew that the cooperation agreement had violated Article 33 paragraph (3) of the 1945 Constitution and the subjective rights of the public interest as referred to in the provisions of Article 28 C and Article 28 I of the Indonesian Constitution 1945, Article 9 paragraph (1) and (2) and Article 11 of Act No.39 of1999 and causing the State not to control water and not carry out its obligation to control water and

use it as much as possible for the prosperity of the people, the State loses income from water payments made by the community. However, the defendant did not make reasonable efforts to stop or in any way took appropriate policies so that the violations could end immediately. Defendant who represents the State in terms of State control against water, they do not take any legal action or action related to the Cooperation Agreement so that the public interest is increasingly disadvantaged in the long term.

The demands requested in this lawsuit are to grant the plaintiff's claim in its entirety, declare that the defendant has committed an action against the law, declare that the work agreement on June 6, 1997 amended on October 22, 2011 is contradictory (Article 33 of the 1945 Constitution and Article 33 paragraph (3) of the Indonesian Constitution 1945 , Article 5 of Act No.7 of 2004 and the subjective rights of public interest as referred to in the provisions of Article 28 C and Article 28 I of the Indonesian Constitution 1945, Article 9 paragraphs (1) and (2) and Article 11 of Act No.39 of1999, Stating corporation agreement on June 6, 1997 was amended October 22, 2011 and its derivatives were null and void with all the legal consequences and punishments. The defendants jointly and severally to pay the losses suffered by the Plaintiffs of IDR. 11,000 (eleven thousand rupiahs), with the following agreement, material losses, amounting to IDR. 1,000, - (one thousand rupiah) and immaterial losses IDR. 10,000, - (ten thousand rupiah). The verdict of the judge in Case No. 87/PDT.G/2014/PN.JKT.PST is to reject all the demands put forward in this lawsuit, with the consideration that the panel of judges is of the opinion that the lawsuit filed through the citizen lawsuit mechanism does not meet the formal requirements as a lawsuit, namely not providing a notification which, according to the judge, is important for a citizen lawsuit to be preceded by a notification. Judges consider the importance of this notification because citizen lawsuit has not been regulated and in the opinion of the judge, it can refer to the concept of citizen lawsuit that applies in the common law system. Apart from that, the judge's consideration that those who can be sued in the citizen lawsuit are state administrators only, so that it becomes the basis for the judge's consideration to reject the lawsuit.

Citizens' lawsuit through these cases can be said as the beginning of the use of the citizen lawsuits concept in Indonesia although there were several other cases which by the

court verdicts the plaintiff's demands is rejected. It has been decided in the first instance court, where all of the court verdicts of these cases are rejected with judges' considerations mostly refer to the citizens' lawsuit concept in common law system. The basis consideration of the court verdicts on these cases can be constructed for the development and application of the further concept of citizen lawsuit in Indonesia. When further elaborating of the cases that use the citizens' lawsuit concept (above), there are several judges' considerations and reasons are used as a basis that the plaintiff demands in the cases (above) to be unacceptable. Thus, the judges in their verdict rejected the demands in the lawsuit is caused as follows[92]:

1. The plaintiff's legal standing (the above cases filed through citizens' lawsuit invariably questions the plaintiff's legal standing and becomes the initial reason for the judge to declare a citizen lawsuit unacceptable).
2. The understanding of actions against the law (which became the point of attention of the judges in the above cases were also related to action against the law. The comprehension of the meaning of actions against the law in a narrow sense causes the judges to state that the plaintiff was not declared to have committed an action against the law even though in fact what the plaintiff's claim against his constitutional rights was not fulfilled). (Case of Migrant Worker No. 28/PDT.G/2003/PN.JKT.PST, case of Divestment of Indosat's Share No. 178/PDT.G/2003/PN.JKT.PST, case of Social Security 278/PDT.G/2010/ PN.JKT.PST
3. The Defendant is not only the state administrators/government (It can be seen from the case of Drinking Water Management No. 87/PDT.G/2014/PN.JKT.PST where the plaintiff included a private company as one of the defendants).
4. Claims for compensation and not asking the court (through a lawsuit) to give a decision so that the state administrators being challenged to make policies or regulations that can settle and resolve the problem.(Case of Rotating Power Outage No. 476/PDT.G/ 2009/PN.JKT.PST, Case of Traffic Congestion in Jakarta No. 53/PDT.G/2012 /PN.JKT.PST, Case of Water Management No. 87/PDT.G/2014/PN.JKT.PST).
5. Notification is essential before applying for citizen lawsuit. Several citizen lawsuit did not carry out of giving notification and did not pay attention to the notification period. (Case of Traffic Congestion in Jakarta No. 53/PDT.G/2012/PN.JKT.PST, Case of General Election No. 145/PDT.G/2009/PN.JKT.PST).
6. The citizen lawsuit was made not to defend the public interest (this is an important measure of the characteristics of citizens' lawsuit). Case of Rotating Power Outage No. 476/PDT.G/2009/PN.JKT.PST, Case of Traffic Congestion in Jakarta No.

[92] For description, see chapter 3 and chapter 4 as further explanation to what should need to be criticized from the basis of the judge's consideration in their decision to reject the plaintiff's demands can be developed to construct the concept of citizen lawsuit, so that it can be applied in Indonesia.

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53/PDT.G/2012/PN.JKT.PST, Case of Water Management No. 87/PDT.G/2014/ PN.JKT.PST are cases when the judge considered were not purely to defend the public interest. Every civil lawsuit procedure in Indonesian civil justice systems has different characteristics, and the characteristics that should be developed in citizens' lawsuit concept in Indonesia is different from other civil lawsuit procedures (to defend constitutional rights of the citizen and the public interest).

- **Comparing characteristics of citizens' Lawsuit that have been applied in the U.S., Indonesia and India.**

In the U.S.

Plaintiff	Basically, the plaintiff can be the U.S. citizen. However, public-interest environmental legal service organizations often prosecute citizen lawsuit, as long as they have legal standing which is determined through 3 things, namely injury in fact, causation, and redressability.
Defendant	Citizen, Corporation and Governmental Bodies.
Plaintiff Reason and Interest to file a citizen lawsuit	First, private citizens can sue against citizens, companies, or government bodies for engaging in action that is prohibited by the statute. Second, private citizens can file suits against government bodies for failing to perform non-discretionary duties. Third, citizens may sue for an injunction to reduce imminent and substantial potential harm involving the generation, disposal or handling of waste, regardless of whether or not the defendant's action violates statutory prohibitions.
Claim	Basically according to environmental law in the U.S. such as: Clean Water Act, Safe Drinking Water Act, Clean Air, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Surface Mining Control and Reclamation Act, Endangered Species Act, cannot claim financial compensation from the defendant for the losses suffered, the plaintiff can only claim to stop the violation, environmental restoration measures, recover reasonable attorney fees and other litigation costs.
Procedure before filling a citizens' lawsuit	Notification with a period of 60 days. notification is made by registered mail with proof of acceptance from the defendant. Citizen lawsuit will not be accepted if the defendant has been tried or do efforts to restore and improve the environmental conditions in question.

Table 1. General characteristics of citizens' lawsuit in the U.S.

In Indonesia

Plaintiff	Citizen
Defendant	State administrators' bodies/officials
Plaintiff Reason and Interest to file	Negligence and omission of the government in fulfilling the constitutional rights of citizens argued as an action against the law. Public interest, which is used as a reason for the plaintiff, not individual

a citizen lawsuit	interests, so there is no need to prove the losses suffered directly
Claim	Make important policies and regulatory arrangements that are deemed necessary for efforts to resolve and restore the constitutional rights of citizens, so that it does not occur again in the future without asking for monetary compensation.
Procedure before filling a citizens' lawsuit	Before filing a lawsuit in court, first giving notification to the state administrators in a period of 60 days. This aims to provide opportunities for state administrators to take immediate countermeasures and take certain actions as an effort to restore and solve the problem.

Table 2. General characteristics of citizens' lawsuit in Indonesia.

In India

Plaintiff	The plaintiff can be an organization or an individual citizen
Defendant	Corporation and Governmental Bodies
Plaintiff Reason and Interest to file a citizen lawsuit	Does not require or prove that there is an interest or loss suffered directly which is real suffered. These interests are very broad in nature with regard to religion, aesthetics, humanity, honor, nationality
Claim	In addition to asking for certain actions such as restoration and repair of the situation as before, it can ask for compensation. And it is possible for the citizen to claim reimbursement of costs even though the lawsuit is defeated in court. It can also ask for compensation for any delays in restoring the situation and the increase in costs that occur as a result of the delay.
Procedure before filling a citizens' lawsuit	Before filing a lawsuit in court, first notify the organization or government agency with a period of 60 days. This aims to provide opportunities for organizations or government agencies to take certain actions as an effort to restore and improve the environment. take immediate countermeasures.

Table 3. General characteristics of citizens' lawsuit in India

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By comprehending the essence of citizens' lawsuit in the U.S. or India and aligned with the 6 (six) constraints of implementing citizens' lawsuit in Indonesia, it is possible to formulate the appropriate concept where the concept of citizen lawsuit that attempted to be applied in Indonesia is not only related to the adoption of legal concepts from different legal systems but also how to harmonize with the existing legal principles and provisions in Indonesia.

2.4 Improving Access to Justice in Indonesian Civil Procedural Law through Citizens' Lawsuit for Environmental Law Enforcement.

Compare with the circumstances that occur in the U.S. roughly 5 decades ago, seeing a reality before having the laws and regulations, there are many pollution of rivers, cities disappear in the shroud of deadly fog. Then the citizens began to feel frustrated and demand action from the government, many movements were carried out because citizens were aware of their rights and wanted to have access to the courts to solve environmental problems. Anticipating that lack of government resources or political will can seriously damage environmental law enforcement, Congress in the 1970s included innovative provisions that could improvise access to justice, Congress has placed special interest in one important component of environmental protection, namely the provision of citizens' lawsuit through the Clean Air Act, the Clean Water Act and other federal environmental laws that have dramatically reduced pollution and increased the conducive life of every citizen in America.[93] Where in the legislation authorizes citizens to be able to prosecute violations in cases where the government fails to fulfill its enforcement responsibilities. Unlike previous lawsuit concept for individuals (citizen) that are only available to individuals who suffer personal injury or property damage directly, modern environmental laws authorize every citizen to file a lawsuit to protect and solve the environment problems from pollution and destruction. While citizen as plaintiffs in personal injury lawsuits usually seek monetary compensation for their injuries, citizen as plaintiffs in citizen lawsuits seek to bring violators into compliance with the law, clean up pollution and benefit our entire society. The existence of provisions regarding citizens' lawsuit is one of the important criteria for improving access to justice. This provision aims to benefit for the citizen who may be adversely affected by a violation of environmental regulation that has gone unnoticed by the regulatory enforcement agency, and also to provide environmental enforcement through people empowerment in exercising their right for access to justice.

From the explanation above, there are two components that can be used to measure effective

[93] See Pete Harrison, *How Citizen Lawsuits Can Help Enforce Environmental Laws Under the Anti-Environment Trump Era, Citizens Can Use the Courts to Fight the Trump Administration's Attack on Environmental Protections.* Available at <https://www.alternet.org/2017/03/how-citizen-lawsuits-can-help-enforce-environmental-laws-under-anti-environment-trump/>, last visited (February the 10th , 2020).

access to justice:

- The nature and extent of the need for laws and regulations as a basis for understanding every citizen's access to justice.
- The impact of the existence of laws and regulations for citizens to understand their rights of access to justice.

A citizen-oriented access framework requires the conceptualization of the need for legislation to achieve legal certainty and justice for every citizen. in Indonesia although there are regulations that provide opportunities for every citizen to file a lawsuit for any violation of the rights that have been regulated in Indonesian Constitution 1945, but the clarity of the regulation, which gives every citizen the right to file a lawsuit against state officials related to problems the environment has not been determined. Unlike in the U.S. which provides a quick response to the legal needs of citizens to a provision that is inserted in the legislation with the aim of law enforcement as contained in several environmental regulations in the U.S. meeting the legal and justice needs of citizens is the goal of modernizing law in general to increase efficiency in the broader justice sector as the main mechanism for encouraging access to justice. It focuses on identifying the role of citizens in the civil justice system and emphasizes the court in solving formal problems based on citizens empowerment who are indeed, to meet the public interest in general and the interests of the citizens themselves specifically.

The application of citizens' lawsuit in Indonesia where the legal framework is not yet clearly determined provides an opportunity for the court to open access for citizens to the court. Legal issues related to the environment often run without a clear and detailed definition of a solution to the concept of legal needs and access to justice. The need for laws and regulations relating to the environment has been expanding over time. This is an ongoing process needed to deal with the dynamics between empirical knowledge outside of the legal system adopted by Indonesia that requires legal transplants to adopt concepts from different legal systems. Revamping the civil justice system in Indonesia must be oriented towards access to justice by providing a view that every legal problem related to the environment has the potential for legal resolution even though the regulation is still outside the dimensions of the civil justice system. As well as the use of the citizens' lawsuit concept which should be

apply by following the procedures in Indonesia civil procedural law specified in the HIR/RBg and essential things from the citizens' lawsuit concept (notification, citizen legal standing and filing a lawsuit to the state administrators for negligence in protecting the public interest and the rights of citizens) are harmonized with procedures that can be applied in Indonesia so as to provide distinguishing features without contradiction with the general rule of filing lawsuit in Indonesia.

The basic understanding of modern law for the right to access to justice can be seen in several international covenants, one is the International Convention on Civil and Political Rights (in Part 3, Article 14, paragraph (1)[94]). This codification of access to justice signifies that access to justice is a right as well as other rights mentioned in this convention. However, as life becomes more complex there will be an imbalance between the ideals expressed in this convention and the reality in practice. Likewise, the law also develops with various new forms of legal elements which of course can be contradictory to one another. Access to justice is based on the basic principle that people (citizens) must be able to rely on the application of law correctly. However, is it true that it can be carried out in legal relations among citizens, between citizens with legal entities and/or state administrators. This because there are differences in each citizen due to their background in life, such as citizens who do not know and understand the law or vice versa, citizens who have power and power or vice versa. On the other hand, there are also citizens who have easy access to courts who understand their own rights and who can use their rights effectively for their purposes in state life and organize legal relation between citizens. Some problems with access to justice arise from practice as follows,

- The first, some citizens do not know their rights and do not understand the access they can have to protect their rights due to lack of clarity in the rule of law, so they have not advocated on their behalf.
- The second is the complexity of judicial system by it mean the legal process which is not based on its implementation by applying the law and proper legal principles.

[94] "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law…"

Reflecting on the beginning of the emergence of the use of citizens' lawsuit in Indonesia in the case of deportation of migrant workers in Nunukan based on the court verdict of Central Jakarta District Court Number 28/PDT.G/2003/PN.JKT.PST can set a precedent for similar claims in the future. Although as a milestone for the introduction of citizens' lawsuit in Indonesia, the obstacles and pessimism faced are related to access to justice and whether the lawsuit will be accepted for examination and adjudication or not. Some basic issues that interfere with the efforts of the plaintiffs to seek justice as a result of the absence of definite regulation regarding procedure of citizens' lawsuit. In addition, it is also associated with the defendant who incidentally is the government/state administrators. However, the plaintiff's obstacles and pessimism were answered by the panel of judges where the panel of judges made a legal breakthrough in favor of the citizen lawsuit concept, although the legal basis is still being debated. The panel of judges argued and explained in its verdict that based on the provisions of the Judicial Power Act, the judge must not refuse to examine the case that filed to the court. In addition, the judge is obliged to explore the law and norm that lives in the community (wider) and also judges must not reject a case even though there is no legal basis on how to examine a case.[95] Based on these decisions, this is why citizens place the court as the foundation of expectancy to seek justice and are expected to be able to reform the provisions that have not been clearly regulated especially related to the public interest. Revealing access to justice is one of the progressive judges' efforts who understands that justice is the objective of the law and judges must try to provide opportunities for justice seekers to obtain it.

Accepting the application of citizens' lawsuit as part of procedures in civil procedural law is improving access to justice for every citizen. Indeed, there have been efforts to enforce environmental law provided by Environmental Act in Indonesia, such as, the Class Action

[95] The description of the panel of judges is indeed in line with article 14 paragraph (1) and article 27 paragraph (1) of the Act Number 14 Year 1970 concerning the Basic Provisions of Judicial Power which has subsequently been renewed several times and most recently replaced with the Act Number 48 of 2009 concerning Judicial Power states:
Article 5 paragraph (1) Judges and constitutional judges are obliged to explore, follow, and understand the legal values, norm and a sense of justice that lives in the community.
Article 10 paragraph (1) The court is prohibited from refusing to examine, adjudicate, and decide on a case that is filed on the pretext that the law is does not exist or unclear, but it is obligatory.

Lawsuit contained in Article 91 and the Environmental Organization Lawsuit contained in Article 92. However, many environmental problems arose and a thought that how the environment can defend itself and needs a guardian that can protect the interests of the environment, gives rise to a condition where empowering the role of citizens is important to be able to accept this concept openly. Citizens' lawsuit which was developed in countries adhering to common law systems, in principle, are not completely contrary to the principles of civil procedure law in Indonesia. What will be needed is how the concept of citizens' lawsuit is adjusted to the essential principles of civil procedural law and its implementation in the civil justice process because the ultimate goal of applying this concept is to achieve justice carried out with impartial processes and fair trial. Improving access to justice is therefore a key means of promoting a law state that upholds the supremacy of law to ensure legal certainty and justice. It enables people to exercise their rights and encourages effective participation in the legal system.

CHAPTER III

HARMONIZING CITIZEN'S LEGAL STANDING AS THE ESSENTIAL CHARACTERISTICS OF CITIZENS' LAWSUIT CONCEPT TO THE PRINCIPLE IN CIVIL JUSTICE SYSTEM IN ORDER TO BE USED AS AN ENVIRONMENTAL LAW ENFORCEMENT EFFORT

Since the 1970s, the U.S., has made a significant developments in the justice system with the emergence of new procedures in the litigation process. This was triggered by distrust of the government as a state administrator, litigation which sought to oppose what was considered illegal acts of officials and unconstitutional government behavior. The burden of public law enforcement is increasingly to be the responsibility of individuals, in the sense that private individuals have a chance to litigate rather than rely on of public law enforcement. The largest area of public law development for private individuals' enforcement is environmental law.[96] Individuals have begun to emerge as subjects defending the public interests, especially related to environmental problems. As a subject, individuals generally seek and urge the court so that a lawsuit arises in the public interest which has enlarged the lawsuit dimension which traditionally only seeks resolution on issues of private dimension. In the public interest, they have sought the court to make a breakthrough in legal policy and as a subject, they tend to perpetuate the judiciary as the only body in the state that is above political obscurantism. The belief is that the court as a judicial body will achieve society's problems resolution faster and with a more desirable than the legislative or executive.[97]

3.1 A Comprehension of Legal Standing and Its Development.

Around that time , the perception of individual lawsuits in public interest as a means of forming and re-organizing to achieve social justice has caused many judges, practitioners, and legal scholars to question the appropriateness of the judiciary to intervene in the realm of policy-making related with the proper procedures for a case settlement. A lawsuit

[96] Timothy Belevetz, *The Impact on Standing Doctrine in Environmental Litigation of the Injury in Fact Requirement in Lujan v. National Wildlife Federation*, 17 WILLIAM & MARY ENVIRONMENTAL LAW AND POLICY REVIEW 103, 103-04 (1992).

[97] See Adolf Homburger, *Private Suits in the Public Interest in United States of America,* 23 BUFFALO LAW REVIEW 343, 343-44 (1974). See also Dianne L. Haskett*, Locus Standi and the Public Interest,* 4 CANADA-UNITED STATES LAW JOURNAL 39, 39-40 (1981).

regarding public interest is likely to be above traditional ideas about the function of the court to settle cases. Meanwhile, on the other hand, the court has historically been seen as an appropriate institution for adjudication of disputes. Compliance with *locus standi*, or legal standing, has become a barrier to overcome for those who are litigants who try to bring legal action to advocate for the public interest. Although the development of the concept of legal standing to be applied is reduced so as it becomes unclear. It is even said that the concept of legal standing is described as having the least form, jumbled between the domains of public law.[98] Even said that legal standing neither reconcilable nor rational in its conceptional framework, moreover it is referred to as a set of disjointed rules dealing with a common subject. For this reason, the court must refrain from discarding cases on the basis of legal standing and, conversely, by careful examination save the reasonable elements and synthesize the results into a conceptual framework that is more fully articulated and right.[99] In an effort to reduce a set of disjointed rules dealing with a common subject, the role of the court is important to provide opinions and make decisions on legal standing in public cases by focusing on whether an interest can be categorized as a public interest and after that whether public interest is worth of protected.

The basic idea to understand about legal standing is relatively unassuming "that only parties who have an interest in a case can file a lawsuit". Nevertheless, in practice, with regard to environmental matters it is difficult to develop a basic idea about legal standing can be demonstrated. Viewed from the constitution that applies in the U.S. the standing principle is based under Article III, section 2, clause (1)[100], the judicial power in the U.S., at

[98] Louis L. Jaffe, *Standing to Secure Judicial Review: Private Actions,* 75 HARVARD LAW REVIEW 255, 258 (1961).

[99] Mark V. Tushnet, *The New Law of Standing: A Plea for Abandonment,* 62 CORNELL LAW REVIEW 663, 664-65 (1977).

[100] There is a "case or controversy clause" which is then interpreted as embodying of limitations in the implementation of judicial power so that the clause identifies, among others: (1) the scope of the matter that a federal court can and cannot consider as a case (by distinguishing between lawsuits within and outside the institutional competence of federal justice), and (2) to restrict federal judicial powers regarding specific lawsuits and which courts are competent to hear and examine.
The constitutional limitation of federal courts' jurisdiction over actual cases or controversies is a fundamental principle of the proper role of the judiciary. Article III, section 2, clause (1) of the U.S. Constitution is built on the implementation of the separation of powers principle which aims to prevent the judicial process from being used to seize legislative and executive powers under the federal government system in the U.S. The requirements regarding the "case-or-controversy clause" contained in the Article III of the U.S. constitution

the time, noted that regardless of the defendant's actions and how many people the defendant's actions were harmed, any plaintiff wishing to file a lawsuit had to demonstrate that the defendant's conduct personally injured them. In simplified understanding, it has been interpreted that only the lawsuits filed by the plaintiffs so that the plaintiffs incur losses can be heard by federal courts. Further developments occurred in the 1990s, several decades after the significant development of the litigation process especially in relation to legal standing.

- **Manuel Lujan, Jr., Secretary of the Interior, Petitioner v. Defenders of Wildlife, et al. 504 U.S. 555 (1992)**

The plaintiffs brought suit requesting an injunction requiring the Secretary of the Interior (Secretary) to reinstate an initial interpretation of the Endangered Species Act of 1973 (ESA). The ESA was promulgated to protect endangered and threatened animals. Under the authority of the ESA, the Secretary declared that the ESA applied to actions outside of the United States. Upon further review, the Secretary reinterpreted the ESA to be applicable to actions only within the United States or the high seas.

Shortly thereafter, respondents, organizations dedicated to wildlife conservation and other environmental causes, filed this action against the Secretary of the Interior, seeking a declaratory judgment that the new regulation is in error and an injunction requiring the Secretary to promulgate a new regulation restoring the initial interpretation. The District Court granted the Secretary's motion to dismiss for lack of standing. The Court of Appeals for the Eighth Circuit reversed by a divided vote. On remand, the Secretary moved for summary judgment on the standing issue, and respondents moved for summary judgment on the merits. The District Court denied the Secretary's motion, on the ground that the Eighth Circuit had already determined the standing question in this case; it granted respondents' merits motion and ordered the Secretary to publish a revised regulation.

The Secretary claimed that the Plaintiffs lacked legal standing and cannot create legal standing when an injury in fact, a causal connection and redressability are not present. It

require the plaintiffs to build their legal standing, require concrete, specific and real injuries which are then used as law enforcement measures that can be resolved by the issuance of an appropriate decision by the federal court.

refers to the Supreme Court further elaborates the requirements for legal standing and applies them to environmental cases. The irreducible constitutional minimum that must be met of standing to litigate have to demonstrate three elements. First, the plaintiff must have suffered an "injury in fact", an invasion of a legally protected interest which is must be (a) concrete and particularized, and (b) actual or imminent, not conjectural, or hypothetical. The Court also noted that "particularized" means that the injury must affect the plaintiff in a personal and individual way. Second, there must be a causal connection between the injury and the conduct complained of the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.[101]

In this case, the Plaintiffs failed to establish injury in fact or redressability. Due to the limited effects of the ESA, it is too speculative to claim that not enforcing an order on the Secretary would result in injury to any Plaintiff. Likewise, it is too speculative to assume that any redress by the courts will have a major impact on threatened species outside of the United States. The Plaintiff's claim that they suffered "procedural injury" as stipulated by the provisions of the citizen lawsuit in the ESA is also baseless. Permitting legal standing under this Congressional Act would deprive the executive to take care that the Act be faithfully executed. Congress does have the power to create standing where it had not existed before but must identify the injury it seeks to vindicate and relate that injury to those bringing suit.

The court decision of the Manuel Lujan, Jr., Secretary of the Interior, Petitioner v. Defenders of Wildlife, et al. 504 U.S. 555 (1992) be regarded controversial, induce criticism that believed it is too narrowed for the standing doctrine and create enforceable legal rights in federal court. The Court's decision highlighted a shift towards a more stringent interpretation of legal standing in environmental cases and other areas of the law. Moreover, limiting citizens' rights to file a lawsuit and it is feared that it will hinder regulatory reform.

[101] See the three elements of standing to litigate in point 7 of Manuel Lujan, Jr., Secretary of the Interior, Petitioner v. Defenders of Wildlife, et al. Case of 504 U.S. 555 (1992). See also Marisa A. Martin, "*Standing*": *Who Can Sue to Protect the Environment?*, 72 JOURNAL OF SOCIAL EDUCATION 113, 133 (2008).

It was thought that the strict standards contained in the decision, especially for what was considered actual and distinctive injury (injury in fact), would severely limit citizens' ability and a willingness to sue against the government for violations of environmental laws.

- **Friends of Earth v. Laidlaw Environmental Services (TOC), 528 U.S. 167 (2000).**

Different things occurred in 2000, where the U.S. Supreme Court issued a decision related to legal standing in the environmental case, Friends of Earth (FOE) v. Laidlaw Environmental Services (TOC), 528 U.S. 167 (2000). In this environmental case, the environmental protectors (plaintiffs) sued the river polluters in accordance with the provisions of the Clean Water Act.

The limitation of the Constitutional case-or-controversy to federal judicial authority underlies the doctrine of standing, but the two inquiries differ on crucial points. Since the Fourth Circuit is convinced that its case has been disputed, it is assumed that FOE has an initial legal standing. However, since this Court concluded that the Court of Appeal was wrong in terms of mootness, it is the duty of this Court to ensure that the FOE has Article III at the outset of the litigation process. The FOE has Article III standing to bring this action. This court has ruled that in order to comply with the founding requirements of Article Ill, the plaintiff must demonstrate injury in fact, causation, and redressability.

An association has standing to bring suit on behalf of its members when its members will have legal standing to sue their own rights, the interests at stake are closely linked to the organization purpose, and neither the asserted claim nor the assistance requested require the participation of individual members in the lawsuit. Here, the injury in fact is adequately documented by the written statements and testimony of FOE members stating that the Laidlaw pollutants discharges, and the affiliates' reasonable concerns about the effects of such releases, directly affect the affiliates' recreational, aesthetic, and economic interests. Civil penalties fit that description. To the extent that they encourage the defendants to discontinue current violation and prevent future offenses, they provide compensation to the citizen plaintiffs who are injured or threatened with injury as a result of the ongoing action against the law. Courts need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability, because the civil penalties sought here have a possible deterrent effect, is not to the contrary. The case states that the private plaintiff

may not sue to assess penalties for completely past violations but did not address standing to seek penalties for violations ongoing at the time of the complaint that could continue into the future if unaffected.

Laidlaw argues that the FOE lacks standing to seek civil penalties to be paid to the Government, as such penalties offer no redress to citizen plaintiffs. For plaintiffs who are injured or threatened with injury due to an illegal act in progress at the time of the lawsuit, sanctions that effectively defuse the action and prevent the action from recurring provide a form of redress. The Court of Appeals incorrectly conflated this Court's case law on initial standing, such confusion is understandable, given this Court's repeated description of mootness as "the doctrine of standing set in a time frame. The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness). Standing admits of no similar exception, if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition, yet evading review will not entitle the complainant to a federal judicial forum. Standing doctrine ensures, among other things, that the resources of the federal courts are devoted to disputes in which the parties have a concrete stake. Yet by the time mootness is an issue, abandonment of the case may prove more wasteful than frugal. Courts have no license to retain jurisdiction over cases in which one or both of the parties plainly lacks a continuing interest. Laidlaw argues next that even if FOE had standing to seek injunctive relief, it lacked standing to seek civil penalties. Here the asserted defect is not injury but redressability. Civil penalties offer no redress to private plaintiffs, Laidlaw argues, because they are paid to the Government, and therefore a citizen plaintiff can never have standing to seek them. Although Laidlaw is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought. (notwithstanding the fact that plaintiff had standing to pursue damages, he lacked standing to pursue injunctive relief), but it is wrong to maintain that citizen plaintiffs facing ongoing violations never have standing to seek civil penalties.

In dealing with whether the plaintiff has a legal standing, the court applies the same tests which requiring actual and distinctive injury (injury in fact) to the plaintiff that could prove to be caused by the defendant and which would be corrected by assistance sought. However, in this environmental case, the court decided that the plaintiff had fulfilled all the

requirements of legal standing (the court judged that the plaintiff's allegations such as: being unable to carry out activities on or near the river because the river was polluted with odors and was dangerous, inconvenience to live in the house etc.) and therefore the court found that the plaintiff's allegation was sufficient to cause "injury in fact" to have legal standing.

- **Massachusetts et.al. v. Environmental Protection Agency, 549 U.S. 497 (2007)**

In 2007, the environmental case related to global warming occurred due to the emission of greenhouse gases. Massachusetts et.al. v. Environmental Protection Agency, 549 U.S. 497 (2007), the case is based on the background that global warming will result in rising sea levels, which will threaten the coastline and coastal properties of Massachusetts. Plaintiffs simply point out that the Environmental Protection Agency's failure to regulate greenhouse gases contributed to global warming, leading to the projected sea level rise. The Plaintiff assumed that the Environmental Protection Agency has the authority to regulate greenhouse gas emissions and that the policy considerations identified by the Environmental Protection Agency fall outside its discretionary range. In this case, the court was asked by the plaintiff to review whether the plaintiff had legal standing according to jurisprudence. The court discusses the legal standing of the state of Massachusetts, based on jurisprudence, there are three elements that must be met in order to have sufficient relevance to be granted legal standing. The court examined the facts of the state of Massachusetts because it can adequately demonstrate and prove that global sea level rise has engulfed several coastal lands which include the territory of the state of Massachusetts as a sovereign state. In addition, if the emission of greenhouse gases is allowed, global warming will become even more and if due to global warming continues which causes sea levels to continue to rise, then the condition of the coast and seacoast in Massachusetts will get worse in the future.

Since the court found that the Massachusetts injury was actual and distinctive, according to the court the element of injury in fact was fulfilled. Then the court looked at the second element, namely with regard to things that cause greenhouse gas emissions, the court found the transportation sector to be the biggest cause of air pollution. Pollutant gases released by vehicles can trigger global warming. "that carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are heat trapping greenhouse gases that greenhouse gas

emissions have significantly accelerated climate change".[102] The court found that the regulation on pollutant gases released by motorized vehicles is the authority of the Environmental Protection Agency and that these regulations need to be addressed to reduce the impact of global warming due to motor vehicle pollutant gases. The court agreed with the plaintiffs that greenhouse gases fall under the definition of "air pollutants" in the Clean Air Act. As such, the Environmental Protection Agency holds the power to regulate greenhouse gases from new motorized vehicles under Article 202 (a) (1) of the Clean Air Act.[103] Thus, the court concluded that the regulation of greenhouse gases from motorized vehicles will make a significant contribution to reducing the concentration of greenhouse gases. The court found that the third element of legal standing in jurisprudence was "redressability" also adequately demonstrated by the plaintiff. After finding the three elements of legal standing shown by the plaintiff, such as "to ensure the proper adversarial presentation, that a litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury", then the court examine the case. Court judgment in the Massachusetts et.al. v. Environmental Protection Agency, 549 U.S. 497 (2007) provides further guidance on the analysis of legal standing in environmental cases, it is clear that the issue of environmental legal standing will continue to be a contentious one. Whether the legal standing analysis conducted by the Court in the Massachusetts et.al. v. Environmental Protection Agency, 549 U.S. 497 (2007) restricted only for States or can be extended to private individuals will be important to determine as many environmental lawsuits are filed by citizens on behalf of most other citizens. If the application of legal standing analysis in the Massachusetts et.al. v. Environmental Protection Agency, 549 U.S. 497 (2007) is ultimately limited to States only,

[102] See Opinion of the Court, Massachusetts et.al. v. Environmental Protection Agency et.al., Case of 549 U.S. 497 (2007), p. 6

[103] Article 202 (a) (1) of Clean Air Act, the Administrator shall by regulation prescribe (and from time-to-time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d)), whether such vehicles and engines are designed as complete systems or incorporated devices to prevent or control such pollution.

there may be greater pressure from citizens as plaintiffs on behalf of most other citizens.

Things that can be learned from this case even though the recognition of legal standing for States, what needs to be interpreted is how the court first assesses that legal standing can be owned by every legal subject including its citizens by expanding the understanding of the three elements of legal standing contained in the jurisprudence of the Manuel Lujan, Jr., Secretary of the Interior, Petitioner v. Defenders of Wildlife, et al. U.S. 555 (1992). Citizens and environmental activists cite this case as a development for environmental regulation on legal standing. Even though regulation regarding environmental in the U.S.A such as the Clean Air Act, the Clean Water Act etc. has regulated the citizens' lawsuit and their legal standing, the court noted that the plaintiff was still asked to prove actual and distinctive injury (injury in fact) as what mentioned in the Manuel Lujan, Jr., Secretary of the Interior, Petitioner v. Defenders of Wildlife, et al. 504 U.S. 555 (1992).

3.2 An Overview of Legal Standing (Standing to Litigate) in Indonesian Civil Procedural Law.

In Indonesia, the development of laws regarding legal standing related to the environment began when there were many cases/environmental problems that could not be resolved properly. The influence of several concepts for solving environmental problems from the common law system raises the urge to adopt appropriate environmental solutions and concepts. In fact, Indonesia has implemented management milestones for the environment since the issuance of the Act Number 4 Year 1982 concerning Basic Provisions for Environmental Management with the consideration of empowering natural resources to promote public welfare based on the Indonesian Constitution 1945. In addition, efforts to conserve the environment in a harmonious and balanced manner to support sustainable development by considering the needs of present and future generations through regulations in environmental management. Merely, that national development and the increase of environmental problems complexity cannot be matched by this Act. The Rio Declaration on Environment and Development in 1992 became one of the references and reasons for the amendment of this Act by incorporating new legal norms. Toward the complexity of global environmental problems that have a significant effect on changes in behavior and character to the environment, this causes the need for more concrete regulations as an effort to protect

the environment, which according to the Universal Declaration of Human Rights is one of the important rights that everyone has, as well as with the Indonesian Constitution 1945 which states in Article 28 H it is the constitutional right of Indonesian citizens.

The need for improvisation on regulations regarding environmental protection and management was then answered by the replacement of the previous Act into Act No.32 of 2009 concerning Environmental Protection and Management. This act be guided by the constitution and is considered as one of the progressive act to protect the environment and the safety of all people. Likewise, provides important new legal norms and underlines that the right to habitable and wholesome environment is a constitutional right for citizens. The emergence of this act also responds positively to matters that have not been significantly determined in the previous act, responding to legal needs by adopting several concepts in the common law system and incorporating them into several articles, such as "Class Action" and "Organization Legal Standing" as an environmental law enforcement mechanism. Indeed, this is a significant progressive and improvisation in the development of environmental law in Indonesia, where the existence of articles that clarify legal standing of the subject of law related with environmental disputes/cases. It turns out that the developments in environmental disputes/cases settlement through civil procedural law are still on going. The influence of the common law system provides an opportunity to enable the application of the environmental cases/problem settlement concept called citizens' lawsuit. Even though in the country of origin (this concept) provides good prospects in reducing the quantity of environmental disputes/cases, in addition, the issue that is being debated by the court is regarding the legal standing of citizens, whether citizens can simply file a lawsuit or a court's judgment is needed regarding the citizens' appropriateness in filing a lawsuit with this concept.

In some literatures, there are terms regarding legal standing, which are intended to be interpreted to have the same meaning as standing, standing to litigate, and/or standing to sue. It should be emphasized that the term legal standing is different from the term of capacity to sue. Capacity to sue refers to an individual's ability to represent their interest in a lawsuit without the assistance of another. In a sense the requirement reflects a series of

rules concerning certain categories of person or entities.[104] While the term of legal standing be interpreted as an access of individuals or group of people or organizations as plaintiffs to be able to file a lawsuit to the court.[105]

Countries which have different judicial systems, in principle, determined similar things regarding the requirements to have legal standing. In Japan, standing to litigate denotes a party's having sufficient interest in the action to bring or defend it. The concept of standing differs from the related concept of party capacity and procedural capacity determine whether a party is generally qualified to litigate (as mentioned in Article 28 *jo.* Article 31-34 of Japan Code of Civil Procedure, Act Number 109 Year 1996 amended by the Act Number 36 Year 2011) not whether he has a sufficient interest in the action. As a general rule, the person who asserts a rights under substantive law will have standing to engage in litigation concerning that rights. The court must determine whether a party has standing to litigate an action.[106] In the U.S to have standing in federal court a plaintiff must show that the challenged conduct has caused the plaintiff actual injury and that the interest sought to be protected is within the zone of interest meant to be regulated by the statutory or constitutional in question.[107] As a general principle, standing means that a party must be injured by an action he/she is asserted as unconstitutional. The party who wishes to seek justice must demonstrate that he/she is sufficiently affected by an action that he/she believes violates their rights and acquire justifiable consideration from the Court of the legality of the

[104] JACK H. FRIEDENTHAL, CIVIL PROCEDURE, (West Publishing Co. 1985), p.323. the most common categories who may lack of capacity to sue can be organized into two types of incapacity because of physio-psychological condition and incapacity due to organizational or legal status. For example: a person under curatorship, a person under assistance, mentally incompetent, married woman (common law system), infants, individuals acting in representative capacities in jurisdiction other than that of their appointment, foreign and dissolved corporations.

[105] See HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY, (5th eds, West Publishing Co. 1978), p. 1260, mentioned "standing to sue means that party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. It is also a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court. The requirement of standing is satisfied if it can be said that the plaintiff has a legally protectible and tangible interest at stake in litigation".

[106] TAKAAKI HATTORI AND DAN FENNO HENDERSON, CIVIL PROCEDURE IN JAPAN, (Matthew Bender & Company Inc. 1985). §5.04, pp.13-14.

[107] BRYAN A. GARNER AND HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY (West Group, 7th ed. 1999), p.1413.

action.[108] From the significance of those two things, a common thread that connects, among others, a legal standing that is owned by any person is usually accompanied by a capacity to sue. Any person who has the desire to file a lawsuit because according to the national law they already have legal standing, then that person generally knows about the capacity to sue that has been regulated in their national law. However, if every person who according to national law meets every requirement regarding capacity to sue but does not have legal standing, then of course that person does not have the right under the law to file a lawsuit.

In Indonesia, the concept of legal standing initially was not something that was often questioned as a component in civil justice practice. This what the so-called the embodiment of adheres to the civil law system, in which basis and principles of law also procedural norms adopted in the civil justice system are properly applied wherein is regulated in an orderly manner. Conventionally, in Indonesian civil justice system there are principles of "*legitima persona standi in judicio*"[109] and "*point d'interet, point d'action*"[110] which is applied in connection in order to have legal standing. In civil justice practice, those principles have consequences that each person could be a plaintiff in civil court, provided they have sufficient legal interests. Thus, legal standing (standing to litigate) is usually based on an argument where the plaintiff really suffered a real loss. and if the plaintiff also cannot prove the interests, they cannot have a legal standing (standing to litigate). Legal standing is bound by what is procedurally determined in the legislation. Whatever occurred in Indonesia when a person does not have legal standing, they will not be able to file a lawsuit in court. The strict application of the principle of *persona standi in judicio* and the positivist character of judges causes the principle of *persona standi in judicio* to not develop and becomes rigid

[108] Robert Allen Sedler, Standing, *Justiciability, and All That: A Behavioral Analysis*, 71 YALE LAW JOURNAL. 599, 599-600 (1972).

[109] In principle, every person who feels has rights and wants to sue or defend his/her rights, is authorized to act as a party (as a plaintiff). *Persona standi in judicio* is essential for a person to vindicate his/her right. Generally, every person has got the right to file suit seeking relief for infringement of his/her right.

[110] *Point d'interet point d'action* is an important principle in civil justice in Indonesia which means that anyone who has an interest can file a lawsuit. See SUDIKNO MERTOKUSUMO, HUKUM ACARA PERDATA INDONESIA [INDONESIAN CIVIL PROCEDURAL LAW], (Yogyakarta Liberty Press, 1999), p. 53.

rules that must be obeyed. In line with this, the *point d'interet, point d'action* principle also narrows the space for those seeking justice to move. The linkages between these two principles in forming a legal standing framework cannot be denied. The civil procedural law that Indonesia applies is a legacy of judicial practices during the colonial period, which in fact substantive and procedural regulations are still used in Indonesia and impede positive modification.

In accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 294 K/Sip/1971 states that a lawsuit must be filed by anyone who has a legal interest. If no legal interest is found, then, therefore, the Court should declare the (*a quo*) lawsuit is rejected or at least declared unacceptable. Conventionally, the legal interests referred to in this jurisprudence are related to ownership or material interests where this legal standing is based on postulate where the plaintiff actually suffered real losses. If the plaintiff cannot prove a concrete interest in why he wants to sue, then he does not have the right to sue. This judicial principle started to occur in Indonesia approximately five decades ago, before the concept of legal standing developed in line with the development of public interest law. The concept of legal standing in public interest disputes/cases experienced a shift though it remained on the path of upholding civil procedural law principles. With the perspective of wider understanding and application, this really effects the judge's ability to interpret the prevalent application of legal principles.

Legal standing becomes debatable and develops rapidly along with the development of laws relating to the lives of people (public interest law[111]). Because applying the two principles strictly, does not get the best solution in finding an understanding of legal standing. What needs to be understood is that these two principles are the basis for having legal standing in the realm of civil cases, with a private dimension. It cannot be denied that the development of law in the civil sector has not only been handcuffed to the private dimension but has also entered the public dimension as in disputes/cases concerning the environment

[111]Public interest laws cover a wide variety of activities designed to improve access to justice for the most vulnerable and disadvantaged people in society. These activities seek to promote fair and equitable implementation of laws and regulations, policies and practices for all. Available at < https://law.unimelb.edu.au/students/jd/enrichment/pili/about/what-is-public-interest-law> (last visited , February 14th 2020).

which involve citizens at large. When examining these two principles, the *persona standi in judicio* is based on the existence of a right owned by citizens which is protected by the constitution and other laws and regulations. When there is a violation or desecration of the rights they have, it is possible for them to defend their rights by filing a lawsuit. Although filing a lawsuit is a right that is owned, there are things that must be considered in it, including: (a) Whether there is an act that is contrary to the law. (b) Are there any losses incurred (c) Is there a fault, whether in the form of intentional or negligent (negligence), and (d) is there a causal relationship between the losses incurred and the wrongdoing or actions committed. Likewise, with the *point d'interet, point d'action* principle, initially this principle states that anyone with an interest can file a lawsuit, the interest referred to in this principle is of course the direct interest of the problem to be resolved through filing a lawsuit (a special characteristic in civil cases). However, in line with the development of public interest, this principle cannot be placed absolutely and can be ruled out because civil cases with dimensions of public interest may not have direct interests. The need for the development of the rule of legal standing is based on the need to fight for the interests of the wider society against violations of public rights such as in the areas of the environment. In Indonesia, the public interest is regulated in various laws and regulations. Public interest is not clearly regulated in the environmental law in Indonesia it becomes a complicated matter when faced with environmental problems that raises doubts whether environmental problems are part of the problems that fall into the category of public interest. This causes the legal standing related to defending public interests in the environment to be debated. Whether individual citizens have the legal standing to defend the environment which has an impact on the interests and rights of other citizens at large.

The existence of legal standing is actually intended to encourage improvement in an effort to protect and manage the environment, especially as an effort to enforce the law. In the Indonesian Environmental Act, legal standing is divided into three forms of legal standing, namely:

(a). Individual legal standing (a person who has legal standing).

Individual legal standing namely the right to sue which is owned by every person who experiences losses directly as a result of environmental pollution and / or damage. This is

expressly regulated in Article 87 paragraph (1) of the environmental law which states that every person in charge of a business and/or activity that commits an illegal act in the form of pollution and / or destruction of the environment which causes harm to other people or the environment is obliged. to pay compensation and/or take certain actions. This article is a realization of the polluter pay principle by which the Judge can decide that environmental polluters and/or destroyers are not only required to pay compensation but are also charged with taking certain actions as an effort to restore the functions of the environment they destroy. Further analyzed of the Article 87 paragraph (1) is an embodiment of protecting the rights of everyone (subjective right) to a habitable and wholesome environment[112]. Because a subjective right is a form of protection for any person, it gives them a legal assurance according to law, so that the public interest in a habitable and wholesome environment is respected. When a lawsuit arises, its implementation is guaranteed by proper legal procedures. Apart from that, Article 87 paragraph (1) also contains the same understanding for "injury in fact" (direct loss that can be felt in real terms) which applies to the common law system as an element of legal standing.

(b). Legal standing of a group of people (class action)

Legal standing of a group of people (class action), it is a procedure in civil procedural law that was enforced in Indonesia which was previously an adoption of the class action concept in the common law system. Class action had a long journey before it was integrated into civil procedural law in Indonesia through Supreme Court regulations, although at first there was a conflict because there were no regulations, but the use of the class action concept was often used as an effort to environmental law enforcement to resolve environmental problems and

[112] In the Environmental Act, it includes human elements and all their behavior, therefore, humans as environmental subjects have a role that includes rights and obligations as well as participating in environmental sustainability. The right to a good and wholesome environment as a subjective right as stated is the broadest form of citizen protection. The so-called "subjective rights" in this context is the most extensive form of protection. Such a subjective right grants a legal claim to the individual to have his interests in a decent environment respected, a claim he can enforce by legal procedure (and with legal protection by the courts or equivalent institutions). Heinhard Steiger said that a subjective right is a legally recognized and valid claim by a legal subject to a certain legal object. Therefore, when a legal subject acquires a right in a thing or object as a result of a lawful real relationship with the thing or object, the right is a subjective right. *See* Heinhard Steiger et.al., "*The Fundamental Right to a Decent Environment" in Tendances Actuelles De La Politique Et Du Droit De L'environnement* (*The Fundamental Right to a Decent Environment, Trends in Environmental Policy and Law*), IUCN-WWF (project No. 1244) 2-5 (1980).

cases. Class action was first integrated into the Act Number 23 Year 1997 concerning Environmental Management, in Article 37 paragraph (1) “The public has the right to file a representative suit to the court and/or report to law enforcers regarding various environmental problems that harm people's lives”. It is just that what is stipulated in Article 37 paragraph (1) only in substantively where there is no regulation to implement Article 37 paragraph (1) procedurally. Hence, at the time, there was also uncertainty regarding both the legal standing and the character of the settlement of environmental cases through class actions. Because this procedure comes from the common law system, it is gradually discussed about the character of the class action. Based on the initial understanding of class action, not all civil cases (including civil cases related to the environment) can use class action procedures. Looking at the U.S., the country of origin where this procedure originated, there are four requirements that must be met to be able to use this procedure as set out in the Federal Rule of Civil Procedure, Rule 23 (a), namely: numerosity, commonality, typicality and adequacy which are described as follows :

(i) Numerosity, the class must be so numerous that joinder of all members is impracticable. Regarding to the number of plaintiffs that must be included, Rule 23 (a) of Federal Rule of Civil Procedure does not provide a specific number of plaintiffs which are needed for class action. Instead, the rule requires what is referred to as “numerosity” and requires that “the class is so numerous that joinder of class members is impracticable.” There are factors to determine whether joinder of claims is impracticable. The number of plaintiffs is of course important, this is related to legal standing whether they can file a lawsuit without regard to numerosity. It can be concluded that there was not an adequate number of class members in the arrangement, and that the court had to consider other factors such as geographic distances between class members, the nature of the act. In the U.S., the federal court determines that there are at least 40 class members to be able to say according to numerosity requirements.

(ii) Commonality, there must be the same facts and questions of law within class members and class representative. It is easily demonstrated because “class members complaint competently raises a common question”.

(iii) Typicality, the claims of the representative parties must be typical of the claims of the

class. In order to determine typicality, the court considers the extent to which the plaintiffs' claims differ substantially or are generally the same (arising from similar occurrence) with other group members with respect to the relevant legal theory and factual circumstances of the case. Typicality also requires whether the plaintiff legal or factual position is "noticeably different" from the rest of the class members.

(iv) Adequacy, the representative parties will fairly and adequately protect the interests of the class. The adequacy requirement seeks to "reveal a conflict of interest between class members and class representative". The requirement calls for determining whether the "interests and incentives between the class representative and class members" are compatible or conflicting. Some courts considered whether class representative would adequately represent the interests of class members with respect to conducting litigation. Thus, requiring class representatives to guarantee honestly and fairly and are able to protect the interests of those they represent.

Above, then becomes a consideration in Act No.32 of 2009 concerning Environmental Protection and Management[113] mentioned in Article 91 so that uncertainty in determining the legal standing and character of class action to be able to resolve civil environmental cases does not occur. Article 91 of Act No.32 of 2009 determines "(1) The public (society) has the right to file a class action (group representatives' lawsuit) for interest himself and/or for the sake of society if they experience a loss due to pollution and/or damage of environment. (2) A lawsuit can be filed if any similarity of facts or events, basis of law, as well as the types of claims among representatives' groups and group members. (3) Provisions regarding the community's right to sue implemented according to the applicable laws and regulations".

With regard to procedural aspects, the examination of class action lawsuit has been

[113] Public (society) and Legislator think and consider that it is necessary to reform the Act Number 23 of 1997 concerning Environmental Management, that the decreasing quality of the environment has threatened the continuity of human life and other living creatures as well as increasing global warming has resulted in climate change which has exacerbated the decline in the quality of the environment.
This Act replaces the Act Number 23 Year 1997 concerning Environmental Management In order to better guarantee legal certainty and provide protection for the rights of everyone to have a habitable and wholesome environment as part of the protection of the entire ecosystem.

stipulated in the Supreme Court Regulation [114] Number 1 Year 2002 concerning the Procedure of Class Action, which stipulates that in the process of examining civil cases (including environmental cases) judges are obliged to examine the legal standing and criteria for class action lawsuit in accordance with this regulation. With the formation of this Supreme Court Regulation, procedurally changed some of the common procedures applied in the HIR and RBg (Indonesian Code of Civil Procedure) such as the addition of the initial stage of certification, notification, and the existence of member statements to leave class members (option in or out). This regulation has determined by harmonizing with what is contained in the procedures used in the common law system. This is in accordance with the legal transplantation theory introduced by Alan Watson[115]. The term of legal transplantation is used as a form to indicate the transfer of a rule or legal concept from a system of law from one State to another. The idea of legal transplantation is based on diffusionism where in the concept of legal transplantation some changes to the legal system in a country occur as a result of borrowing, legal transplantation is the worth and adequate source of law development (as comparative ways). Legal transplants are carried out without providing contradiction to the constitution, legal principles and legal regulations that have been enforced in a State system of law.

(c). Legal standing of environmental organizations.

Environmental organizations have legal standing and receive recognition of the legal standing of the environmental organizations for the first time as stated in Act No.32 of 2009 concerning Environmental Protection and Management, the legal standing was regulated for environmental organizations specified in Article 92 which states "(1) In the framework of

[114] The emergence of a Supreme Court Regulation in the procedural law regulatory system in Indonesia is based on the authority of the Supreme Court in regulating judicial procedures that are not sufficiently regulated by statutory regulations for the sake of certainty, order and smoothness in examining, hearing and deciding a case Where in Article 79 of the Act Number 14 Year 1985 concerning the Supreme Court granting the authority to the Supreme Court to further regulate matters necessary for the smooth running of the judiciary if there are things that are not sufficiently regulated in law by establishing a Supreme Court Regulation.

[115] ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW' (University of Georgia Press, 1974), p. 95.

implementing responsibility for environmental protection and management, environmental organizations have the right to file a lawsuit in the interest of preserving environmental functions. (2) The right to file a lawsuit is limited to demands for certain actions without any claim for compensation, except for real costs or expenses. (3) Environmental organizations can file a lawsuit if they meet the following requirements: "(a) An environmental organization which holds a legal entity status based on Indonesian laws and regulation. (b) Affirmed in the organization statue that the organization established for the sake of preservation environmental function. (c) Has carried out real activities according to organization statutes at the shortest for 2 (two) years".

Hence, from the provisions of those articles in Act No.32 of 2009 concerning Environmental Protection and Management, it can be seen that the environmental law system and environmental dispute resolution procedures related to legal standing for public interest adhere to a closed system, because of public standing (the legal standing that is owned by a large number of people, environmental organizations) become the only who can file a lawsuit related with defending the public interest. Likewise, this Act does not mention regarding private standing related with defending the public interest (citizen lawsuit concept). Thus, with a closed system, citizens who have a desire based on certain interests to enforce environmental law for the public interest do not have legal standing. What makes it possible for these citizens to only use class action procedures or through legal standing mechanisms of environmental organizations in an effort to enforce environmental law and fight for their constitutional rights to a habitable and wholesome environment.

3.3 The Legal Principles on Civil Procedural Law related with Legal Standing and the Rights to File a Lawsuit: Supporting Elements to Strengthen the Citizen to Have Legal Standing for Filing Citizens' Lawsuit.

The environment is always related to the public interest. The environmental regulations enacted in Indonesia do not mention to provide an understanding of the public interest even though environmental law is related to various dimensions of other legal fields. The first legal issue considered by a court in examining a case is the legal standing of the plaintiff. Not having legal standing is tantamount to not having rights and access to court. Some countries have strict legal standing regulations in their judicial systems. In common

law countries, even though with a judicial system that places jurisprudence as a legal guideline in examining cases and also as a basis for legal arrangements that are enforced to resolve cases, then legal standing is an important matter. Legal standing, however, is required to have the capacity to sue in the sense of a substantial, and sufficient interest in the subject matter of certain litigation in connection with a case to be examined and resolved by the court. It is just that in Indonesia, understanding the meaning of this public interest causes the inability to adopt citizen lawsuit as a concept of environmental law enforcement that can be applied in Indonesia.

The approach that can be taken by the courts in Indonesia will consider many things both in terms of procedural principles, from the point of view of regulating as well as from the point of view of judges' considerations with theory and jurisprudence. This occurs when there are only individual plaintiffs who wish to defend the public interest which also includes their constitutional rights. It is clear that legal standing consists of two elements: the capacity to sue (*legitima persona standi in judicio*) and sufficient interest in the problem at hand (*point d'interet, point d'action*). Courts are likely to combine these two requirements to provide plaintiffs with legal standing in filing citizens' lawsuit. This because the regulation concerning citizens' lawsuit neither substantively nor procedurally does not exist. Therefore, the absence of this regulation causes the court to have to raise supporting matter, hence, citizens can be categorized as having a legal standing in filing a lawsuit with the citizens' lawsuit procedure. Supporting matter can be raised starting from the two elements of this legal standing.

Seen from the first element of legal standing, namely the principle of *legitima persona standi in judicio* in the environmental law is designed to be broaden to any person who try to defend the public interest according to law, including environmental interests. Act No.32 of 2009 concerning Environmental Protection and Management has not clearly specified in one of its articles regarding this matter. This act only stipulates in Article 66 that "any person who is fighting for the right to a habitable and wholesome environment cannot be prosecuted criminally or as well as being sued by civil lawsuit". This is not an Article that provides space for any person (citizen) to have legal standing, this is a protection for any person to defend their constitutional rights and of course any person who fights for their

rights should be in accordance with the laws and regulations which cannot be interpreted that easily as *legitima persona standi in judicio*.

Regarding legal standing of citizens, whether the law, the governing law, the constitution, or general legal thought have provided the plaintiff with reasons to have legal standing in filing citizens' lawsuit. This limitation on understanding of legal standing needs to be addressed by the court by seeing citizens as potential legal subjects who have rights to public interests related to the environment. Citizen lawsuit from its inception to modern development in common law countries aims to get the executive branch (government) to do what the law is required to do. This is the underlying idea of citizen lawsuit, most prominently in the environmental field because it appears that the interest in the environment is a public interest.[116] There are 3 (three) things that can be considered in the principle of *legitima persona standi in judicio* in relation to citizens who wish to file a citizens' lawsuit related to environmental problems/cases, as follows:

(1) First, because this a concept citizens' lawsuit, "any person" who wants to file a lawsuit through this procedure must be able to prove himself as a citizen in the jurisdiction of a State where this "any person" feels that his constitutional rights regarding the environment are being violated. In Indonesia, Act Number 12 Year 2006 concerning Citizenship stipulates in Article 4 regarding Indonesian Citizens, and also in Article 2 in conjunction with Articles 8, 9 and 10 that specifies foreign citizens who wish to change the citizenship to become Indonesian Citizens through the citizenship process. In addition, this requirement for Indonesian Citizens must also be accompanied by the capacity and ability to file a lawsuit. In this sense, not all Indonesian Citizens can freely file a citizens' lawsuit if they do not have the capacity and ability to take an action as measured by law. Capacity[117] commonly measured by legal maturity. In Indonesia civil

[116] Cass R. Sunstein, *"What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III,"* 91 MICHIGAN LAW REVIEW 163, 168-175 (1992).

[117] Hans Kelsen mentioned as legal capacity (*rechtsfahigkeit*) which according to traditional theory designates legal capacity is the capacity of a person as an individual to have rights and legal obligations or to be the subject of rights and obligations. A person who lacks legal capacity is said to be a person who does not exist and is considered non-existent in modern law. He also said that not every person has the capacity to act such as children and mentally ill person. See HANS KELSEN, PURE THEORY OF LAW, (University of California Press, 1967), pp. 158-163.

law, through its regulation in *Burgerlijk Wetboek*[118] in article 330 it stipulates that 21 years of age or married is an adult and legally becomes a subject of civil law. Capacity according to Indonesian civil law is also measured by whether an adult is under interdiction, is a wasteful person, a person who has mental or memory disorders and a person categorized as having a physical disorder (dumb or deaf) so that it becomes an obstacle to taking an action in court.

(2) Second, the plaintiff can show that the environmental problem/case is a violation of the law in the sense by showing that which environmental laws and regulations have been violated and whether the violation interferes with their rights to the environment. So that if the court accepts the legal standing of the plaintiff, the plaintiff can prove the relevant factors related to the legal interests they are at stake.

(3) Third, if it does not involve the meaning of a violation of the law then anyone can file a lawsuit if they can show that the "provisions of the relevant statutory" implicitly gives them status by stating that those person perceive "affected or harmed" are entitled to file a citizens' lawsuit. In this way it permits any person to have a reason for an action. This of course, requires a statutory interpretation[119] and legal reasoning[120] that can be carried

[118] The *Bugerlijk Wetboek voor Indonesie* (BW) came into force in the Dutch East Indies (as Indonesia was then called) starting in 1848 during the Dutch colonial period with *Staatsblad 1847 No. 23*. Furthermore, when Indonesia became independent in 1945, it was stated in Article 2 of the Transitional Rules of the Indonesian Constitution 1945 that "All state bodies and existing regulations will remain in effect as long as they have not been established and replaced by new ones according to this constitution" (concordance principle). So that all existing regulations including the *Bugerlijk Wetboek voor Indonesie* (BW), as long as there are no new ones, remain valid to overcome the legal vacuum (*rechtvacuum*). Thus, *mutatis mutandis* the *Bugerlijk Wetboek voor Indonesie* (BW), which is a legacy of the Netherlands, is still valid until now as the Indonesian Civil Code. After which, a thorough article-by-article translation was carried out by R. Subekti and R. Tjitrosudibio.

[119] Statutory interpretation is approached in a framework that is formed so as not contradiction with the constitution and positive law. Judges in court can interpret with respect to laws relating to individual rights or with judicial procedures. Judges in court, will of course, respect the legislator's objectives in making statutory as well as the language and terminology in it. It is not something that is prohibited from statutory interpretation to find solutions in dealing with complex legal problems as long as it does not cause controversy or precedent that illegitimates the interests of in accordance with the law. See GEOFFREY C. HAZARD JR. AND MICHELE TARUFFO, AMERICAN CIVIL PROCEDURE AN INTRODUCTION, (Yale University Press, 1993) pp. 56-58.

[120] Legal reasoning is used as a collective label for a number of mental processes that lead to legal decisions. Some of these mechanisms focus on events that have initiated the current problem and involve identifying situations, interpreting, and evaluating facts. Other aspects of legal reasoning include legal research and involve a choice between the rules and the available arguments. This process also consists of constant evaluation of possible decisions and formalization activities. Legal reasoning is an important task because the

out by judges in court to be used as the considerations regarding legal standing so that filing citizens' lawsuit can be followed by a case examination.

The quest to determine the legal standing of citizens on citizens' lawsuit should also be linked to the *point d'interet, point d'action* principle. Procedurally, civil justice system in Indonesia determining legal standing when it is not stated in the relevant laws and regulations. Determining legal standing of the plaintiff in citizens' lawsuit concept cannot separate these two principles which are its elements. In *point d'interet, point d'action* principle, if associated with citizens' lawsuit, what is urgent to determine in advance is whether the interest in the environment can be said to be the public interest. What is used as a benchmark for something that can be said to be the public interest. The first thing that a judge must do in court is to find out the definition of public interest from the article provisions contained in other laws and regulations (because of the definition of public interest is not spelled out in the environmental act) as for example those contained in Act Number 2 Year 2012 concerning Land Acquisition for Public Interest, in Article 1 paragraph 6 it states that "public Interest is the interest of the nation, state and society that must be realized by the government and used as much as possible for the prosperity of the people". Act Number 5 Year 1986 concerning State Administrative Justice stated, "public interest is the interest of the nation, state, community together, and/or development".[121] Act No. 16 Year 2004 concerning the Attorney of the Republic of Indonesia mentioned "public interest is the interest of the nation and state and/or the interests of the wider society".[122] However, the nature of the public interest itself is not clearly understood.[123] From the definition of the public interest determined by several Acts that mentioned above, the judge in court (through the methods of legal reasoning and statutory interpretation) can draw conclusions about what

reasons formulated during the process will be used as arguments in support of a decision. Haphazard legal reasoning and superficial analysis, on the other hand, can clearly lead to poor arguments and result in low quality of legal decisions. See Paul Wahlgren, *Legal Reasoning A Jurisprudential Model*, 1957-2009 STOCKHOLM INSTITUE OF SCANDINAVIAN LAW 199, 202-05.

[121] Elucidation section of the Article 49 of the Act Number 5 Year 1986

[122] Elucidation section of the Article 35 letter C of the Act Number 16 Year 2004.

[123] After analyzing various public interest constraints in the existing laws and regulations in Indonesia, Sudikno Mertokusumo has an opinion that what is meant by public interest is related to the interests of the nation and state, public services for the wider society, and/or development in various fields of life, with due regard to the proportions and respect for other interests. see SUDIKNO MERTOKUSUMO, MENGENAL HUKUM [KNOW THE LAW], (Yogyakarta, Liberty Press, 1999). pp. 45-46.

is categorized as the public interest. There are elements of public interest that are referred to in the definition of public interest by those Acts, as follows:

(1) The first, is the interests of the nation and the interests of the wider community. The environment is the national interest and the public interest because it is a common concern. every national development in various fields, especially economic development, will always be in contact with the environment, and economic development must integrate environmental protection. When everyone needs the environment, it is said to have an interest in the environment, and when everyone has an interest in the environment, the interest in the environment is a public interest.

(2) The second is the interest that must be realized by the government. In relation with the environment, the interest of any person to habitable and wholesome in the environment is a constitutional right that must be realized by the government as state administrator, realizing this as a public interest that must be protected. This can be seen in article 28 H of Indonesian Constitution 1945 which then spelled out in detail by Act No.32 of 2009 concerning Environmental Protection and Management, which in Article 63 determines the duties and authorities of both the central and local governments in protecting and managing the environment in connection to Article 13 which states the role of the government in preserving environmental functions. in the form of implementing 3 (three) important actions, namely prevention, control, and restoration. This definition is appropriate when it is connected to the concept of a law state which has been stated in the Indonesian Constitution 1945. As a matter which has been stated in the constitution, it is appropriate for state administrators to create state welfare as a form of law state that guarantees the rights of citizens which mentioned in Indonesian Constitution 1945.

The development of the public interest as a character of the environmental position causes legal practitioners', legal scholar and also environmentalist to question its intervention within the scope of Indonesian civil justice system. As a tool for legal reform, the suitability of the public interest is questioned in terms of being properly used as a basis for filing a lawsuit by any person as an individual. This intervention was then linked to the conventional notion of the party as the plaintiff. Courts in Indonesia have traditionally positioned themselves to comply normatively with what is stated in the HIR and RBg, so

that the function of the court in the settlement of civil cases will lead to quandary and confusion in using the judiciary as an institution in the settlement of civil cases regarding the environment involving the public interest. Although the court has historically been seen as an appropriate forum for inter-party civil case settlement, public interest plaintiff often does not fit into the traditional understanding of what is understood to be an "appropriate party".[124]

A citizen as a plaintiff in a public interest lawsuit relating to the environment is not a traditional plaintiff. The plaintiff is not only trying to prosecute a violation of his personal legal rights for himself. Instead, the plaintiff seeks to challenge unconstitutionality or to assert illegitimate action. In doing so, the plaintiff was not harm and violate of rights beyond those felt by the citizen (public) in relation to the public interest. Citizens' lawsuit on public interests related to the environment gives rise to broader judicial decisions and the effect of *res judicata*[125] is wider in scope. However, it should be noted that when the Court seeks to consider these two principles in determining the legal standing of "any person" to be considered the correct plaintiff in the citizen lawsuit so that the emphasis on the public interest is the objective to be resolved properly and its effect on the public as a whole. Therefore, it can be seen as a right and proper consequence of the Judge in court to make the right decision regarding "any person" legal standing which can be used as jurisprudence or at least a precedent for similar cases that arise in the future, as long as there are no definite regulations regarding procedures of citizen lawsuit.

[124] According to Professor Louis L. Jaffe, any person who become a plaintiff to defend of public interest are called ideological plaintiff because they try not to assert their personal and ownership interests, but rather the representational and public interests of the plaintiffs in public action. See Louis L. Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff,* 116 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1033, 1044 (1968).

[125] The *res judicata* means that when a court of competent jurisdiction has determined, on its merit, the litigated cause, the judgment entered, until it is overturned, forever and in all circumstances, final and conclusive between the parties with respect to every fact which may be considered in reaching judicial decisions and with respect to all points of law there are decided, as those points related directly with the causes of action in litigation before the court. See in Robert Von Moschzisker, *Res Judicata*, 38 YALE LAW JOURNAL 299, 300-301 (1928).

3.4 Harmonizing Citizens' Legal Standing in Citizens' Lawsuit: Reducing Restrictive Rules on Who May Take a Case to Court.

To the direction of so-called "public interest" litigation, especially with regard to the environment as a constitutional right, needs to be considered because citizens' attention to issues of public interest involving large groups of people is increasing. Law enforcement as a form of environmental protection, it is appropriate to expand the legal standing limits related to claims against the public interest. The traditional notion of legal standing in civil cases in the civil justice system in Indonesia confuses justice seekers when laws and regulations alone do not determine it. Several cases that have emerged in Indonesia that want to be resolved through citizen lawsuit procedures are hampered by issues of legal standing. The judges' confusion was also not without reason, due to the absence of a uniform guideline to determine whether the plaintiff met the criteria as a proper plaintiff with legal standing. The common law system doctrine of legal standing in the U.S. determines the criteria for legal standing that the plaintiff must meet in every case that he wants to be resolved through court as well as environmental cases involving the public interest. As stated in the Clean Water Act, Clean Air Act and several other environmental regulations which limit citizens who want to file for citizen lawsuit if state officials do not do what must be done to provide protection to the environment. Citizen may not bring lawsuit if the Environmental Protection Agency (EPA) administrator or the State has already done so, nor may he recover for compensatory or punitive damages. In addition, not all citizens may bring a citizen suit under the Clean Water Act, Clean Air Act, and several other environmental regulations; only a citizen who has an interest that could be affected by the pollution may bring suit.[126] This is known as an injury in fact where the citizens suffer losses and are directly affected. To have legal standing in a lawsuit, the plaintiff must have sufficient interest in the dispute. The court agreed that the plaintiff has a legally recognizable interest in a lawsuit if he determines "injury in fact, causation and redressability" as mentioned in Manuel Lujan, Jr., Secretary of the Interior, Petitioner v. Defenders of Wildlife, et al. Case of 504 U.S. 555 (1992).

[126] Ben McIntosh, *Standing Alone: The Fight to Get Citizen Suits under the Clean Water Act into the Courts. Ailor v. City of Maynardville*, 12 MISSOURI ENVIRONMENTAL LAW AND POLICY REVIEW 171, 173-77 (2005)

In Indonesian civil justice system, the application of citizens' lawsuit concept cannot precisely determine the legal standing of citizens as contained in the concept of legal standing in the common law system. However, in my view it is accepted that everyone has legal standing in citizen lawsuit based on the understanding of environmental protection as a public interest. This striking difference from determining legal standing is associated with sufficient interest. Sufficient interest has traditionally been interpreted as an interest related to violations of personal rights between civil law subjects but does not concern the public interest. This individualistic vision of traditional procedural due process narrows the path to the merging of social conceptions and the interests of the wider community. Such an environment does not ensure access to justice and requires a transformation that can ensure that the Court has a wider range of legal standing views regarding environmental issues in the public interest dimension.

Shifting the procedural dimension to decide legal standing is needed in Indonesia by accepting re-reasoning of the conception of legal standing for citizens. Acceptance of re-reasoning of citizen's legal standing in the citizen lawsuit concept in Indonesia should reduce restrictions on who can file a civil lawsuit. In my view, courts need an understanding to go beyond the unnecessary requirements of legal standing to conduct litigation in cases involving the public interest. Injury in fact, causation and redressability are related and determined elements that ensure sufficient interest to have legal standing.[127] Furthermore,

[127] In order to comply with the "irreducible constitutional minimum in Lujan v Defenders of Wild life" under the requirements of legal standing, the plaintiff in federal court "must, generally, demonstrate that he has suffered injury in fact, and that the injury be "traceable" to the accused's actions, and that the injury is likely to be corrected by a favorable decision. The element of injury in fact requires the plaintiff whose interests are legally protected to "have suffered both concrete and actual". There is no quantitative standard for the injury in fact element. This element can be satisfied by "identifiable trivia" and the plaintiff does not have to be "significantly" affected by the defendant's activities for this element to be satisfied. Furthermore, the injury in fact suffered by the plaintiff "as a result of the defendant's alleged illegal act" could be actual injuries or injuries that could have occurred in the future. One does not have to wait for the completion of a threatening injury to get preventive assistance. If an injury is bound to come, that is enough. The plaintiff must ensure that he is currently being harmed by continuing, current adverse effects or will be injured near in the future. See Steven A.G. Davidson, *Standing to Sue in Citizen Suits Against Air and Water Polluters Under Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.,* 17 TULANE ENVIRONMENTAL LAW JOURNAL 63, 65-67 (2003)

regarding the legal standing in citizens' lawsuit concept that can be applied in Indonesia, the connection between injury in fact and causation is a definite thing that the plaintiff must prove the connection to. However, the redressability imposed in some environmental cases in the U.S. common law system is not applicable. If redressability is in the form of a request for restoration of the environment, the making of a new public policy to provide protection for the environment or in the form of a future program arrangement for a sustainable environment can be justified. Because what needs to be remembered is the concept of citizen lawsuit which can be applied in Indonesia where the defendant is a state administrator, and it is not justified in the laws and regulations that the inability or negligence or omission of state administrators cannot be asked for compensation which can be measured by amount of money.

In environmental litigation related to the public interest, it is not permissible to reject the existence of a new understanding of a conception which is considered capable of creating a habitable and wholesome environment as part of the constitutional rights of citizens. By adhering to the principle of legal standing in the civil justice system in Indonesia, applying and allowing citizens as subjects of civil law to defend in connection with any offense, inter alia, "any legal provisions relating to environmental protection", for the public interest and for the sake of environmental protection interests. The capacity to obtain rights will create obligations independently of citizens who seek to defend environmental interests according to law for the public interest, which includes environmental interests. Traditional restrictions on legal standing for the public interest due to litigation for the benefit of the environment have not been recognized in the past. However, courts and the civil justice system in Indonesia should adopt a more generous approach to determining legal standing so that they can design to broaden the understanding of legal standing in citizen lawsuit related to the environment.

In connection with the legal standing of citizens who have not been definitively determined in statutory regulations (mainly civil procedural code), to understand the concept of legal standing that can be applied in Indonesia in relation to filing a citizen's lawsuit, the progress of the thinking of judges in court is needed. The role of the judge in determining the character of legal standing which does not contradict with the law and principles in civil

procedural law. The judge will make a decision that will serve as a jurisprudence or precedent for similar cases that may occur in the future. Reducing restrictions starts from not being affected by an element of sufficient interest in the common law system as measured by injury in fact. This requirement appears rigid when applied in Indonesia. This is what is called a reform of the Indonesian civil justice system that increasingly enables individual citizens to be courageous enough to act as supporters of the public interest in upholding environmental law.

An important reason for permitting citizens' lawsuit is that it provides constitutional power to question the legality of legal actions by state administrators that have a negative impact on the environment. Moreover, like its history in the country of origin where the early development of this concept has not strictly applied the legal standing of the plaintiff. Thus, the meaning of *point d'interet, point d'action* would not be narrowed down and then it develops further, especially related to and experiencing a shift in meaning from the beginning of the emergence of this principle along with the development of public interest. In line with the development of public interest law, the concept of legal standing (standing to litigate) in cases relating to public interests has shifted. Individuals can act as plaintiffs even if they do not have direct interest. The administration of public interests is the duty of the government as the state administrator. This can be understood from the definition of public interest, namely the interests of the society or citizens in general relating to the government or the state.[128] Comprehending the development of civil procedural law in Indonesia not only studies the development of the civil law system but also cannot be separated from the method of approach in examining the legal development of the common law system. The citizen lawsuit procedure which in the common law system develops from the fact that public dissatisfaction with the administration of the state in protecting the public interests and rights of its citizens. Broadly, citizens' lawsuit means that every citizen in the name of the public interest can sue the state or the government or anyone who commits an action against the law, which is clearly detrimental to the public interest and the welfare of the wider society. Based on the comprehension of the public interest, the interests to be

[128] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY, DEFINITION OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE ANCIENT AND MODERN, (6th ed 1991), p. 856.

prosecuted by citizen lawsuit procedures can cover public services to the wider society, for example health services, security and community peace by the government which so far have been deemed inadequate by the public, procurement of public transportation, provision of drinking water, electricity, environmental protection, forest protection and so on. Everyone who is essentially as citizen is very concerned about it because it is in the interests of the wider society, if the state or the government is negligent in its fulfillment, every citizen has a right to file a lawsuit.[129]

With regard to legal standing, harmonizing with the civil law system in Indonesia does not conflict with existing legal principles. Although in traditional civil procedural law, legal standing is always associated with the existence of legal interests, but if look at access to justice and environmental protection, legal standing without any legal interests and only based on sufficient interests is not legally deviant. Christoper D. Stone, who argues that the guardianship approach can be used as a basis for argumentation in determining the legal standing for "any person" (citizens) because the environment requires guardians to speak out about the destruction and pollution that occurs while ensuring that similar things do not occur in the future. Christopher D. Stone's rationale observes that the history of law has seen the gradual expansion of the legal personality, and the legal rights that accompany it, to previously unthinkable entities that rights should be granted. Although these entities have included various categories of human beings (such as women, children, and slaves), the boundaries of legal personality have also been extended to include certain non-humans, such as corporations. From this foundation, Christoper D. Stone goes on to build arguments for the extension of legal rights to what hitherto are "natural objects".[130] Christopher D. Stone's opinion is then used in the case below:

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[129] E. SUNDARI, PENGAJUAN GUGATAN SECARA CLASS ACTION: SUATU STUDI PERBANDINGAN & PENERAPANNYA DI INDONESIA YOGYAKARTA [FILING CLASS ACTION LAWSUIT: A COMPARATIVE STUDY & APPLICATION IN INDONESIA], (Yogyakarta, Atma Jaya University Press, 2002). pp. 16-17.

[130] Christoper D. Stone explains what it means to be a legal rights holder: first, no entity has rights "unless and until some public authoritative body is prepared to provide a number of reviews of actions inconsistent with the right". Second, "something can take legal action at his command". Third, "the court must reckon with the loss" and fourth, "the release must be exercised for his benefit". Naturally, inanimate objects can carry out litigation only through a "guardian". in P.S Elder, "*Legal Rights for Nature: The Wrong Answer to the Right(s) Question*", 22 OSGOODE HALL LAW JOURNAL 285, 286-88 (1984). See also Christopher D. Stone, *'Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 SOUTHERN CALIFORNIA LAW REVIEW 450, 458-460 (1972).

- **Sierra Club v. Roger C.B. Morton (Secretary of Interior), Case of 405 U.S. 727 (1972)**

The Mineral King Valley are an undeveloped part of the Sequoia National Forest that was mostly used for mining until the 1920's. In the late 1940's, developers began bidding on the land for recreational development. Walt Disney Enterprises wins a bid to start observing the valley in hopes of developing an 80-acre ski resort. The size of the proposed resort will require the construction of a new highway and large high-voltage power lines that will flow through the Sequoia National Forest. The Sierra Club has tracked this project for years and hopes to discontinue it to protect undeveloped land.

In 1969, the Sierra Club, an environmental group, sued the Secretary of the Interior over a decision allowing Walt Disney to build a resort in Mineral King Valley. Sierra Club argues that such development will destroy the natural beauty and values of the region by allowing its development. The Sierra Club filed a preliminary and permanent order against federal officials to prevent them from granting permission for King Valley Minerals development. The district court approved the decision. U.S. Court of Appeal for the Ninth Circuit to overturn the decision on the grounds that the Sierra Club did not demonstrate that it would be directly affected by the actions of the defendants. The appellate court also held that the Sierra Club did not show irreparable injuries or their likelihood of success on the basis of the case. The Sierra Club has no right to sue under the Administrative Procedures Act (APA) for failing to demonstrate that any of its members have suffered or will suffer injury as a result of the actions of the defendants. Judge Potter Stewart, writing for the majority, focused on what specific harm the plaintiffs could demonstrate in this case. The issue of stance is important because it prevents the courts from co-opting the democratic legislative process. Judge Potter Stewart alluded to this matter by arguing that the complainants needed to show some kind of injury to sue and challenge the lower court's interpretation that the Sierra Club could have standing because they had a special interest in the case, writing with the emphasis, expanding the category of possible injuries. allegedly supporting a standing is a different matter than ignoring the requirement that the party requesting the review be injured. Judge Potter Stewart noted that giving the Sierra Club standing would lead to a difficulty in determining valid standing in future cases. Stewart

wrote:

> "But if a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived. And if any group with a bona fide 'special interest' could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so".

Although constructing roads and high-voltage power lines through the wilderness disturbs the beauty of the area and the pleasures of some, such "public interest" in the potential problem is not sufficient to establish that the plaintiff has been harmed in the manner required by fixed doctrine. Judge William O. Douglas wrote a dissent opinion in which he argued that the doctrine should still allow environmental organizations such as the Sierra Club to sue on behalf of inanimate objects. There is precedent for inanimate objects having legal personality for legal prosecution purposes, and those with close contact with inanimate objects to be injured, tainted, or confiscated are their legal spokespersons. "In his separate dissenting opinion, Judge Harry A. Blackmun argued that, when faced with new problems with potentially large and permanent consequences, such as environmental problems, the Court should not be too rigid about its legal requirements. Judge Blackmun proposed two alternatives on how to proceed in the case. this: either the Sierra Club's request for a preliminary injunction must be granted while it is given time to amend its complaint to conform to the requirements of a fixed doctrine, or the Court should expand its doctrinal standing to allow for this type of litigation. Judge William J. Brennan, Jr. also wrote a separate dissent in which he agreed with Judge Blackmun about the position of the Sierra Club and argued that the Court should consider the case on its merits**.** Judge William O. Douglas aligned himself with Christoper D. Stone's opinion, arguing that contemporary public concern for protecting the ecological balance of nature should lead to providing environmental object standing to sue for their own sustainability. He poses critical questions about "standing" that are suggested to be more simplified and also a neat focus if we create federal rules that allow environmental issues to be examined before federal court on behalf of inanimate objects that are or maybe damaged, where the damages become a contemporary public concern.

The existence of Indonesian constitutional provision for habitable and wholesome environment implies that there is an obligation for everyone to preserve the functions of the environment. The existence of this obligation then creates the right for the environment to be protected, managed, and preserved. However, the nature of the environment, which is inanimate and cannot take legal actions, cannot be burdened with these obligations. Despite the difficulties that will arise in implementing it in Court, at least it reflects an important conceptual shift from the traditional anthropocentric human notion of environmental management, which so far has been largely unsuccessful in preventing environmental pollution and destruction. Realizing that various aspects of nature and the environment, instead of just being things for us to use, are able to hold legal rights is an important step to embrace the latter perspective.

The shift in the concept of traditional legal standing that exists in Indonesia towards the concept of modern legal standing needs to be interpreted as a positive development due to the factor of the State as the ruler of nature, the environment and the resources that exist therein and also the interests of the wider community. First, the factor of the state as the ruler of nature, the environment and the resources that exist therein is constitutionally regulated in Indonesian Constitution 1945 Article 33 paragraph (3) which has the consequence that its sustainability is highly dependent on activities, actions, and government policies as state administrators. Which then the government's obligations as state administrators related to this matter are regulated in the environmental act. However, in implementing laws and regulations, sometimes the government neglects its duties and obligations in terms of managing, protecting, and preserving the functions of the environmental. This situation requires citizens as the owner of the right to habitable and wholesome environment as regulated in the constitution to take corrective and enforcing actions through the law. In order to be implemented, it is necessary to accept and acknowledge the citizens' access to courts through legal standing to file for citizens' lawsuit. Second, the factor of the interests of the wider community is always associated with the number of cases and environmental problems that injure the rights of citizens within the scope of the interests of the wider community. Although there are many environmental organizations that have been given legal standing according to the environmental law, citizens are an important pillar of law

enforcement in providing protection for the environment. Citizens can move to fight for the interests of the wider community and push for reform of environmental policies even though in truth they do not have individual legal interests such as ownership interests and economic interests. Furthermore, in accordance with Article 70 of Act No.32 of 2009 concerning Environmental Protection and Management, it is determined that citizens have the same rights and opportunities as widely as is possible to play an active role in environmental protection and management. So that in realizing their active role, citizens can file a lawsuit in court which is preceded by acceptance and recognition of legal standing for citizens as an effort to enforce the law in protecting the environment.

CHAPTER IV.

THE APPLICATION OF CITIZENS' LAWSUIT CONCEPT UNDER INDONESIAN CIVIL PROCEDURAL LAW IN THE FRAMEWORK OF ENVIRONMENTAL LAW ENFORCEMENT.

The filing of a lawsuit by any person as a plaintiff is not an extraordinary thing that is hard to see in the Indonesian judiciary moreover in the era which increasingly open to access to justice, especially those related to securing the constitutional rights of citizen. Problems will begin to arise when in the development of social life, there are rights violated by state administrators, which cause losses not only to individuals, but also to a large number of people. This is very possible considering that the violations of law are not only experienced by a person but can also be experienced by a group or the wider society.

Environmental law enforcement efforts within the civil scope have been regulated in Act No.32 of 2009 concerning Environmental Protection and Management in substantially regarding environmental disputes/cases settlement. The forms of law enforcement efforts that can be taken include individual lawsuits, class action lawsuits, environmental organization lawsuits, which can be procedurally implemented using the provisions for civil case settlement contained in the HIR, RBg, and Supreme Court regulations. This form of law enforcement effort, according to court proceedings carried out in the context of resolving civil cases related to the environment, gives procedural rights to one person or a number of people, to be able to act as a plaintiff, in order to fight for their interests and those of their group, who feel they have been harmed. So, what needs to be underlined in relation to this substantial arrangement is "fighting for their interests or the interests of the group that has been harmed by illegal acts committed by individuals or corporations". So that the scope of filing a lawsuit is limited to private interests which are solely aimed other than demanding restoration of the environment, the main thing is demanding compensation that is nominated with a sum of money. When faced with environmental cases or problem caused by negligence, default, and omission of the government as state administrator which is

annotated as “an act against the law of the ruler” which in the *petitum*[131] of the lawsuit does not demand compensation in the form of money. This is still at the stage of understanding which is not validated in the form of regulations. Then in further developments, there are other types of civil lawsuits which have characteristics in which a lawsuit is filed to sue State Administrators on behalf of the public interest, where it is this public interest that is harmed by illegal acts, especially those committed by the government as state administrators.

The emergence of a different type of lawsuit from the conventionally types of lawsuits regulated in Indonesia civil procedural law is due to the understanding that basically any person can file a lawsuit if their rights are violated. This is an embodiment of the provisions of Article 1365 *Burgerlijk Wetboek* (Indonesia Civil Code) which is used as the basis for filing a lawsuit. The formulation in this Article implies that every act against the law where the act violates the (subjective) rights of other person or the act is against the obligation according to law or is also contrary to what according to law should be carried out between legal relationships can be asked the legal liability because they who commit acts against the law. The emergence of the citizens’ lawsuit concept in Indonesian civil justice system cannot be said to be a breakthrough that brings contradictions that obscure the principles and norms contained in the civil justice system. The emergence of this concept can be used as a new effort to strengthen the procedural system to settle civil cases with the dimension of the public interest. Until now, citizens’ lawsuit has only been placed in the position of being allowed to be brought to court in the sense that any person who wants the citizens’ lawsuit concept to be used in the settlement of civil cases (including the environment), is limited as far as to the filing of a lawsuit.[132] Judges at the Court have the

[131] *Petitum* is a Latin phrase used as a term in Indonesian judiciary which refers to the meaning of “what is requested or what will be the plaintiff's demands” in a civil lawsuit.
The *petitum* must be included in a civil suit, which contains a clear description and mentions individually what things must be borne by the defendant. Otherwise, a civil lawsuit becomes invalid and contains formal defects which causes the lawsuit to be rejected by the court.

[132] Although some citizens' lawsuit is not accepted by courts in Indonesia because they do not meet the formal requirements of a lawsuit, based on Case number 28/ Pdt.G/2003/PN.JKT.PST which is the first citizen lawsuit filed in the State Court. Central Jakarta, in its decision, the Panel of Judges determined that the citizen lawsuit filed by the Plaintiffs was accepted and stated that the case examination could be continued. This can be used as a reference that a lawsuit filed through the citizens' lawsuit mechanism can be accepted “to be submitted” to the court even though in the end the process of case examination until it reaches the decision-making stage is the judge's authority.

authority and competence to accept, examine and adjudicate cases, comply with the applicable procedural law rules and do not comply with the *justiciabelen* (justice seekers/those who will become a plaintiffs) who choose their own way of proceeding with no legal basis. Civil procedural law regulates rights and obligations procedurally (ie. right to appeal, obligation to present witnesses) and not as substantial as in civil law. Accepting a civil case filed to court does not mean simply accepting a new procedural concept that is not well known in the Indonesian civil justice system. There needs to be a harmonization and connection between the legal system and the role of judges in court in determining and considering. This is related to the provisions in Act Number 48 of 2009 concerning Judicial Power which in the Article 10 states that the Court is prohibited from refusing to examine, hear and adjudicate a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine, hear and adjudicate on trial. Although the citizens' lawsuit concept has not been determined substantially or procedurally in justice system in Indonesia, based on this Article, it does not mean that citizens' lawsuit is not allowed to be submitted to court. In conjunction with the Article 5 paragraph (1) which states that judges are obliged to explore, adhere, and comprehend the values of law and the sense of justice that live in society. So that demands an active role of judges when confronted with a case that is filed where the arrangement in laws and regulation is not determined yet or unclear. What is meant in Article 5 paragraph (1) above is material law (laws that govern rights and obligations substantially), not formal laws (laws that regulate procedural rights and obligations). Judges may not make breakthroughs by forming their own procedural law according to their wishes, because the procedural procedures are already regulated in the HIR, RBg. and the Supreme Court Regulations (as the rule of civil procedural law in Indonesia). However, if the judge in court makes a breakthrough by establishing a procedural law by themselves regardless of the existing rules and legal principles, it will create a precedent for other judges when faced with a similar cases. This will cause confusion in the civil justice system in Indonesia and threaten the existence of the HIR, RBg and the Supreme Court Regulations which are upheld and used as the Code of Civil Procedure in Indonesia. In addition, judges in court must be able to carry out judicial functions as stated in Article 4 paragraph (2) which helps justice seekers

and tries to overcome all obstacles, hurdle and barrier in order to achieve an affordable, simple, and prompt justice principle.

Several civil cases that have been submitted to the court through the citizen lawsuit mechanism as an initial milestone in the use of the concept of citizens' lawsuit in Indonesia also experience uncertainty and unequal acceptance for the case hearing process. Citizens lawsuit is described only as a groundless breakthrough. So that it raises differences of opinion among judges to accept/not accept this concept as a development of civil procedural law that must be followed by a comparative law approach followed by legal transplants to adopt it into the civil justice system in Indonesia. The difference in understanding that can be used as a basis for filing a citizens' lawsuit to court is because the defendant is the state administrator (government), which sometimes still confuses the understanding that when suing the government, the lawsuit mechanism used is an administrative lawsuit submitted to an administrative court. Even though the administrative lawsuit will arise if there is an administrative dispute as a result of the issuance of an individual, final and concrete decree by governmental body or official (as a state administrator) where this decree has legal consequences that are deemed to be detrimental to a person or legal entity. Therefore, even though those being sued are the same (state administrator), the difference should be clear that in the citizens' Lawsuit, the object of the dispute (which is used as the basis of the lawsuit) is not a decree issued by governmental body or official (as a state administrator) but government actions related to the public interest. Thus, it is deserved to comprehend a government actions related to state administration in ensuring the constitutional rights of citizens to a habitable and wholesome environment. Hence, the postulates that must be used in relation to government actions are indeed correct. By understanding the basis of filing a lawsuit, the concept of citizen lawsuit in Indonesia becomes clearer, especially in providing understanding to judges to be able to examine cases submitted through citizen lawsuit.

4.1 A Comprehension of the Basis for Postulating in Citizens' Lawsuit: Discontinue the Chain of Disagreement Over the Use of an "Action Against the Law/Tort".

In civil lawsuit, including citizens lawsuit which is categorized as civil lawsuits in the justice system which is normatively and procedurally not regulated yet in the laws and regulations in Indonesia, the postulate plays an important role as a basis for filing a lawsuit.

In the civil justice system, there are 2 (two) basis used for postulating in a civil lawsuit, namely based on a breach of contract and an action against the law.

1. Breach of Contract

In a contract, the performance of contract is the norm. The existence of rules governing breach of contract and regulating the remedies of the innocent party presupposes the existence of a duty to perform contracts. The extent of that duty Is determined by the content of the contract which is composed in part of the matter agreed by the parties, plus any term implied in law and in fact.[133] A breach of contract is committed when a party without lawful excuse fail or refuses to perform what is due from him under the contract or perform defectively or incapacitates himself from performing.[134] In a broad sense, breach of contract is basically a "lawsuit concerning an act against the law". There is a principle called "*pacta sund servanda*[135]", which places the contract as a law for the parties who made it and violation of the contract can be said to be an act against the law. This is because the party who is declared the breach of contract must have committed an act against the law. The act against the law committed is violating the provision in the contract, so that the injured party can submit a request for compensation to the court by filing a civil lawsuit. However, to make it easier for parties to file a civil lawsuit in court, the *Burgerlijk Wetboek* (Indonesian Civil Code) separates " a lawsuits filed due to breach of contract" and " a lawsuits filed due to an action against the law". If the lawsuit is filed on the basis of breach of contract, then the object must be a "contract". Namely, an actions against the law caused by the existence of a contract are referred to as "breach of contract". Because the contract is made by the parties as a reference, an important element that must be present is the breach of contract, not to be mixed up with an acts against the law. In general, the common law system states

[133] SALLY WHEELER AND JO SHAW, CONTRACT LAW CASES, MATERIALS AND COMMENTARY, (Claredon Press, Oxford, 1994), p. 763.

[134] G.H TREITEL, THE LAW OF CONTRACT, (Sweet & Maxwell, London, 10th Ed. 1999), p. 772.

[135] Means that every agreement becomes binding law for the parties who enter into the agreement. This principle is the basis of international law because it is contained in Article 26 of the Vienna Convention on the Laws of Treaties 1969 which states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith" as a comparison, this principle is also contained in the *Burgerlijk Wetboek* (Indonesian Civi Code) Article 1338 which states that all contract made in accordance with the law are valid as laws for those who make them. The contract cannot be withdrawn other than by the agreement of the two parties, or for reasons determined by law. A contract must be executed in good faith.

as failure or refusal to perform and divides into 3 (three) categories to be said to have breach of contract, such as:

i. Explicit repudiation occurs when a party states explicitly that he will not perform his promise. When one party realizes that they will not be able to fulfill the contract, so they act responsibly and inform the other party that they will not be able to fulfill the contract. Early indication of the intention to terminate the contract by itself can be treated as a breach of refusal.[136]
ii. Implicit repudiation occurs when a party does some act which disable him from performing his promise.
iii. Failure to perform occurs when a party fails to perform his obligation on the date for performance fixed by the contract.[137]

When compared with the understanding of the Breach of Contract in Indonesia, there are 4 categories to be said committed breach of contract which is the embodiment of Article 1243 of *Burgerlijk Wetboek* (Indonesian Civil Code).

i. Do not perform at all what was agreed in a contract. Means, the party really does not carry out its precedence obligation in the contract.
ii. Carry out what was promised, but not as it should. This means that the party carries out its obligations but is not in accordance with what is stated in the contract.
iii. Carry out was promised, but not on time. This means that the party continues to carry out the obligations agreed upon but is not in accordance with the time frame.
iv. Carry out actions that are prohibited in the agreements made. If in a contract there is a prohibition that requires the parties not to do the act, but in fact one of the parties continues to carry out the prohibition.

Thereby, related to the environment, it is clear that in the concept of citizen lawsuit the plaintiff cannot use the breach of contract as a basis to file a lawsuit due to there is no agreement that precedes the emergence of problems or civil cases.

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[136] Richard Stone stated with the term "anticipatory breach of contract". See RICHARD STONE, CONTRACT LAW, (Cavendish Publising Ltd., Great Britain, 1994), pp 234-35.

[137] G.G.G. ROBB AND JOHN P. BROOKES, AN OUTLINE OF THE LAW OF CONTRACT AND TORT, (The Estates Gazette Ltd., London, 1957), p. 77.

2. An Action Against the Law.

If a case does not arise as a result of/not related to the breach of contract, it can be understood that cases submitted to the court through the citizens' lawsuit are cases based on the existence of an act against the law. It's however, in the concept of citizen lawsuit, the party is being sued are state administrators, of course it must be found that state administrators have committed acts that fulfill the elements and characteristics of an action against the law. The essence of the use of the citizens' lawsuit concept is the inability of state administrators to fulfill the rights of citizens, such as the right to habitable and wholesome environment as regulated in Article 28 H of the Indonesian Constitution 1945, which later becomes the constitutional right of citizens. Is it appropriate to say that the inability of the organizer is an act against the law?

An action against the law, as previously disclosed, are rooted in the article 1365 of the Burgerlijk Wetboek/Indonesian Civil Code, which reads "*every act against the law which brings harm to other people obliges the person because of his fault to cause this loss to compensate for the loss*". The formulation of norms in the article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code is more of a norm structure rather than a substance of complete legal provisions. If the formulation of this article is said to be the substance of a complete legal provision, then will always need materialization and support from other provisions beyond *Burgerlijk Wetboek*/Indonesian Civil Code. Meanwhile, it is said that the norm structure is due to the time and scope dimensions of this article which will be eternal and does not require materialization from other regulations.

The formulation of norms in the article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code which tends to be more likely as a norm structure can be analyzed by sorting a provision into 4 (four) criteria, namely:

(1) Norm subjects, it is not implicitly mentioned in this article but is like a statutory law, to whom the law is intended, then of course it is aimed at everyone as a subject to Indonesian law.

(2) Norm operators, the provisions of this article contain sanctions for violators, so that we can ensure that the content of Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code is a prohibition

(3) Norm objects, is prohibited behavior, namely an act in which the act is prohibited by law, contradicting to the law, does not comply with legal norms, and violates the law which causes loss/harm

(4) Norm conditions, there is a phrase that requires taking certain actions which in article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code states indemnity "compensation" phrases. In practice, the Article 1365 *Burgerlijk Wetboek*/Indonesian Civil Code has implications in its use which give rise to the perspective that this article is a "multi-use" article for civil matters. Due to its "multi-use" nature, in its development it will provide stimulation for continuous renewal and legal discovery.

Action against the law in article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code initially contained a narrow definition as the influence of the *legism* doctrine[138] adopted at that time in Indonesia. An action against the law is believed to be acts that are contrary to legal rights and obligations only according to the law. Hence, an action against the law is manifested as an action against the legislation. All actions that are contrary to social values and manners in society as long as they are not regulated in legislation are not legal acts. (Indonesia was very much influenced by the legacy of the Dutch). This can be seen as follows:

- **Case of Singer Naaimachine was decided by *Arrest Hoge Raad* on January the 6th 1905.**

  In the case of "Singer Naimachine Arrest", the company "Maatschappij Singer" served as the plaintiff who filed a lawsuit against a shop across the street name Singer Shop as a defendant. "*Maatschappij Singer*" objected and felt aggrieved over the use of the singer's name used by that shop which resulted *Maatschappij Singer* being empty of customers. The plaintiff's claim against the defendant is based on the provisions of article 1401 *Burgerlijk Wetbook*. *Arrest Hoge Raad* [139] did not grant the claim on the basis that the defendant did not violate the law or the subjective rights of others. The Gist of the 'Singer Naimachine Arrest' Case is based on history that actions against the law as regulated in article 1401 *Neuw Burgerlijk Wetbook* initially had a narrow definition as the influence of the thought of legism, namely action that are contrary to legal rights and obligations according to law. This legism teaches that an action against the law

[138] The thought of *legism* emphasizes the absolutism of a law. According to the thought of *legism*, that law is in legislation and there is no law beyond the legislation. In other words, the thought of l*egism* does not use any methods of legal discovery/legal finding (*recht vinding*).

[139] *Arrest Hoge Raad* is a Dutch Legal Terminology refer to The Supreme Court Judgement.

(*onrecthmatige daad*) is the same as an actions against the legislation (*onwetmatige daad*). This teaching was marked by the existence of the Singer Naimachine case. The case occurred when the name 'Singer' was used by another shop across the road the Singer Naimachine shop which sold sewing machines. The word 'Singer' was used by the two shops even though it was written differently, one shop used capital letters while the other shop used lowercase letters so that it seems at first glance the word 'Singer' only. Based on this *Arrest Hoge Raad* on January 6, 1905, the action of the shop across the road the 'Singer' shop using the same name is an action against the law because not every action in the business world that is contrary in society is not considered an action against the law. With this decision, the meaning of an action against the law is not seen narrowly but seen broadly. Actions against the law are broadly defined as actions that violate written rules, namely contrary to the obligations of the perpetrator and violating the rights of the victim, as well as violating unwritten rules, namely morality, propriety, thoroughness, and caution that should be owned by someone in social life in society.

- **Case of Cohen v Lindenbaum was decide by *Arrest Hoge Raad* on January the 31st 1919.**

Before the existence of *Arrest Hoge Raad*, the definition of an action against the law, which was regulated in Article 1401 *Neuw Burgerlijk Wetbook* was only interpreted narrowly. What is said to be an action against the law is any action that is contrary to the rights of others that arise because of the Act (*onwetmatig*e *daad*). People cannot file an action against the law and ask for compensation if it is not clearly stated which articles and which laws have been violated. The case Lindenbaum vs. Cohen was an important milestone in broadening the definition of actions against the law "*onrechtmatige daad*". The case involved two competing printing offices, one owned by Lindenbaum and the other owned by Cohen. One day, employees working at the Lindenbaum office were persuaded by Cohen to give them the names of their customers and their offers. With that data, Cohen could use the data to create a new offer that would make people choose his printing office over the Lindenbaum office. Fortunately, Lindenbaum quickly discovered Cohen's actions. As a result, Lindenbaum immediately filed a lawsuit against Cohen before the court. Besides filing a lawsuit against Cohen, Lindenbaum also asked for compensation for Cohen's actions. At the first stage, Cohen lost, but on the other hand, at the appeal level, Lindenbaum lost. At the appeal level, it was said that Cohen's action was not considered an action against the law because he could not show an article of the Act that Cohen had violated. Finally, through *Arrest Hoge Raad* on January 31, 1919, it was Lindenbaum who was declared the winner. *Arrest Hoge Raad* states that the definition of an action against the law in article 1401 *Neuw Burgerlijk Wetbook*, includes an action that violates the rights of others, against the legal obligations of the perpetrator, or against morals.

An action against the law is then defined as not only actions that violate statutory regulations (legislation) namely acts that are contrary to legal obligations that violate the subjective rights of others, but actions that violate the rules of conduct such as moral code, propriety, prudence, thoroughness etc. This development has also tarnished the legism doctrine in Indonesia, legal experts' understandings regarding an action against the law as stipulated in the Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code began to develop, although some of them were still influenced by the legism doctrine. The expansion of the meaning of an action against the law is described as[140]:

(1) An action that inflicts harm to others.
(2) Against the law is interpreted as an act that violates the rights of others, contrary to propriety and the rules that must be obeyed in social life.
(3) Against the law is also interpreted as an action and deliberate not to do an obligatory action.
(4) Against the law is also interpreted as an action or inaction that causes loss to the subjective rights of others without prior legal relationship.
(5) Actions against the law are also said to be a civil fault that can be requested responsibility.
(6) Against the law is interpreted as an act which is contrary to one's own legal obligations, contrary to decency, contrary to prudence or necessity in good community relations.

Hence, from the development of comprehension and expansion of the meaning of actions against the law as stated in Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code, there are many actions that were not originally included as an action against the law which later became part of the category of an action against the law. From the provisions of article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code and the expansion of the meaning of an action against the law in its development in Indonesian civil justice system, important elements can be drawn to make it easier to determine whether an act is categorized as an action against the law. The elements of an action against the law are things that must

[140] See MUNIR FUADY, PERBUATAN MELAWAN HUKUM: PENDEKATAN KONTEMPORER [ACTION AGAINST THE LAW: A CONTEMPORARY APPROACH], (Bandung, Citra Aditya Bakti, 2013), p 6. See also ROSA AGUSTINA, PERBUATAN MELAWAN HUKUM [ACTION AGAINST THE LAW] (Indonesia University Press, 2003), pp. 48-56.

be fulfilled in order to insert an action which can be categorized as an action against the law. The nature of these elements must be completed and fulfilled, which means that each element must be used as a whole in determining an act against the law and not just one element can be said to be an action against the law. These elements can be said to be a material condition for an action against the law, as follows:

1. The existence of an action, which is meant by active and passive action, active action is an action that has caused consequences or impacts to others. Meanwhile, the passive action that is meant here is not doing an act or just silence, causing harm and violating the subjective rights of others, whereas according to the law the action must be done.
2. The action must violate legal provisions. The doctrine of *legism* indoctrinate the concept of an action against the law into an action that violates what is only stipulated in law. After the initial development of the expansion of the meaning of the action against the law through *Arrest Hoge Raad* on January 31st ,1919, it is explained, in addition to actions that are contrary to law, they are also contrary to propriety, thoroughness and prudence. Actions that are contrary to propriety, thoroughness and care as referred are related to harm to the interests of others or to pose a threat to a decent life.

   In addition, an action that violates legal provisions also qualifies, among others, as an action:

   a. Contrary to legal obligations. Legal obligations are obligations or duties that can be enforced by a court. A term that describes an obligation imposed to do what is required by law.

      H.L.A Hart has a positivist view that a person has a legal obligation to comply with lawful laws even though they feel that the applicable law is unjust.[141] According to positivist thought, any valid law, i.e., one that has been passed by the legislature, signed by the executive, and (perhaps even) enforced by the courts, imposes legal obligations. Since the law establishes legal obligations, then a person has a legal obligation to comply with the lawful law. Thus, it is more than just an interest to trace that the legality of establishing legal obligations will emerge.

[141] H.L.A. HART, THE CONCEPT OF LAW, (Oxford University Press, 2nd ed. 1997). See also Roscoe E. Hill, *Legal Validity and Legal ObligationI*, 80 THE YALE LAW JOURNAL 47, 48-50 (1970)

b. Contrary to the subjective rights of others. Subjective rights are rights that are legally recognized and valid by legal subjects against certain legal objects. Therefore, if a legal subject obtains a right to a legal object (whether in the form of an object or non-object) as a result of a factual relationship according to the law, then that right is a subjective right. A subjective rights is a protectable interest which a legal subject (persons or legal entities) has to a particular legal object.[142] Actions that violate the subjective rights of others are against the law. So that subjective rights give legal claims to individuals to respect their interests related to the legal object they have, claims that they can uphold by legal procedures (and with legal protection by courts or equivalent institutions).

3. Fault, in Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code, faults include a narrow and broad meaning. In the narrow sense it is deliberate action. Deliberate action can be measured from the intention, mental and behavior which are the dominant factors. Deliberate action will be fulfilled if at the time he commits an action, he already knows that the consequences of his actions will harm others. In a broad sense, apart from being deliberate, it also includes negligence. Negligence is defined as something that should have been done but not done, however, as a result of the negligence other people will suffer losses. The element of fault is used to state that a person is responsible for an action committed that causes harm to others and is obliged to compensate for the loss. Therefore, in civil law it is stated that there is no responsibility for the consequences of action against the law without any faults. The fault is a matter of personal shortage. It has been well argued that fault is the basis for being responsible and being responsible for fault is a legal obligation. Fault committed may not always coincide with personal immorality. The law find fault in a failure to live up to an ideal standard of behavior that may be beyond the knowledge or capacity of the individual.[143] The concept of fault in

[142] A subjective right is a legally recognized and valid claim by a legal subject to a certain legal object. Therefore, when a legal subject acquires a right in a thing or object as a result of a lawful real relationship with the thing or object, the right is a subjective right. *See* Heinhard Steiger et.al., *Tendances Actuelles De La Politique Et Du Droit De L'environnement* (*The Fundamental Right to a Decent Environment, Trends in Environmental Policy and Law*), IUCN-WWF (project No. 1244) 2-5 (1980)

[143] R.F.V. HEOUSTON AND R.S. CHAMBERS, LAW OF TORTS, (London, Sweet & Maxwell Ltd., 18th ed. 1981), pp. 18-20.

the Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code emphasizes that someone who commits an action against the law is only responsible for the losses incurred if the action is his fault. If someone at the time of committing an action against the law knows well that their action will result in a certain condition that is detrimental to other people, they can be requested for their legal responsibility.

4. Losses/disadvantages will arise as a result of an action against the law. Losses arising from an action against the law according to the Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code require compensation. The forms of compensation are not only in the form of material but also other forms that cannot be measured in terms of money.

   As described above, a person who commits an action against the law or breach of contract is obliged to compensate for losses. For those things, we need to comprehend more about the demands that are possible in an action against the law and in breach of contract. In the Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code provides the possibility of several types of compensation, including:

   a. Compensation for losses in the form of money.
   b. Compensation in the form of *natura* (the fundamental and normal qualities of a person or thing, identity or essential character) or return to its original condition,
   c. A statement that the action committed is against the law,
   d. Prohibition to do an action,
   e. Negate something that is done by against the law,
   f. Announcement of a decision or of something that has been corrected.

   Compensation payments do not always have to be in the form of money. *Arrest Hoge Raad* in May 24th1918 has considered that the return to its original state is the most appropriate compensation.[144] The purpose of the provisions of article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code is to make it possible to return the sufferer (those who get harm/disadvantage) to his original situation, at least to the condition he

[144] A jurisprudence of a case based on an action against the law and in it decision mention about a compensation to restore to its original situation. See Sri Redjeki Slamet, *Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum: Suatu Perbandingan Dengan Wanprestasi* [Claims for Compensation in an Action Against the Law: A Comparison with Breach of Contract], 10 LEX JURNALICA 107, 113 (2013).

might have achieved when an action against the law was not committed. Then, what is strived for is a real return that is more appropriate than the payment of compensation in the form of money because the payment of a certain amount of money is only an equivalent value. A sufferer of an action against the law has the authority to ask for a replacement in *natura* (the fundamental and normal qualities of a person or thing, identity or essential character). Apart from his right to ask compensation or claim to return to its original situation (*restitutio in integrum*), then the sufferer has the authority to put forward the values of the claims, namely for the court to declare that the action that is blamed on the perpetrator is an action against the law. In this case, the sufferer can also file a claim before the Court so that the Court gives a declared decision without demanding compensation. Likewise, the sufferer can claim that the Court pass its decision by prohibiting the perpetrator from committing another action against the law in the future. If the perpetrator continues to disobey the decision to return to its original situation, the perpetrator may be subject to forced money. These claims can be submitted cumulatively several claims at once provided that a compensation payment cannot be in the form of two types of compensation at once, namely that it cannot be claimed to return the situation to its original situation along with compensation in the form of a sum of money. Furthermore, the development of compensation in an action against the law in jurisprudence of *Arrest Hoge Raad* on November 17th, 1967 has stated that the perpetrator of an action against the law can be punished to pay compensation for an amount of money to the sufferer for the losses incurred, as well as if the sufferer sues him and the judge considers the claim appropriate to be punished to make another measure/action that can negate the losses they have caused.

5. Causality relationship between actions and losses incurred, is a condition for determining the existence of an action against the law which is described in Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code. the dcotrine of causality is important to determine who can be responsible for the emergence of a result. In civil law, the doctrine of causality is to examine whether there is a causal relationship between actions against the law and the losses incurred. "something" must be considered a cause rather than an effect, so every problem that have an effect has a cause that precedes it. There is the

theory of *adequat veroorzaking* from Von Kries which teaches that an action that must be considered the cause of the effect is an act that is balanced with the result. So that in this theory, the causal relationship will exist if the loss which is the result of an action against the law appears and can be seen in real terms. In the concept of causality, all certainty in the relationship between legal subjects and with what is in the world lies in the recognition of causality. Causality is a relationship of events in which one thing (cause) under certain conditions gives rise to something else (effect). In civil law, according to the Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code, a certain action can be called a cause, namely as a causa of a certain event. Cause is something that by its work brings changes that have resulted in effect/consequences. The comparison with the tort law that applies to the common law system, the action against the law in the civil law system in Indonesia is defined as an action or negligence that is contrary to the rights of others or contrary to legal obligations, morals or a compulsory in a legal relationship between legal subjects which results in losses for others and is obliged to compensate for such losses. This is regulated in articles 1365-1380 of the *Burgerlijk Wetboek*/Indonesian Civil Code and is also complemented by the existence of jurisprudence which provides a broader interpretation of an action against the law. Meanwhile, in the common law system, there is no source of law in the form of codification of legal provisions governing the law of tort. Because in the common law system tradition, it develops from judges' decisions to form norms and legal rules that can be followed (judge made law). In filing a lawsuit based on tort, there must be active and passive acts from the defendant so that these acts cause harm to the plaintiff's legal interest. This passive/active action is to do or not do something, but there are consequences and then the consequences are detrimental/harm to others. The losses incurred due to the defendant's fault and because of the fault is a reason to be held responsibility legally. The fault referred to in the Law of tort is not only guilty of legal wrongdoing but also for moral and ethical fault that a person should not been commited.[145]

[145] B.S MARKESINIS AND S.F. DEAKIN, TORT LAW (Oxford University Press, 2nd ed. 1999) pp. 41-42

From the similarities between Tort in the common law system and action against the law in the civil law system, several things can be drawn:

1. Whereas both action against the law and tort are prohibited and unacceptable actions at the scope of law and society because it causes harm to citizen rights uphold by the law in its regulation through statutory regulations. Because tort is included in the type of civil injury/wrong, then give rise to civil proceedings, that is to say, which have their purpose the enforcement of rights claimed by the plaintiff as against the defendant. Therefore, in tort, every wrongdoer may compel in a civil action to make compensation or restitution to the sufferer (injured person) in a court process.[146]
2. Actions against the law and tort both contain elements as actions which:
   a. Violating the rights of others.
   b. Violating the obligations stipulated by law.
   c. Contrary to decency or propriety in social interactions.
3. Action against the law or tort are not rooted in the agreement between the parties but are actions that can cause losses to the others and the injured party can claim compensation. This is also in line with the principle of corrective justice that forms the core of the account presented here states that individuals who are responsible for the wrongful losses of others have a duty to repair the loses. Tort law's structural core is represented by case-by-case adjudication in which particular victims sue those they identify as responsible for the losses for seeking redress.[147]

There is also a difference seen by the way to comprehend the understanding between action against the law in Indonesia and tort in the common law system. Action against the law as stated in article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code have a broader meaning and do not mentioned specify to what is meant in Tort. In article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code, it is formulated in general terms as a violation of the subjective rights of a person as a legal subject. Meanwhile, tort in the common law system includes specific and limited forms in the sense that it has been recognized and used

[146] R.F.V. HEOUSTON AND R.S. CHAMBERS, LAW OF TORTS, (London, Sweet & Maxwell Ltd., 18th ed. 1981), pp. 18-20

[147] See JULES COLEMAN, TORT LAW AND TORT THEORY: PRELIMINARY REFLECTION ON METHOD IN PHILOSOPHY AND THE LAW OF TORTS (Cambridge University Press, 2001), pp. 84-85.

in court. In the common law system, there is no formulation or description of the types of Tort in the regulations because Tort is formed in court through court decisions which later become jurisprudence and are used to resolve problems with the same characteristics. What then becomes obscure from the appropriateness of an action against the law to be used as a basis for filing a lawsuit is an assessment of "whether such an act by a state administrator can be categorized as an action against the law" where the influence of positivism is still strong among judges in the absence of regulation regarding certain matters. Hence, it cannot just be implemented. Let us just say that the actions of state administrators are negligence or omission. Can this negligence or omission be categorized as an action against the law according to the civil justice system in Indonesia? If we make a comparison with Tort in the common law system, as previously explained, that negligence or omission is a specific type in the law of tort. Even in countries with the common law system, negligence is a frequent occurrence. Negligence is the third major category of torts (the other two being the intentional tort and various kind of strict liability). Negligence has been called a catch-all tort in that it encompasses a very wide variety of unreasonable action and inaction that have caused injury.[148]

In Tort, negligence is a form of failure to act, which generally has legal consequences different from positive behavior. because negligence is an act, it creates liability only if the regulation stipulates that the obligation to act must be carried out and will be able to be sued if there is a violation of that obligation. When viewed from the point of view of the elements that construct the structure of the Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code concerning an action against the law, therefore, negligence or omission done by state administrators are:

1. An action that violates legal provisions, in an action, inherent active or passive nature that has an impact. In negligence, an active character is inherent in the sense that an action is carried out which causes consequences or impacts on other people. Negligence is a common in civil lawsuit, used to rectify various types of personal and property injuries. Negligence is failure to do a reasonable thing to prevent foreseeable risk to

[148] WILLIAM P. STATSKY, TORTS: PERSONAL INJURY LITIGATION, (West Publishing Co., 1982), p. 6, p.293.

others, and indirectly open up necessity for recovery options when that failure causes physical or economic injury to another person. In environmental disputes/cases based on negligence of the state administrators, it is of course, will be justified. Protecting the environment is the government's “duty of care”. This obligation arises because the constitution, laws and regulations instruct state administrators to guarantee habitable and wholesome environment to their citizens.

The negligence of state administrators to provide guarantees for habitable and wholesome environment can be seen from the point of view that the state administrators do not carry out their functions and duties which mandate of the constitution, laws and regulations in the environmental sector related to environmental supervision and management. If the actions of state administrators do not heed the obligations imposed on them by the constitution, laws, and regulation, which are intended to protect against the types of losses that are ultimately caused by state administrators, then it is a negligence.

Whereas the omission by state administrators related to the existence of an environmental problem/case that has an impact on the loss of public interest, where according to laws and regulations, it is the state administrator’s duty and obligation to find solutions and efforts to resolve or it is said that according to the law, the act must be done. If the state administrators just silence and forming passive action it will causing losses and violating the subjective rights of citizens.

2. Is a form of fault. This fault can be seen from two perspectives. The first is objectively a measure of behavior which is determined according to a general measure. Every element of a state, either citizens or the government as state administrators, in general, as far as possible, will act equally to prevent a loss/harm the others. When associated with the environment, then, naturally, behave to protect and preserve the environment to make it remains habitable and wholesome environment and comply with all regulations related to the environment including the rights, duties, and responsibilities that each one carries. The behavior that is not in accordance with the value of general behavior can be said to fulfill the element of fault. The second is subjective, namely with regard to the

ability to overcome a loss that may or has been incurred to determine how far the responsibility should be taken as a result of an action.

3. Causing harm/losses/disadvantages, is the effect of an action of negligence or omission by state administrators give rise of losses to the public interest. Related to the environment, harm/losses that have an effect on society at large need to be anticipated. Hence, requires a procedure that the harm/losses incurred as much as possible to be overcome. The concept of citizens' lawsuit in Indonesia sues the government in the name of the public interest. Due to the nature of filing a lawsuit to represent the public interest, the form of compensation is not desirable for material compensation as measured by an amount of money. Rather, it emphasizes restoring the situation or making things better. For example, environmental problems in Indonesia such as smog due to forest burning, river pollution by business waste, air pollution by vehicle fumes and factory exhaust fumes. It is the environmental destruction and pollution that occurs in Indonesia that must be observed in the resolution mechanism through the citizens' lawsuit procedure. Because the losses incurred may materially harm individuals (and compensation can always be requested with money), however, the concept of compensation in citizens' lawsuit as public interest litigation is compensation that cannot be requested in the form of an amount of money. When compared to tort, compensation is categorized into 3 (three), namely (1) compensatory damages, compensation used in tort in general which is always measured as a whole in money, (2) Nominal damages, the compensation provided does not ask for the amount of money to replace as a whole with no need to prove how much money to compensate for as the aim is as a token of this compensation currency to show that tort has occurred. (3) Exemplary damages is a form of compensation besides asking for an amount of money, it is also a punishment or an effort to prevent or recover.[149] This is what distinguishes Tort in the common law system in terms of negligence, where compensation in the form of money is an important part of the concept of tort law and even in the concept of modern law of tort, based on the principle of full compensation, tries to put the injured person in his position. prior to the

[149] CLIVE R. NEWTON, GENERAL PRINCIPLE OF LAW, (London: Sweet & Maxwell 1977) pp. 237-38.

occurrence of the harmful act. A position that is generally considered a situation where there is no loss at all.[150] The reasons for redress are understandable given the tort system's general reliance on liability for negligence. The aim of redress seems to justify the regime that lawsuits must be based on liability, but compensation is usually limited to injuries caused by unreasonable behavior or negligence. In tort law, Even the liability for negligence is limited in important ways, does not compensate many individuals who suffer economic losses and emotional losses caused by negligent behavior.[151]

4. The existence of a causality connection. A negligence or omission made by state administrators to provide guarantees for habitable and wholesome environment as well as protection of the environment is an act that has consequences. The nature of the problem is the relationship between the actions of the defendant and the losses suffered by the plaintiff. Determining a causality connection between an action and a loss will indeed require proof which will later become the task of the court. It is just that for the initial comprehending of cause and effect it must be done so as not to bring up a lawsuit with wrong purpose. The thing that can be drawn is finding the causes in a problem. Regarding citizens' lawsuit on negligence of state administrators, what can be done is to find and link the duties, obligations and legal responsibilities that should have been carried out but in fact resulted in losses/harm. It is important to ascertain whether the actions carried out by state administrators have a causality connection that can be assessed with the relevant factors. Each result is a complex condition that includes antecedent, active or passive, creative or receptive factors, where these factors then produce the result.[152] Environmental law is a complex and multi-dimensional field. Courts do not allow claims to proceed if they feel the injury charged is not specific or speculative. Consequently, the relevancy of a cause-and-effect connection is needed. For example, regarding the alleged negligence and omission of state administrators that cause haze that occurs after forest fires cause air pollution, health problems in the form

[150] Peter van Wijck Jan Kees Winters, *The Principle of Full Compensation in Tort Law*, 11 EUROPEAN JOURNAL OF LAW AND ECONOMICS 319, 319-20 (2001).

[151] Mark Geistfeld, *Negligence, Compensation, and the Coherence of Tort Law*, 91 GEORGETOWN LAW JOURNAL 585, 585 (2002).

[152] JOHN G. FLEMING, THE LAW OF TORTS, (London: Sweet & Maxwell Ltd., 6th ed. 1983), p. 170.

of vision and lung disease and also disrupt local economic stability.[153] State administrators should have the obligation to protect both in the form of prevention efforts such as monitoring the activities of companies that contribute to the impact, controlling permits and documents for forest clearing and pollution prevention, as well as repressive measures by following up on indications that may raise environmental problems. and making concerted efforts to tackle fire and haze problems as a form of implementation of Presidential Instruction Number 11 of 2015 concerning Improved Control of Forest and Land Fires. But forest fires and haze have remained raging for more than a decade.

Some notes on negligence and causal relationships in the case of forest fires causing haze.

- Preventive measures, such as monitoring of company compliance with forest fire prevention and preparedness efforts until now have not been well exposed to the public. Initiatives that have been running before and should be an important prerequisite for tackling forest fires such as the One Map Policy and the Evaluation of land-based permits have not been heard from again. Not only that, but the government's promise also to urge companies/business performers for their activities that cause forest fires to be responsible for restoring the burned ecosystem is not clear. Meanwhile, the sweat and sacrifice of field workers/field officials and the state budget have been drained a lot.[154]
- The government has been slow and incomplete in minimizing the impact of smog caused by forest and land fires and in restoring the rights to health of people exposed to smog and these conditions as a result of weak planning, including identifying the number of people who are potentially affected by smog and have been exposed to smog for years.

[153] Court Verdict on Case of 118/Pdt.G/LH/2016/PN.PLK can be used as an example of negligence of state administrators in carrying out legal obligations mandated by constitution, laws and regulations so that the smog as a result of forest fires has an impact on the health of affected citizens and disturbs comfort and feasibility of life guaranteed by the Constitution.

[154] Indonesian Center for Environmental Law, Intisari mengenai kebakaran hutan dalam "Catatan Akhir Tahun 2016 Indonesian Center for Environmental Law" [The Essence of forest fires in the "2016's End Notes of the Indonesian Center for Environmental Law"].

- There have been state administrators (government) efforts with the establishment of the Peatland Restoration Agency and efforts to prevent fires on peatlands in several locations, but these efforts are still sporadic.
- Overlapping powers and weak authority and responsibility of several institutions have resulted in no significant improvement in handling forest and land fires even though it has been going on for more than a decade. Smog is strongly suspected of having a serious impact on the health of the lungs and hearts of residents, especially children and vulnerable groups (pregnant women, the elderly, and people with respiratory diseases).
- The legal review of National Commission of Human Rights of Indonesia with the Indonesia Center for Environmental Law (ICEL) in 2016[155] in monitoring in three affected provinces, namely South Sumatra, Riau, and Central Kalimantan in 2015-2016, found the occurrence of neglect of the right to health, a very technical or fire-fighting-oriented approach, law enforcement that is suspected of being discriminatory, and laws and regulations that sectoral and multiple interpretations on the handling of the impacts of forest and land fires on society during the last 18 years. As a result, it is unclear who has the most authority to coordinate efforts to prevent, handle, and rehabilitate victims from the fires and fires.
- In addition, it was found that almost partly local governments were not prepared to provide adequate budgets and facilities/infrastructure to cope with the impact of the haze on the community. The government has been slow and incomplete in minimizing the impact of smoke and restoring the right to public health, so that the health quality of people exposed to the haze has drastically decreased. In this context, the state administrators have failed to guarantee the constitutional rights to the right to life as guaranteed by Article 28 (A) of the Indonesian Constitution 1945, Article 4 in conjunction with Article 9 paragraph (1) of the Act Number 39 Year 1999 concerning Human Rights, the right to habitable and wholesome environment

[155] Keterangan Pers Komisi Nasional Hak Asasi Manusia Republik Indonesia Nomor: 32/Humas-KH/IX/2016 tentang Penanganan Asap Kebakaran Hutan dan Lahan Abaikan Hak Asasi Manusia. [Press Statement of the National Commission on Human Rights of the Republic of Indonesia Number: 32 / Humas-KH / IX / 2016 concerning Handling Forest and Land Fires Smoke Ignoring Human Rights].

guaranteed in Article 28 H (1) of the Indonesian Constitution 1945 as well as the right to a good and healthy environment guaranteed in Article 9 (3) Act Number 39 Year 1999 concerning Human Rights.

Seen from the fulfillment of the elements of an action against the law with the comprehending of using an action against the law as a basis and postulate in the civil lawsuit as I have previously described, it can overcome disagreements over the use of an action against the law to file citizens' lawsuit for the public interest cases/problem of a decent, habitable and wholesome environment. After all, control over state administration is needed. The use of Article 1365 of the *Burgerlijk Wetboek*/Indonesian Civil Code as a legal basis for action against the law can be applied to sue state administrators for the sake of the public interest, however, compensation is not permitted in the form of money but will be allowed in the form of recovery and restoration to the real conditions such as before the occurrence of environmental destruction and pollution.

4.2 The Role of Judges and Judicial Institutions in Renewing the Paradigm of the Civil Justice System Related to Solve Environmental Cases.

This is motivated by the reality that disputes/cases related to the environment are still happening even though environmental act provides several ways of resolving environmental disputes/cases. On the other hand, the existence of case settlement concept to resolve environmental problems with the dimensions of the public interest that has been used for more than decade in countries adhering to the common law system, is not so easily adopted, and applied by judges in Indonesia. Then when it is drawn further when the concept of citizens' lawsuit was used for the first time in Indonesia and several times it was also used to solve various civil cases with the dimension of public interest, but after being explored deeper there is a non-empirical reality and there is academic suspicion behind the facts, that are found to be judges disagreements in receiving and resolving cases using the concept of citizens' lawsuit. Accordingly, there are some assumptions that the output of different judges' decisions regarding the acceptance of the concept of citizens' lawsuit in resolving civil cases with the dimension of public interest even though the judicial process is carried out in the same court. Therefore, the role of judges becomes a crucial point in the process of accepting and settling cases when a case settlement procedure is not clearly stated in the regulations

either in the HIR/RBg, or in the Supreme Court Regulations. Hence, it raises an assumption or at least a response to whether the community of judges (or at least practitioners in the judicial process) forming and developing their own patterns make a different form of law enforcement culture.

There are 2 (two) perspectives that can respond to this as follows:

(1) The first is an internal perspective that is included in the realm of authority and freedom of judges in receiving, examining, and deciding a case. This perspective is also based on judicial principles set out in the Act Number 48 of 2009 concerning Judicial Power, in the Article 5 and Article 11, which in essence there is nothing wrong with what is done by a judge if the judge's work is still within the limits and space of the laws and regulations that gives them authority. In this perspective, the emphasis is on how judges carry out their functions, work according to the procedural rules that are packaged in a laws and regulations and also do not deviate from the authority granted by the laws and regulations to the judges.

(2) The second is the external perspective, which in this perspective sees that the operation of the law is not only limited to the fulfillment of formal procedures alone. Judges, for the operation of the law, are firstly limited by the standard of formality formulated in the laws and regulations. However, adhering to the limitations of formal procedures is not sufficient to understand and explain behavior without entering into external elements such as social elements including culture. So that every law enforcement activity includes values, ideas, attitudes, and behaviors related to law. This is what by Lawrence M. Friedman conceptualized as a legal culture. He divided it into external and internal legal culture. external legal culture describes the attitude towards law of the general population. Internal legal culture is a legal culture of those members of society who perform specialized task describes the attitude towards law of legal practitioners such as judges and lawyers, here he states that everyone has a legal culture, but only legal practitioners have an internal legal structure.[156] From the development of reality in the

[156] LAWRENCE M. FRIEDMAN, THE LEGAL SYSTEM: A SOCIAL SCIENCE PERSPECTIVE, (New York, Russel Sage Foundation), p. 223. Ralf Michaels says a legal culture is often viewed as that part of the culture which concerns itself with law, Legal culture stands between law and culture, with unclear boundaries in both

community at court, judges build their own legal culture that departs from daily interactions in the operation of the law to resolve cases in accordance with legal values and norms, Thus, in that community, a law enforcement culture is formed that is distinctive and different from what is outlined in the regulations. Judge's legal culture is a machine that can move judges to take roles to make an action as important actors in the settlement of a case.

The positivist paradigm that is rooted in the judicial system in Indonesia forms a legal culture where judges tend to point to and hold on to what is stated in the laws and regulation, so that it emphasizes the value of legal certainty. Meanwhile, some other judges adhere to the non-positivism paradigm in which facing a case is not only based on what is stated in laws and regulation, but also observes legal values and norms that have legal substance to find justice and take advantage of the availability, appropriateness of legal values and norms as a basis for resolving a case that has not been regulated in the laws and regulations in Indonesia. This positivist paradigm needs to be changed because the law is not static, and the judicial system is a series that cannot run alone based solely on the positivist paradigm of judges which is rooted as a legal culture.

Referring to the role of judges, the positivism paradigm can be dimmed by interpreting the three elements of legal values proposed by Gustav Radbruch, namely fairness, expediency, and legal certainty. The synergy of these three elements is what is needed to achieve legal objectives. The synergy referred to here is to use the three elements based on the emphases of which element is preferred.[157] The judges do not only talk about legal certainty as a symbol of positivism but prioritize justice as the main legal ideal. the synergy of the three elements can be interpreted as a value that together regulates the operation of the law. Therefore, in many cases, the content, form, and validity of the law are

directions. According to a broad comprehending, legal culture represents the legal culture background that creates law and is needed to give meaning to law. Legal culture is more important in explaining and predicting the impact of law on society, such as the extent to which laws are enforced and decisions will be implemented. The success or failure of legal reform depends on the legal culture. RALF MICHAELS, LEGAL CULTURE, IN OXFORD HANDBOOK OF EUROPEAN PRIVATE LAW (Basedow, Hopt, Zimmermann eds., Oxford University Press, 2011). pp.1-2.

[157] GUSTAV RADBRUCH, THE LEGAL PHILOSOPHIES OF LASK, RADBRUCH, AND DABIN (Harvard University Press, 2013), pp. 107-08.

understood in terms of Radbruch's three elements of legal value, although there are tensions and perhaps contradictions. Indeed, if the emphasis on the three elements of legal value is done properly, they can be used collectively to form laws that work to achieve its goals.[158] To realize the three elements put forward by Gustav Radbruch, a progressive character of the judge is needed. This character will emerge when the judge understands the basic principles of progressive law[159], which is a continuous truth-seeking process. This progressive law assumes that the law is for humans, the law is to achieve human justice, welfare, and human order. If there are problems in the law itself, then the law must be corrected, and the shortcomings are corrected. Progressive law is not viewed from the perspective of the law itself but from the goals to be achieved and the consequences of the operation of the law. so that the law is always in a process which is not only studied in terms of existing regulations but also sees what is outside so that the law also works in the law enforcement process.

In the context of progressive law enforcement, the concept of progressive law has a spirit to give freedom to the types, ways of thinking, theories and principles that have been used dominantly by judges, namely positivism. So that it is connected to the liberation of legal culture from law enforcers who have not been able to create the three elements of legal values with an emphasis on achieving the main legal objectives. This progressive law enforcement emerged as a result of the law enforcement crisis in Indonesia, to find a way out of the downturn in law enforcement because conventional methods based on the old paradigm did not help much in the effort to find a way out of the right form of law enforcement. Progressive law enforcement is carrying out the law not only in black-and-

[158] Heather Leawoods, Gustav Radbruch: An Extraordinary Legal Philosopher, 2 WASHINGTON UNIVERSITY JOURNAL OF LAW AND POLICY 489, 492-95, (2000).

[159] Progressive Law is a theory initiated by Prof. Satjipto Raharjo, an Indonesian legal sociologist, in which he broadly states that "let the law flow" legal certainty should not be too deified because the law must be more humane. It was also explained that the cause of problems in the legal situation in Indonesia is due to the state of the written law itself and unconsciously causes a loss of balance between justice and legal certainty. According to Satjipto Rahardjo, the power of progressive law is a force that rejects the status quo. Maintaining the status quo means accepting normativity and the existing system without making any effort to see the various weaknesses in them which then encourage action to overcome them. See SATJIPTO RAHARDJO, HUKUM PROGRESIF: SEBUAH SINTESA HUKUM INDONESIA [PROGRESSIVE LAWS: A SYNTHESIS OF INDONESIAN LAW], (Yogyakarta, Genta Publishing, 2009). See also SATJIPTO RAHARDJO, MEMBEDAH HUKUM PROGRESIF [DISSECTING PROGRESSIVE LAWS], (Jakarta, Kompas Publishing, 2006), pp. 114-116.

white words from the rules (according to the letter), but according to the spirit and deeper meaning of legislation or law to achieve justice and order without neglecting legal certainty and expediency.

Environmental problems are a problem that is often faced in Indonesia until now. Environmental problems are faced with the point of continuing to look for ways and forms of appropriate solutions. The idea of progressive law enforcement wants law enforcement not only to carry out laws and regulations, but to capture the legal will of citizens in a community. Therefore, when a regulation is considered shackling and static in law enforcement efforts, progressive law enforcers are demanded to find legal norms outside the legal system that can be accommodated as an effort to enforce the law without tarnishing the legal norms and regulations that have been in force in Indonesia. Therefore, progressive law enforcement refers to the figure of law enforcers who indicate the need for a law enforcement ideology that is prospectively oriented towards justice and truth. When looking at law enforcement figures, it will depend on the judge and his role. In progressive law enforcement, progressive judges are needed. Progressive judges cannot be separated from high standards of scientific competence, professional skills and personality qualities that are attached to judges as subjects of law enforcement. The predicate of progressive judges is also closely related to the ideology of law and the ideology of judges as law enforcers. For the judge profession, understanding progressive law is understanding the law that rests on the conviction of the judge, where the judge is not only bound by the formulation of the laws and regulations. Using progressive law, a judge has the courage to seek and provide justice beyond what is written in the law by upholding the value of truth. Moreover, the laws made by legislators are not always able to reach the desires of every citizen even though they feel unable to provide justice for all. A judge not only voices the contents of the law but also social beings who have conscientious behavior because the judge does not only use his mind to polish the rules but also use his conscience. So that the existence of progressive law departs from two basic components in law, namely regulations and behavior. Law is placed as an aspect of behavior but also as a regulations. Regulations will build a positive legal

system, while human or behavior will drive the regulations and systems that have (or will) be built.[160]

How the judge's view on the law and the function of the law will affect the law enforcement process. The concept of citizen lawsuit that can be used as an effort to resolve environmental cases with the dimension of public interest demands the role of judges who have a progressive character. How the Judge accepts a procedure that has not been stated in the statutory regulations but demands for the settlement of a case using that procedure continue to emerge. The progressive judges will play a role in carrying out the legal mandate in a position as someone who has the competence and quality of legal intellectuals. The progressive judges realize that his role and duty are not only as readers of a series of words in laws and regulations made by the legislators but are able to use the law properly and also in the appropriate way for unexpected circumstances (such as the absence of regulating procedures for citizens' lawsuit). Seen from this context, the public interest becomes the point of orientation and the goal of the importance of progressive judges, the absence of regulation is not a barrier to bringing justice to citizens as justice seekers.

The influence of the legal-positivism paradigm which is still very dominant in Indonesia controls the way judges think in constructing a decision. When the judge's understanding of principles, theories and legal principles is too narrow, factors outside his understanding are not taken into consideration. So that what is achieved is procedural justice and does not achieve substantive justice. In general, every judge will always have a different perspective in interpreting the construction of substantive justice which can be seen from whether the judge adheres to a positivistic paradigm or the judge has a progressive character. The change of the judge's paradigm is indeed a task that must be carried out by judges itself as individuals and judges in a large legal community. The positivism paradigm of judges that is still mainstream in Indonesia can be described as follows:

1. The main characteristic is positivistic thinking, which only considers the law as a source and reference in handling a case.

[160] See Satjipto Rahardjo, Membedah Hukum Progresif [Dissecting Progressive Laws], *supra* note 163, pp. 263-66

2. Judges are positioned as mouthpieces of the laws and regulation so that laws and regulations are placed in the main position and do not pay attention to the existence of other concepts or procedures outside the legal system adopted in Indonesia that can be transplanted and adopted as a comparative effort to deal with the complexity of legal problems that develops faster than flexibility of the available laws and regulation.
3. Judges do not have a broader space to make legal findings because judges will tend to ignore things outside of their belief in the prevailing laws and regulations. This indirectly presents the limitations of the judge's understanding of the law which is very broad in philosophy, principles, and theory.
4. The judge will focus on/point on a problem or case in a resolution with a procedural justice dimension that emphasizes most of the elements of legal certainty, the implication is that the judge does not explore to seek substantial truth in order to present law in fair, appropriate and truth even to protect the public interest.

Then, of course, in relation to the existence of the concept of citizens' lawsuit and its integration or application into civil procedural law in Indonesia, the role of judges first needs to accept the existence of this concept as an effort to enforce environmental law to achieve justice for the public interest. The role of the judge here will change the positivist paradigm that is mainstream and has roots in Indonesia. Progressive judges are a challenge to change those paradigm, hence, these progressive judges will be present as a new judge's legal culture to see law holistically. The new of judge's legal culture as a form of progressive judges will be contrary to judges who have a positivism paradigm, which can be seen in the following description:

1. Progressive judges do not view only laws and regulations made by the legislative body or the state administrators as the only source that is considered valid in resolving a dispute/case. The absence of laws and regulations is not an obstacle for judges to achieve the objectives of the law itself. Principles, procedures, and the arrangements of regulation internationally can be used as a reference by adjusting national laws, principles, and procedures. Herein lies the importance of the judge's understanding of the importance of quality and self-competence to position himself as the justice giver. Quality and self-competence based on an understanding of the concept of comparative law to the concept

of legal transplantation. So, integrating a concept or procedure outside the legal system is a common and open thing.

2. Judges are positioned not only as mouthpieces of the law, who embody every letter in the law, but it is better if judges can also be positioned as lawmakers. This is in a different sense from the legislative authority in making laws. Making law is in the sense of a process through court until a decision is issued which can be used as jurisprudence (as a source of law). Positioning judges statically only as mouthpieces for the law will limit the progressiveness of judges. Making law does not mean making procedural provisions that can be used as guidelines for procedural law in general, what is meant is the construction of procedural and material laws to resolve cases where there is no regulation so that from this construction it is able to provide the right scope and limits in accordance with values, norms. and existing legal provisions.
3. Judges have adequate space in making legal finding. This is an important thing that a principle has existed in Indonesia and has also been stated in the Judicial Power Act can be implemented. Legal finding is a characteristic of progressive judges because by carrying out legal finding, the number of judges will be free from being seen as a mouthpiece of law. Adequate space in legal finding is meant to make efforts if the absence of regulation is not an obstacle for the judge in accepting, examining, and deciding a case.
4. Progressive judges will focus on solving cases/disputes to achieve substantive justice. Substantive justice, therefore, is justice created by a judge based on the results of his search for a sense of justice in society, without being shackled only to the provisions of the applicable laws and regulation. So that judges are able to solve cases/disputes even though they are not procedurally regulated. Because the emphasis is not on legal certainty but on justice and the public interest.

In interpreting the emergence of concepts that come from different legal systems and want to be applied in Indonesia, progressive judges also have characters that can be seen contextually in looking for starting points of difficulties which then become obstacles to the integration of a concept (citizens' lawsuit) into the civil justice system in Indonesia. An example is the contextual meaning of the law regarding action against the law. The problem

of using an action against the law is often used as an obstacle in accepting whether citizens' lawsuit can be accepted, examined, and decided upon in the case resolution process. Judges with characters who are influenced by the positivism paradigm will interpret an action against the law in a narrow way. "Are government actions linked to negligence and omission in providing guarantees and protection for a habitable and wholesome environment constituting an action against the law", judges with characters who are influenced by the positivism paradigm will see only from a textual point of view, because narrowly seeing that the act (negligence and omission by state administrators) is not specifically determined in Article 1365 of the *Burgerlijk Wetbook*/Indonesian Civil Code, so that action is not categorized as an action against the law. Meanwhile, progressive judges will interpret an action against the law in a broad sense and do not require a specific description of the action against the law. Therefore, progressive judges will not see at the extent of violating statutory regulations but rather see whether they violate the proper values that exist in society or violate general principles in good state administration.

In Indonesian civil justice system, where several regulations are former regulation that has been use in colonial era. Problems/cases that arise are increasingly complex, which cannot be covered by old regulations. Likewise, with environmental problems in Indonesia which are increasingly complex, which demands a proper procedure. As in the U.S., which has used citizen lawsuit to address environmental problems, it can be used as a real example. When faced with the problem of "absence of regulation" and being correlated with the "positivism paradigm of judges", this is where the role of the judge emerges. Reform in the civil justice system in Indonesia does not only require the formation of procedural rules but also the role of judges in changing the old paradigm that does not support the law enforcement process to achieve justice. From the previous explanation, the role of judges is very much needed in reform. In the character of progressive judges, it is no longer centered on regulations but on the ability of judges to actualize the law and the right time and space.

4.3 Recognition and Enforcement: Between Hesitancy and Necessity.

The use of citizen lawsuit to resolve environmental problems with the dimension of public interest is needed. Environmental problems in any part of the world will definitely exist because the environment will always be in contact with various fields and every citizen

will become a subject who needs the environment as a medium for living. and therefore, the right to the environment will always be included as a constitutional right in every country and even recognized internationally in the Universal Declaration of Human Rights as one of the human rights, as well as in several other covenants.

Likewise, in Indonesia, as one of the rights stipulated in the Indonesian Constitution 1945, the state's obligation to provide protection and guarantees for the realization of these constitutional rights will emerge. My view is constitutional rights to habitable and wholesome environment are enforceable rights as well as rights that can be submitted to court (justiciable). The purpose of enforceable is as a constitutional right for citizens, therefore, habitable and wholesome environment must be implemented without complying with the prevailing laws and regulations. As a rights, the limitation of the rights is only if there are certain provisions in the laws and regulations that provide limitations. Likewise, with justiciable, there will be a violation of these rights. A violation of the rights to habitable and wholesome environment results in a consequence that every competent citizen can file a violation of this right to the court. From this matter, associated with the concept of citizens' lawsuit, which is the concept of a lawsuit to sue state administrators, a state obligation will emerge which is implemented through state administrators to fortify the rights of these citizens.

These state obligations, among others[161]:

1. The obligation to recognize and respect. First, the state must recognize, this form of recognition usually exists in the basic laws of the state/constitution. In Indonesia itself, for example, it has been recognized that the right to habitable and wholesome environment has been mentioned and inserted into the Indonesian Constitution 1945. With the state's recognition of this right, it creates the state's obligation to respect the

[161] This obligation was developed from Henry Sue's concept of responsibility. He distinguishes correlative obligations into four, namely the obligation to recognize, respect, protect and fulfill. For a complete overview of this issue. See HENRY SHUE, BASIC RIGHTS SUBSISTENCE, AFFLUENCE AND U.S. FOREIGN POLICY, (Princeton University Press, 1980), pp. 51-64. I correlate this concept of responsibility with the obligations of the state, because after all responsibility is always in line with obligations. I can interpret the opinions expressed in Henry Shue's influential book not only in terms of human rights but also in other fields, especially since Constitutional Rights are highly correlated with human rights. See also HAKIMI, MONICA. "HUMAN RIGHTS OBLIGATIONS TO THE POOR." IN POVERTY AND THE INTERNATIONAL ECONOMIC LEGAL SYSTEM: DUTIES TO THE WORLD'S POOR, (Cambridge: Cambridge Univ. Press, K. N. Schefer eds., 2013), pp 395-96.

constitutional rights of citizens by not interfering with it. This obligation requires the state not to take actions that prevent the access of the constitutional rights of its citizens, which in this context is the right to habitable and wholesome environment. For example, the state is not allowed to make efforts that can cause damage and pollution to the environment in the form of negligence or omission.

2. Obligation to protect. This obligation is basically requiring that the state guarantees that the party (individual or legal entities as a subject of civil law), do not violate the rights of other parties. This obligation includes issuing laws and regulations that guarantee and provide protection for these rights. In the context of the right to a habitable and wholesome environment, it is necessary to have a structured arrangement in accordance with the hierarchy of laws and regulations in Indonesia. Hence, what is mandated in the Indonesian Constitution 1945 can be implemented.
3. Obligation to fulfill. In contrast with the obligations to respect that limits the actions of the state, this obligation precisely requires the state to take pro-active action. Therefore, the obligation to take positive measures from the state through state administrator to fulfill the rights for everyone to guarantee a habitable and wholesome environment. The action referred to this is an active effort in the form of supervision, management, preservation, and enforcement of environmental law in accordance with what is emphasized in the environmental law.

The state's obligations, which can be carried out as mentioned above, reflect what a country should be. A country that is under the shade of the rule of law concept has implemented 3 (three) principles, namely: supremacy of law, equality before the law and law enforcement in ways that are not contrary to the law (due process of law). In its implementation, these three things are spelled out in the form of: (1) guarantee of protection of rights, including the constitutional rights of citizens (2) independent judicial power, independent and impartial judiciary and (3) legality in all its forms (every state action through state administrators must be based on and through the law).

I believe, the above elucidation can be interpreted that recognizing and implementing the concept of citizens' lawsuit as a form of environmental law enforcement is very feasible because it is a legal requirement that can be used as a tool or means to provide protection for

the environment. Citizens' lawsuit is a case settlement procedure that aims to sue the state administrators for its responsibility to administer the state to provide guarantees for the rights of citizens. This responsibility gives rise to an obligation for the state administrators to provide protection for the environment not only in the form of preventive measure but also in the form of resolving disputes/cases. This obligation has logical consequences which, if not implemented, will provide space for citizens to defend their rights. In addition, citizen lawsuit presents new alternatives to solve environmental problems that generally impact the wider community (public interest). This can be seen from the procedures for resolving environmental problems that already exist but have not yet touched the realm of the public interest, where the aim of this lawsuit is to restore to its original situation (perhaps to the situation before the action against the law occurred) or issued an environmental law policy that can improve the damaged situation and also prevent the same problem occurring in the future rather than ask for compensation/indemnify.

4.4 The Prospect of Application: An Optimist's View of the New Approach.

The impact of environmental destruction and pollution will not only be felt by current generations but indirectly felt by future generations. Indonesia is also a country that supports sustainable development that focuses on environmental sustainability. and this can be seen from the Indonesian environmental law system which started from the Indonesian Constitution 1945. Which implicitly states that habitable and wholesome environment is a human right and constitutional right for every Indonesian citizen. Therefore, the state through state administrators, and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development, so that the Indonesian environment can remain a source and support for the live of the Indonesian people and other living creatures. Then to realize these things, then, a more comprehensive, consistent and substantial content environmental law is needed. Thus, the emergence of Act No.32 of 2009 concerning Environmental Protection and Management can be said to answer most of these needs. Philosophically, Act No.32 of 2009 concerning Environmental Protection and Management, views and appreciates that the importance of constitutional rights is the right to habitable and wholesome environment for citizens. Then, from this Act emerges environmental management and protection policies, which clearly construct the

environmental law system in Indonesia as a legal policy, containing the ideals of the state, the goals of the state, and the ideals of law. To achieve the objectives of this policy, a law enforcement escort is required. It can be understood that when you want to achieve the objectives of the policy you encounter problems, law enforcement is used as the last pillar of guarding the legal policy for environmental management and protection.

The prospect of implementing a citizens' lawsuit can be considered by looking at how the class action (originating from the common law system) can be applied in Indonesia. Class action was first integrated into environmental law, but there were obstacles due to disagreements about the procedural law procedures that could be used in court. Hence, many class action lawsuits were rejected and could not be examined in court at that time. Various research and studies were carried out on how to adopt the class action concept from the common law system which is harmonized with statutory regulations and the principles of civil justice. Until the Supreme Court issued Supreme Court Regulation No. 1 of 2002 concerning Class Action Procedures. With the complexity of environmental problems, it at this time that class actions began to emerge as a procedure to settle environmental cases and show that the integration of citizens' lawsuit concept into Environmental Act does not interfere with the legal substance and procedural order in it. To connect the understanding that citizen lawsuit needs to be integrated and avoid being misunderstood due to distractions from class action procedure. The things that made it different to overcome the confusion of understanding can be seen below:

- **The difference between Class Action and Citizen Lawsuit.**

	Class Action	Citizens' Lawsuit
Background	There is a principle in civil justice system as outlined in the Act on Judicial Powers namely affordable, simple prompt and efficient principle which is seen as an important pillar for realizing justice for all, where many environmental cases have occurred with a long and complicated process. The cases where the defendants are the same party but the plaintiffs are different, likewise the lawsuit is filed to	It emerged as a result of consideration due to environmental problems that were not resolved and were still occurring, resulting in citizens' rights to a habitable and wholesome environment that were not fully enjoyed by citizens. Fulfillment of these rights is the responsibility of the state in protecting the constitutional rights of citizens and the environment is a

	district court with the same jurisdiction and this becomes ineffective. Since it is seen as a concept that has prospects in the development of the judicial system in Indonesia to overcome these problems, the concept of class action in the common law system has been introduced to solve these problems. Even though there is confusion in the application due to the absence of a regulating procedure, after conducting studies and research on the class action of the common law system which is continued by stipulating in the environmental law and also issuing of the Supreme Court Regulation, then the application of class action in Indonesia becomes a strengthening for civil justice systems	public interest which is guaranteed by the state. The responsibility of state administrators to provide guarantees and protection of habitable and wholesome environment, causes every neglect and omission, which results in not fulfilling the constitutional rights of citizens which is called an act against the law which can be sued based on the concept of citizens' lawsuit as happened in countries that adhere to the common law system
Legal basis	Class action is defined for the first time in Act Number 23 of 1997 on Environmental Management in Article 37 paragraph (1).	There is no statutory law that defines citizens lawsuit. It is only a form of Chief Justice of the Supreme Court Decree Number 36 / KMA / SK / II / 2013 regarding Guidelines for Handling Environmental Cases, which in one of the points explains at a glance the perspective of citizens' lawsuit but it is stated that there is no regulation concerning citizens' lawsuit in Indonesia
Procedure	HIR/Rbg and Supreme Court Regulation No. 2 of 2002	Does not have a definite procedure that has been determined. Still using the ability of judges in examining cases based on the Act on Judicial Powers, HIR/RBg and Citizens' Lawsuit in common law system.

Plaintiff	Because it is a representative lawsuit, the people who become a representative (class representatives) have the position as a plaintiff to represent a large number of person (class members) who must meet the requirements of equality of facts and damages caused by the action against the law of the defendant.	Citizen
Plaintiff's Legal Standing	Given and clearly defined by laws and regulations regarding class action	Has not been determined in the laws and regulations certainty, but legal standing refers to the rights granted by article 28 H (1) of Indonesian Constitution 1945, article 65 paragraph (1) and (4) and article 66 of Act No.32 of 2009 on Environmental Protection and Management
Defendant	Individuals, Corporations, or State Administrators	State administrators
Reasons and Interests for filing a lawsuit	Based on losses suffered directly as a result of an illegal act committed by the defendant so that the legal interests of the plaintiff have been significantly harmed	In its concept, it is based on negligence and omission committed by state administrators resulting in direct or indirect harm to the public interest. Therefore, the public interest which is a constitutional right of citizens which is the responsibility of state administrators cannot be fulfilled.
Compensation	Because class action is a procedure of representative lawsuit based (which is demanding) on the existence of civil rights, the claim for compensation is the main objective.	In a citizens' lawsuit concept that can be applied in Indonesia, does not allow claims for compensation in the form of monetary compensation. The claim is in the form of requests that state administrators make a general policy or rule to address the problems to be resolved.

Notification	In class action, notification is an obligation made as a statement of whether the class members' willingness to enter/not enter the case and be bound/not with the court's decision thereafter. This notification will be issued after the judge declares that the class action lawsuit submitted is valid and can be examined.	Notification is given before a lawsuit is filed which aims to provide opportunities for state administrators to take initial steps in solving the problem. The notification period still observes the validity period in the common law system

Table 4. The difference between Class Action and Citizen Lawsuit.

The application of the concept of citizens' lawsuit that has been used to settle civil cases in Indonesia, has received rejection in several courts because they do not recognize yet this concept in the civil justice system as a concept of civil cases settlement. Citizen lawsuit is an alternative solution to civil cases that can be raised in the civil court system in Indonesia. However, there is an important implication of those cases decision, namely acknowledged the concept of citizen lawsuit to be integrated into the civil justice system in Indonesia. Which is expressed "every citizen without exception has the right to defend the public interest (on behalf of the public interest) can sue the state administrators or anyone who commits an action against the law which are clearly detrimental to the public interest, welfare of large society and an access for citizens to get justice when the state stays silent or does not take any action for the interest of its citizens (public interest)". In an optimistic view of the existence of citizen lawsuit, it can be said that the integration and application of citizens lawsuit into civil procedural law in Indonesia does not conflict with what is outlined in the civil justice system in Indonesia. this can be seen from:

1. It is a typology of civil lawsuit, this can be seen from the basis for filing a lawsuit is using an action against the law. The expanded view regarding an action against the law as described in the previous chapter is one of the bases for filing a civil lawsuit.
2. The form of civil lawsuit filed aims to sue state administrators for their actions which is not according to the law (an action against the law). This needs to be clarified, because some practitioners who do not understand the concept of citizen lawsuit say that every lawsuit filed against the state administrators is categorized as an administrative lawsuit

and has to be filed to an administrative court. What should be noted is that in the administrative justice system in Indonesia, a lawsuit filed by the plaintiff (citizens or legal entities) against the defendant (state administrators, it can be a state official or state administrative body) is based on the issuance of a decree (a decision from a state official or state administrative body) which has final, individual and concrete characters, This causes losses for citizens or legal entities personally. From this, it can be seen that the element of loss for the public interest in this administrative lawsuit has not been fulfilled. Meanwhile, the element of harm to the public interest is an important requirement in citizens' lawsuit.

3. Since the legal basis and procedures for implementing case settlement using the concept of citizens' lawsuit do not yet exist in Indonesia, the characteristics, terms and conditions of citizen lawsuit in the common law system can be used and adapted to the provisions and procedures for resolving civil cases contained in the HIR and RBg. Using/ borrowing legal concepts or provisions is the meaning of legal transplantation which is common. As Alan Watson put it in the theory of legal transplants[162] stated by him, he also mentioned that the object of legal transplants is "rules not just statutory rules-institutions, legal concepts and structures that are borrowed, not the spirit of the legal system".[163] Legal transplants are needed because many laws are not in line with the needs and desires of society, to a certain extent that makes the theory of existing legal developments and the relationship between law and society absurd.[164] So that in this understanding it can

[162] Alan Watson said the discussion of legal borrowing and relationship could continue interminably, to offer a few general reflection which will be arranged in the order of the most obvious proceeding to the less obvious. He also stated that "the transplanting of individual rules or of a large part of a legal system is extremely common… Transplanting is, in fact, the most fertile source of development, most changes in most system are result of borrowing… The transplanting of legal rules is socially easy. Whatever opposition there might be from the bar or legislature, it remains true that legal rules move easily and are accepted into the system without too great difficulty. This is so even when the rules come from a very different kind of system. See ALAN WATSON, LEGAL TRANSPLANTS AN APPROACH TO COMPARATIVE LAW, (The University of Georgia Press, 2nd ed. 1993), pp 95-96.

[163] Cited by Valderrama from Alan Watson, Legal Transplants and European Private Law. Ius Commune Lectures on European Private Law, (electronic version), Dutch Institute of Comparative Law. See Irma Johanna Mosquera Valderrama, *Legal Transplants and Comparative Law*, INTERNATIONAL LAW JOURNAL 261, 264 (2004).

[164] Alan Watson, *Legal Change: Sources of Law and Legal Culture*, 131 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 1121, 1142-43 (1983).

be interpreted that legal transplants are not a form of imitation of the law, legal transplants is requiring adjustments and making correlation to the applicable provisions in laws and regulation so as not to cause contradictions and legal conflicts.

Further, whether integrating the concept of citizens' lawsuit into regulations is said to be contrary to the positive law that applies in Indonesia, then can its application be said to be legal according to Indonesian law. In an optimistic view of how law develops in a state, how law is a means of maintaining orderly legal relations between legal subjects in a state, I would say that citizens' lawsuit is a concept that should be integrated and applied. As the initial foundation for applying and integrating the concept of citizen lawsuit into positive law in Indonesia, it is appropriate to be initiated to solve environmental problems and be included in the Environmental Act. This aims to make it easier to understand the meaning of the public interest as a basic element to sue state administrators related to their illegal actions because when talking about the environment it will always talk about the public interest. Integrating and applicating citizens' lawsuit into the Indonesian civil justice system indicates the need for a lawsuit mechanism that empowers citizens whose procedures need to be regulated in an alternative solution to environmental problems.

The theorist of legal science, Hans Kelsen, argues that legal norms are tiered and layered in a hierarchy (arrangement). The relation between the norm regulating the creation of another norm and this other norm may be presented as a relationship of superior and subordinate which is the spatial figure of speech. The norm determining the creation of another norm is the superior, the norm created according to this regulation, the inferior norm.[165] In other words, inferior norm originates and is based on superior norm. A superior norm applies, originates and is based on an even higher than superior norm, and so on until it reaches a norm that cannot be traced further, namely the basic norm (Hans Kelsen said in German phrase "*grundnorm*" which mean for a need to find a point of origin for all law, on which basic law and the constitution can gain their legitimacy). Guided by the theory from

[165]The superior and the inferior norm by Hans Kelsen to explain what he says "*Stufen Theorie*" that the legal system is a system of rungs with tiered rules in which the lowest legal norms must adhere to the higher legal norms, and the highest legal rules (such as the constitution) must adhere to the most basic legal norms (*grundnorm*). See HANS KELSEN, GENERAL THEORY OF LAW AND STATE, (New York: Russell & Russell, Anders Wedberg trans., 1945), pp.123-24.

Hans Kelsen (*stunfentheorie*), I review Indonesian environmental legal norms with the assumption that citizens' lawsuit is a provision set out in an environmental law and also requires procedural arrangements (the same as class action and environmental organization legal standing), while the Indonesian Constitution 1945 as the highest law of the land serves as a benchmark for whether the citizens' lawsuit is against the Indonesian Law or synergized with Indonesian law. The arrangement of the right to the environment in Indonesian positive law is contained in the constitution and several other regulations, namely: The fourth paragraph of the Preamble to the Indonesian Constitution 1945 which states "... to form an Indonesian government that protects the entire Indonesian nation ...", and is linked to the rights to authorization of the state over the earth, water and wealth contained therein for the greatest prosperity of the people, as stipulated in Article 33 number (3) of the Indonesian Constitution 1945. The Indonesian Constitution recognizes that everyone has the right to habitable and wholesome environment. Based on the thought of constitutionalism, every right contained in the constitution is a basic right or human right. Article 28 H (1) of the Indonesian Constitution 1945 states: "Everyone has the right to live in physical and mental well-being, to have a place to live and to have a habitable and wholesome environment and the right to obtain health services".

In particular, Act No.32 of 2009 concerning Environmental Protection and Management which is the main Act for environmental law in Indonesia also recognizes that a habitable and wholesome environment is part of human rights and also bases it on article 28 H (1) of the Indonesian Constitution 1945. This also can be seen on Letter (a) of the consideration part of Act No.32 of 2009 concerning Environmental Protection and Management states that: "Habitable and wholesome environment is the basic right of every Indonesian citizen as mandated in Article 28 H of the 1945 Constitution of the Republic of Indonesia." The right to habitable and wholesome environment is reaffirmed in the Act No.32 of 2009 concerning Environmental Protection and Management through Article 65 number (1), which clearly states that: "Everyone has the right to habitable and wholesome environment as part of human rights".

If it is connected to state obligations as previously discussed and also by observing the provisions in Act No.32 of 2009 concerning Environmental Protection and Management,

such as, the principle of state responsibility being the basis for environmental protection and management (Article 2 letter a), regarding law enforcement as the scope of environmental protection and management (Article 4 letter f), then integrating citizens lawsuit into Act No.32 of 2009 concerning Environmental Protection and Management does not conflict with the 1945 Constitution. Hence, citizens' lawsuit can be included as one of the articles in Act No.32 of 2009 concerning Environmental Protection and Management, and the function can be juxtaposed with the other concept of environmental disputes/cases settlement which are also recognized such as, ordinary civil lawsuit, class action lawsuit, environmental organization lawsuit. This can strengthen the Act in guaranteeing the trust of citizens because each concept of environmental dispute/cases settlement contained in Act No.32 of 2009 concerning Environmental Protection and Management has different characteristics.

After comprehending that the concept of citizens' lawsuit which will be integrating does not conflicted with the positive law in Indonesia, then it is necessary to know the position of citizens' lawsuit among other rights in Act No.32 of 2009 concerning Environmental Protection and Management. Whether it can be justified to say that it is a form of rights owned by citizens to resolve disputes/cases so that it can be aligned with other concepts of environmental disputes/cases settlement which are also recognized such as, ordinary civil lawsuit, class action lawsuit, environmental organization lawsuit. In response to this, we can divide the right to the environment into two types of rights, namely substantive rights (substantive right to environmental quality) and procedural rights (procedural right to achieve equitable environmental law enforcement). The right to habitable and wholesome environment is a substantive right, while the right to access information, access to participation, the right to play a role in environmental protection and management, and environmental law enforcement are included in procedural rights.[166] The parameter of the division into two types of rights is based on the function of the right itself, substantive rights (the right to habitable and wholesome environment) can be said as goals or things to be achieved, while procedural rights are the right to strive, to protect and

[166] See Takdir Rahmadi, Hukum Lingkungan di Indonesia [Environmental Law in Indonesia], (JAKARTA: RAJAWALI PRESS, 2015), pp. 53-5, see also RR Kurniawan, *Integrasi Citizen Lawsuit sebagai Hak Prosedural atas Lingkungan Hidup dalam Dimensi HAM*, 1 PAGARUYUANG LAW JOURNAL 92, 104-06 (2017).

ultimately to be able to access these objectives. Commencing from this idea, citizens' lawsuit is part of the procedural rights because the spirit of the citizens' lawsuit itself aspires to empower citizens (civil empowerment) to be able to fight for their rights in front of the court (access to justice). By holding the position as procedural rights for citizens, it will be necessary to regulate how to implement, how does the citizens' lawsuit work. There is urgency to regulate ordinance and procedures for implementing citizens lawsuit, and it can be seen from the authority and responsibility of either the legislative institution or the Supreme Court as a judicial institution. This is an effort for environmental law enforcement so that it does not raise doubts both from the side of citizens who want to defend their rights to a livable and healthy environment, as well as from the side of law enforcers (judges) in accepting, examining, and deciding an environmental case.

4.5. A Critical Assessments of the Application of Citizens' Lawsuit Concept and Future Implementation.

Citizens who have the vision and commitment to launch a supervision movement towards the good governance of the state administrators. This positive role provides advocacy for public rights that are ignored by state administrators. The environmental law allows citizens to intervene in exercising supervision over government actions related to environmental issues. this is said to be "the role of the citizen and their rights". The form of oversight of government actions is not only carried out on how state administrators perform their duties, but also on legal obligations imposed on them through the implementation of the constitutional mandate so as to give rise to actions to carry out obligations to fulfill the constitutional rights of citizens. If the actions taken by state administrators are not within the scope of the obligations that must be carried out or also cause the citizens' constitutional rights not to be fulfilled, then the existence of a court is indeed needed to fortify the fulfillment of these constitutional rights. The existence of the court as the last struggle for *justisiabelen* (justice seekers) in particular and the hopes of citizens in general has become a widespread topic on how the court is able to resolve cases filed as well as providing a sense of justice. Especially in cases where the state administrators are defendants. This is reflected in the concept of citizens' lawsuit that is fought to provide a sense of justice for the public interest.

The problems in implementing citizens' lawsuit in court and its acceptance are the result of thoughts on what is or should be regulated and determined to avoid from judicial hesitation. This can be seen from the number of cases that want to be resolved through the concept of citizens lawsuit in Indonesia, but in fact there are rejections which generally involve procedural problems such as notifications, citizens' legal standing, understanding on the basis of filing a lawsuit using the postulate of an actions against the law, request for compensation still exist which emphasizes the demand for a certain amount of money, described as follows:

1. Notification issues.

Notification is important because it means to give a state administrators the opportunity to improve the situation or fulfill the rights of citizens.

- Hallstrom v. Tillamook County, 493 U.S. 20 (1989) can be used as an example that the citizens' lawsuit in the common law system really emphasizes the importance of notification before filing a lawsuit. Where a party suing under the provisions of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6972 citizen's lawsuit fails to comply prior 60-day notification requirement mentioned in § 6972 (b), the action must be dismissed as prohibited by statutory provisions. Justice O'Connor expresses the opinion of the Court. in which Rehnquist, C.J., White, Blackmun, Stevens, Scalia, and Kennedy, JJ., joined. Citizen requirements of the Resource Conservation and Recovery Act of 1976 (RCRA) allow individuals to initiate action in district courts to enforce the waste disposal regulations established under the Act. At least 60 days before starting the lawsuit, plaintiffs must notify the alleged offender, the State, and the Environmental Protection Agency (EPA) of their intention to sue. In this case, they had to decide whether compliance with the 60-day notification provisions was a mandatory prerequisite that had to be met or could be waived by the district court at its sole discretion. "The starting point for interpreting the provision in the Act is the language of the Act itself". The language of this provision could not have been clearer. Citizens may not initiate action under the RCRA until 60 days after the citizen has notified the EPA, the State where the alleged violation occurred, and the alleged offender. Actions initiated before 60 days after notification are "prohibited". As this language is expressly incorporated by reference to § 6972 (a), it acts as a specific limitation on a citizen's

right to bring lawsuit. Based on a literal reading of the statute, compliance with the 60-day notification provisions is a precedent of a mandatory, not optional, condition for a lawsuit. In this case, there were also things which according to the Petitioner that the language of this provision was not ambiguous, it just had to be given a flexible or pragmatic construction. Accordingly, the petitioners argue that the 60-day period will function the same as delaying the commencement of the lawsuit, it will provide the Government with the opportunity to take action against the alleged offender and will give the violator the opportunity to comply. On the other hand, the petitioner also argued that the strict construction of the notification provisions would lead to procedural anomalies. For example, the petitioners argue that, if a citizen notifies a government agency of a violation, and the agency explicitly refuses to take any action, then there is no point asking citizens to wait 60 days to initiate a citizens' lawsuit.

What can be comprehend from the above case is if there is no concrete and significant attitude taken by the state in its efforts to fulfill the rights of citizens, then this will become a reinforcing reason for the continuation of the lawsuit. When adopting provisions in the common law system, a period of 60 days will be determined for notification before filing a lawsuit. Determining a period of 60 days for a notification is considered too long, because the time period is given "to initiate" an action by the state administrators to improve the situation, not the time period "to resolve" any environmental disputes/cases. Hence, if it is related to environmental disputes/cases, this will cause an even greater impact, because environmental disputes/cases require a faster resolution. Most of the facts found during that time period, did not lead to any action to resolve the environmental disputes/cases faced. In some cases, that proposed using the concept of citizens' lawsuit in Indonesia, the use of 60 days to provide time for state administrators to initiate an action is less efficient. This is because, in fact, during those 60 days there has not been initiated any real action by the state administrators as a form of initial response to resolve the disputes/cases faced. Thus, in the absence of citizens' lawsuit regulation procedurally raises arguments about the specificity requirements for notification of citizens' lawsuit. Therefore, it is necessary to have laws and regulations that provide relevant requirements guidance for notification of the citizens' lawsuits. This notification must include sufficient information to enable state administrators to identify certain standards, limitations, or things that are alleged to have been violated,

activities that are suspected to be violations, persons who are responsible for the alleged violation, the location of the alleged violation, the date of the violation, and how it is related to the legal obligations of state administrators for the occurrence of such a violation (along with what matters are considered negligence, omission or silent acts of state administrators causing the violation) . I consider that notification in the citizens' lawsuit as a "delay requirement" for filing citizens' lawsuit. This delay requirement became a mandatory requirement that preceded the initiation of lawsuits filed using the concept of citizens' lawsuit which obliges the judge in court to accept this requirement at his discretion.

2. Citizens' legal standing issue

The issue of legal standing of citizens, when viewed from the procedures and provisions of citizen lawsuit in the US which have clearly stated how the legal standing of citizens in several environmental regulations, cannot be adopted simply because the concept of citizens' lawsuit in Indonesia then has different characteristics. It is different, however, what is contained in the concept of citizen lawsuit in the common law system can be used as a comparison to be understood to show its application in civil justice systems in Indonesia.

In some cases, the question is whether citizens have legal standing? this is due to the assumption that there is no direct interest so that it does not give rise to legal standing. It is undeniable that this is an old view of the legal principle of the *point d"interet point d'action* which states that whoever has a legal interest can file a lawsuit. However, in its development, this principle has undergone a shift in its significance. The principle of law as intrinsic fundamental values always requires a hermeneutic approach. in order to obtain substantive, actual, and relational meanings, namely, a meaning that can be traced by linking reality with the socio-cultural problematic in certain situations, so it is deemed necessary to find meaning from various sides. Thus, the passive words in a principle are not left unchecked that causes have a narrow meaning which could result in losing their function if they are confronted with new things, thus causing widespread debate among judges. Therefore, if the principle of law is used, it needs to be interpreted to get its relevance to the current situation and applied to solve new legal problems in a new socio-cultural context that is different from the period in which the principle was formulated. With a note that, there is no conflict with legal rules or norms contained in laws and regulations that give rise to substantial errors.

3. The use of negligence and omission or silent acts of state administrators categorized as action against the law.

This requires intellectual acuity and changes in the character of judges to categorize phrases of an action against the law when associated with actions of state administrators in fulfilling the constitutional rights of their citizens. It can be viewed from 3 (three) perspectives.

- First, a philosophical perspective,

  Judges need exploratory and innovative thinking to find essential elements regarding an action against the law stipulated in article 1365 *Burgerlijk Wetboek*/Indonesian Civil Code. Among the reasons that can be put forward to illustrate the importance of exploratory and innovative thinking is the persistence of views among judges that reflect a positivistic paradigm. The spirit of formalism in the contextual sound of laws and regulations or certain legal doctrine is still very prominent. Without being able to find a general tendency in the judge's thinking which is appreciative of critical interpretations that can help discover the intrinsic fundamental values behind the text of the legislation (including interpreting acts against the law). Therefore, it is found that a court process is considered a process that works much like a machine. Hence, it is rare to find the trial (court proceedings) where judges appear to reflect elegant thoughts and attitudes that are contemplative, rational, systematic, and critical. Those are as characteristics of philosophical thinking to judge whether negligence, omission and silent acts of state administrators can be said to be an action against the law. Where a reflection of the thoughts and attitudes mentioned above is needed in adjudicating a case when filed with the concept of citizens' lawsuit based on acts against the law.

- Second, the Sociological Perspective

  Overview on this matter, it is intended to emphasize the importance of how judges can synergistically live in one perception, one frame of view and one juridical attitude in the meaning of action against the law when linked to actions of state administrators and the public interest. Starting with the interpretation of action against the law through a critical assessment of the relevance of the source of legislation. Analysis from the socio-logical aspect has to comprehend an action against the law of what is behind it,

what is the form and quality of a right that is violated, what legal aspects are violated, and the extent to which the loss suffered by citizens whose rights are violated.

- Third, the Juridical Perspective

Within the scope of justice in Indonesia, action against the law is not only committed by citizens as individuals/legal entities (conservative assumption) but are also committed by state administrators. It appears when the state does not use its authority to carry out its legal obligations or even causes violations committed by the state. Court proceedings for an action against the law by a State face inequality of justice, leaving law enforcement with few obstacles. The strategic role of citizens in defending the public interest is the background for the emergence of the concept of citizens' lawsuit in the U.S. which has also been applied several times in Indonesia. Likewise, the strategic role of judges as lawmakers (judge made law) and also as the last bastion for upholding justice and truth when laws are violated. Judges professionally have the legality to conduct critical judgments including a number of principles of civil procedural law, which seem irrelevant. The principle of freedom of judges as contained in the Act Number 48 of 2009 on Judicial Power in conjunction with the Indonesian Constitution 1945 Article 24 (1) becomes relevant to mean that judges have broad powers to construct their views and opinions ethically-professionally. Therefore, it becomes sufficient reason for judges to freely enforce or not enforce statutory regulations, to interpret or comprehend phrases in articles (such as phrases of an action against the law), with clear parameters and arguments of correct and appropriate legal logic. Judges must pay attention to the interests and rights of the public. Comprehending the laws and regulations, legal doctrine, and the meaning of articles therein, which have been addressed rigidly, it will be difficult to find justice, especially those related to justice for the public interest. Critical thinking on the principles of civil procedural law, needs to be put in a comprehensive frame and spectrum of thought, namely how the roles of the judiciary, especially through the independence and professionalism of judges, can better place the judiciary in more basic agendas, namely, to contribute to solving civil problems with the dimension of public interest (environmental disputes/cases), restoring and distributing rights and obligations

proportionally, restoring public balance, providing legal protection for individuals taking into account the rights and interests of the public.

I believe that the urgency to integrate the citizens' lawsuit concept into the Environmental Laws and Regulations is an alternative effort in providing provisions for dispute resolution with the dimension of public interest. Apart from seeing the fact that the provisions on environmental organization legal standing have not yet worked optimally in facing the complexity and the widening range of environmental disputes/cases. Hence, from the integration of this concept into a provision in environmental laws and regulations, it demands reform in terms of civil procedural law as a procedure for implementing it in court. Therefore, there is no longer doubted to resolve disputes/cases that use the citizens' lawsuit concept which will gradually be able to realize the goals and ideals of law, namely achieving justice and order for every citizen. As for the proposed arrangements of citizens' lawsuit requirements to be integrated into the Environmental Law, the requirements to be able to file a citizen lawsuit are:

a) The Plaintiff is one or more Indonesian citizens (based on the Act of Citizenship), who have (legal) capacity, competence and as (legal) subjects of civil law (based on *Burgerlijk Wetbook*/Indonesian Civil Code).
b) Defendants are state administrators (can be officials or state administering bodies).
c) Basis to file a lawsuit is an action against the law (negligence or omission) of state administrators which has an impact on the loss of public interest and citizen constitutional rights.
d) The object of a lawsuit is negligence, omission, silent action, or failure to carry out legal obligations stipulated in laws and regulations related to the fulfillment of the constitutional rights of citizens.
e) Notification is mandatory that the plaintiff must do as an initial effort in order to be declared acceptable as citizens' lawsuit, followed by examination procedures until the decision made by the judge in court. This notification is given within 30 days for state administrators for initial action to resolve environmental disputes/cases. If within 30 days of initial action is not taken, then a citizens' lawsuit can be filed. Whereas within 30 days the initial action has been taken, hence, the court can assess whether the efforts made have

brought significant changes to lead to a state of recovery or improvement. Thus, another additional 30 days will be given to resolve the problem. However, if within additional 30 days the environment problem cannot be resolved, it must be considered a failure and a citizens' lawsuit can be filed.

f) If there is no notification, the court is obliged to declare that the lawsuit is not accepted, providing a note that the notification is given to the state administrator is also sent as a copy to the court. The contents of the notification are made in writing which at least contains:
   - Information on state officials and agencies relevant to the violation.
   - Committed an action against the law.
   - Legal obligations of state administrators specified in laws and regulations that were not implemented.
   - Describes the public interest that has been harmed.

CHAPTER V.

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

1. Fulfillment of citizens' rights as stipulated in the constitution will not all be felt when problems arise that have not been resolved properly. There are many rights contained in the constitution that are owned and must be accepted by citizens fairly as constitutional rights. One of those rights is the right to habitable and wholesome environment. Citizens' lawsuit brings new constituents to law enforcement efforts. Citizens' lawsuit has the intended effect to implement new law enforcement regimes that are loaded with environmental norms. Thus, the important objective of the citizens' lawsuit is to promote the enforcement of the right to habitable and wholesome environment. Whereas, in Act No.32 of 2009 concerning Environmental Protection and Management has not stipulated citizens' lawsuit in one of the articles as a provision for dispute/case resolution, this does not mean that citizens' lawsuit is not desired as an alternative environmental law enforcement mechanism. Those who file citizens' lawsuit will not be treated as a nuisance but as an admission to justify the right to habitable and wholesome environment as a public interest that must be protected. Comprehending citizens' lawsuit inherently requires access to address certain environmental problems and this creates a system integrated law enforcement by placing the power of law enforcement in the hands of citizens to increase oversight to the state administration which is obliged to provide protection and fulfill the constitutional rights of its citizens.

   Citizens' lawsuit is the right form of access to justice because it supports law enforcement by citizens, which initially points to the increasing number of environmental problems that arise as a result of negligence/omission/silent action of state administrators in giving surveillance/control of people/business activities that have a negative impact on the environment causing harm to the public interest. One of the weaknesses in environmental law enforcement is that the procedures for resolving disputes/cases in Act No.32 of 2009 concerning Environmental Protection and

Management in Indonesia are not equipped with the concept of citizens' lawsuit. This concept seeks to complement several mechanisms for resolving environmental disputes/cases already stipulated in Act No.32 of 2009 concerning Environmental Protection and Management. Citizens' lawsuits enable people to exercise their rights and encourages effective participation in the legal system.

Since the beginning of this concept, access to justice for citizens has been the main goal. The term 'access to justice' is most often used to refer to the various mechanisms by which individuals seek legal pathways to idealized justice. In a country, of course, it has its own procedural law in solving environmental problems whose dimensions of the problem include the fields of administrative law, criminal law, and civil law. Likewise, in civil law systems and civil justice systems (citizens' lawsuit fall within the scope of civil litigation). Indeed, the civil justice system has provided several procedures for resolving environmental disputes/cases. Among other things, environmental problems that occur between civil law subjects (people and legal entities). The settlement of environmental problems / cases between civil law subjects uses procedures for settling ordinary civil cases which have been clearly regulated in the civil procedural law applicable in Indonesia (HIR and RBg). Then the procedures for solving environmental problems/cases involving community groups and those committing action against the law use class action procedures. In the civil justice system, these procedures have been stipulated through Supreme Court Regulation Number 1 Year 2002 concerning Class Action Procedures which are in line with the principles of civil justice as stated in the HIR/RBg. Likewise, with the existence of NGO's which according to the Environmental Law are given legal standing (Legal Standing LSM) and the right to sue related to environmental issues and the procedures will also use HIR/RBg. Regarding how to sue state administrators (government) who are negligent in fulfilling the constitutional rights of citizens to an adequate and healthy environment, there are no regulations in the civil justice system that regulate how to sue the government.

Citizen lawsuit is access to justice "because it refers to the desire for a form of justice" which has not been possible through existing civil justice systems. Access to justice is a fundamental principle of the rule of law. This enables people to exercise their

rights and encourages effective participation in the legal system. The concept of citizen lawsuit is a form of "access to justice" which can be seen through three important elements:

a. Quality of access to courts - citizen lawsuit ensures that every citizen with legal capacity and competence as a subject of civil law, whatever the means, has access to courts and the effective dispute resolution mechanisms necessary to protect their rights and interests.
b. National equilibrium - citizen lawsuit provides an equal capacity for all citizens to access processes to enforce existing rights or laws (This perspective assumes that the rule of law provides an effective means of achieving equitable outcomes, ensuring that citizens enjoy, to the extent possible, equal access consistent with national laws and policies.
c. Equality before the law - ensures that when citizens file citizens' lawsuit regardless of differences, they are treated equally before the law. Hence, any citizens' lawsuit filed to the courts, if appropriate and fulfills the requirements of a lawsuit, will be examined by the court impartially to reach a resolution of the dispute / cases according to the due process of law.

In the framework of access to justice, as a concept, citizens lawsuit includes all the elements needed to enable people to find new hopes for solving legal problems (the environment with the dimensions of the public interest), to find solutions and efforts in order to confirm the offense will not occur in the future, and demand that rights as they are enforceable. Access to justice cannot be achieved if the plaintiffs face many obstacles that prevent them from filing a lawsuit. Access to justice also means that in civil justice systems it must lead to fair results for individuals and the public interest. Thus, citizens' lawsuit concept related to the environmental law enforcement efforts must be acceptable as an access to justice in solving environmental law enforcement problems in Indonesia

2. The application of citizen lawsuit concept in civil justice system in Indonesia, cannot accurately determine the legal standing of citizens as stated in the concept of legal standing in the common law system. As an idea that everyone has a legal standing in citizens' lawsuit based on an understanding of environmental protection as a public

interest. A striking difference in the determination of legal standing is associated with sufficient interest. Sufficient interest has traditionally been defined as an interest related to violations of personal rights between civil law subjects but does not concern the public interest. The individualistic vision of traditional procedural legal processes narrows the path to the merging of social conceptions and the interests of the wider community. Such an environment does not guarantee access to justice and requires a transformation to ensures that the Court has a broader view of the legal standing on environmental issues in the public interest dimension.

Regarding legal standing, harmonization with the civil law system in Indonesia does not conflict with existing legal principles. Even though in traditional civil procedural law, legal standing is always associated with the existence of legal interests, comprehending to the concept of access to justice and environmental protection, legal standing without any legal interests and only based on adequate interests does not deviate legally. The shift in the concept of traditional legal standing in Indonesia to the concept of modern legal standing needs to be interpreted as a positive development because of the state's factor as the ruler of nature, the environment and the resources in it and also the interests of the wider community.

a. First, the factor of the state as the ruler of nature, the environment and the resources contained therein is constitutionally regulated in Indonesian Constitution 1945 Article 33 paragraph (3) which results in its sustainability being highly dependent on activities, actions, and governance. policies as state administrators. Then the government's obligation as state administrators in this regard is regulated in Act No.32 of 2009 concerning Environmental Protection and Management. However, in implementing laws and regulations, sometimes the state administrators neglect its duties and obligations in terms of managing, protecting, and preserving environmental functions. This situation requires citizens as the owner of the right to habitable and wholesome environment as stipulated in Indonesian Constitution 1945 to take corrective and enforcing actions through the law. In order to do so, it is necessary to accept and recognize citizens' access to court through legal standing to file a citizen lawsuit.

b. Second, the factor of public interest is always associated with the number of cases and environmental problems that harm the rights of citizens within the scope of the interests of the wider community. Although many environmental organizations have been given legal standing according to Act No.32 of 2009 concerning Environmental Protection and Management, individual citizens are an important pillar of law enforcement in providing protection for the environment. Citizens can move to fight for the interests of the wider community and push for environmental policy reforms even though they actually do not have individual legal interests such as ownership interests and economic interests.

In line with the development of public interest law, the concept of legal standing (standing to litigate) in cases related to the public interest has shifted. An individual or group of people or organizations can act as plaintiffs even though they have no direct interest. Shifting the procedural dimension to decide legal standing is necessary in Indonesia by accepting a rethink about the concept of legal standing for citizens. Acceptance of re-reasoning of citizens' legal standing in the concept of a citizens' lawsuit in Indonesia should reduce restrictions on who can file a civil suit. Courts need understanding to go beyond the unnecessary requirements of legal standing to litigate cases involving the public interest. Injury in-fact, cause and effect and redress are the related and determined elements which ensure sufficient interest in having legal standing. Furthermore, regarding legal standing in the concept of a citizens' lawsuit that can be applied in Indonesia, the connection between the injury in-facts (provided that the injury in-fact is detrimental to the public interest), cause and effect is a definite thing that must be proven by the plaintiff. However, redress is imposed in some environmental cases in the U.S. common law system not applicable. If redressability takes the form of a demand for environmental restoration, then the creation of new public policies to provide environmental protection or in the form of future programming for a sustainable environment can be justified. Because what needs to be remembered is citizens' lawsuit concept that can be applied in Indonesia, where the defendant is a state administrator, and it is not justified in laws and regulations that the inability or negligence or omission of the state administrator cannot be held responsible and has indemnity which cannot be

measured by the amount of money. The ability to obtain rights will give rise to the obligations of citizens independently who seek to defend environmental interests according to the law for the public interest. Traditional restrictions on legal standing in the public interest due to litigation in the interests of the environment have not been recognized in the past. However, the courts and civil justice system in Indonesia should adopt a more generous approach to determining legal standing so that they can devise an understanding of the legal standing in environmental-related citizens' lawsuit.

3. The importance of applying the concept of citizens' lawsuit in Indonesia because it is related to public interest. Public interest is the interest of the wider community or citizens in general in connection with the state obligation to its citizens. Public interest is an interest that must take precedence over personal or individual interests or other interests. If it is related to the constitutional rights of citizens regarding habitable and wholesome environment, implementing this procedure is an urgency in law enforcement and also for the development of the civil justice system in Indonesia. Moreover, the requirement to obtain habitable and wholesome environment is a right related to the public interest, mandated by the constitution and environmental legislation, which then becomes the legal obligation of state administrators. These legal obligations include obligation to recognize and respect, obligation to protect and obligation to fulfill.

Seen from the number of environmental disputes/cases that occur in Indonesia and how the availability of law enforcement efforts that have been determined in Act No.32 of 2009 concerning Environmental Protection and Management which turned out to be less effective and emergence disputes/new cases that are especially detrimental to the public interest, therefore, in that legislation require an additional provision of environmental law enforcement which aims to protect the public interest which merely provides control for state administration of the three types of legal obligations. Citizens' lawsuit is an individual or citizen access to file a lawsuit to the Court for and on behalf of interest's overall citizens or public interest, which is intended to protect citizens from possible losses and violations of their constitutional rights as a result of negligence or omission of state administrators. Citizens' lawsuit gives the power to citizens to sue state administrators who commit action against the law in the event of failure to fulfill their

legal obligations in implementing laws and regulations. Citizens' lawsuit that can be developed in Indonesia in an effort to enforce environmental law is a concept of lawsuits aimed at state administrators, the citizens only demand in the form of an injunction that the state administrators have to take certain actions (making new policy/regulation which will be correcting, restoring and reforming a condition/situation) without demanding monetary compensation/indemnity with an amount of money. Hence, it is clear that the objectives to be achieved in the concept of citizens' lawsuit can be applied in Indonesia are restoration, protection and preservation of the environment.

5.2 Recommendation

This study provides a rationale and a conceptual basis for how citizens' lawsuit can be integrated into environmental laws and regulations, and then to be applied in civil justice system in Indonesia by using existing civil procedural provisions. The results of this study are expected to be able to put an understanding and basis comprehension on everything to what is the core of citizens lawsuit, which aims to reduce irregular academic opinion, which is still sustainable without considering the need for a concept that can actually embodiment justice as a legal ideal. To provide certainty, by looking at the conditions and legal culture in Indonesia, it is not easy to change the paradigm that is inherent and rooted in some legal experts and legal practitioners, citizens' lawsuit needs to be set forth in laws and regulations as one of the provisions of law enforcement. Moreover, it is needs to be set forth as a provision in legislation in the field of environmental law (seeing from the history of citizens' lawsuit from common law countries). Then proceed by procedural affirming of citizens' lawsuit in Indonesian civil justice systems, what kind of procedures, concept and characteristic should be applied. Whether will use HIR/RBg (as Indonesian Code of Civil Procedure) or by issuing in a form of Supreme Court Regulation as for urgent procedural regulation. Accordingly, it requires further study which turn to provide the basis and fundamental thought for regulating and implementing the procedure of citizens' lawsuit without any doubt from both the academic and practical side especially in judicial proceeding.

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