Disparitas Pertimbangan Hakim mengenai Citizen Lawsuit dalam Perkara Perdata di Indonesia
Lidya Margaretha, Herliana, S.H., M.ComLaw., Ph.D.
Universitas Gadjah Mada, 2026 | Diunduh dari http://etd.repository.ugm.ac.id/

DISPARITAS PERTIMBANGAN HAKIM MENGENAI *CITIZEN LAWSUIT* DALAM PERKARA PERDATA DI INDONESIA

Oleh

Lidya Margaretha[1] dan Herliana[2]

INTISARI

Penulisan hukum ini bertujuan mengetahui dan menganalisis alasan penerimaan perkara perdata *Citizen Lawsuit* oleh sebagian hakim meskipun mekanismenya belum diatur secara khusus dalam peraturan perundang-undangan di Indonesia, serta disparitas pertimbangan hakim dan kaitannya dengan kepastian hukum berdasarkan enam perkara dalam putusan sebagai berikut: (1) Putusan MA No. 2560 K/Pdt/2023; (2) Putusan PT Medan No. 549/Pdt/2021/PT MDN; (3) Putusan PT Jakarta No. 404/PDT/2012/PT.DKI; (4) Putusan MA No. 841 PK/Pdt/2018; (5) Putusan MA No. 490 K/Pdt/2018; dan (6) Putusan MA No. 189 PK/Pdt/2026.

Penelitian hukum ini menggunakan jenis penelitian hukum yuridis-normatif, dengan menggunakan data sekunder yang diperoleh melalui studi kepustakaan berupa peraturan perundang-undangan, putusan pengadilan, asas hukum, buku, dan jurnal terkait. Data sekunder tersebut kemudian didukung dengan hasil wawancara dengan hakim, akademisi, dan pengacara publik. Seluruh data yang diperoleh dianalisis secara kualitatif dan disajikan secara deskriptif analitis.

Hasil penelitian menunjukkan dua hal. Pertama, penerimaan perkara perdata *Citizen Lawsuit* oleh sebagian hakim bertumpu pada penemuan hukum (*rechtsvinding*) yang dilandasi pertimbangan yuridis, filosofis, dan sosiologis, yang terurai dalam lima alasan: pengakuan eksistensi formil melalui yurisprudensi dan praktik peradilan; pengutamaan pemeriksaan substansi Perbuatan Melawan Hukum berdasarkan Pasal 1365 KUHPerdata di atas ketiadaan pengaturan acara; pengakuan hak warga negara atas akses perlindungan hukum dan kepentingan publik; pandangan bahwa *Citizen Lawsuit* mendorong pelaksanaan kewajiban hukum pemerintah secara konstruktif; dan pencegahan kekosongan perlindungan hukum melalui penerimaan di Peradilan Umum. Kedua, disparitas pertimbangan hakim terjadi pada aspek kewenangan mengadili, kualifikasi kepentingan, keterlibatan pihak nonpemerintah, dan syarat notifikasi pra-gugatan. Disparitas tersebut berkaitan dengan kepastian hukum pada dua tataran. Pada tataran konkret, kepastian tetap terwujud karena setiap perkara memperoleh putusan yang menentukan posisi hukum para pihak dan berkekuatan hukum tetap, sedangkan perbedaan penemuan hukum yang menyertainya merupakan konsekuensi yang wajar. Pada tataran normatif, kepastian hukum masih terbatas karena belum tersedia norma umum yang dapat diketahui sebelum perkara diajukan. Disparitas dengan demikian merupakan gejala dari kekosongan pengaturan *Citizen Lawsuit*.

Kata Kunci: Disparitas, Pertimbangan Hakim, Gugatan Warga Negara (*Citizen Lawsuit*), Kepastian Hukum

[1] Mahasiswa Strata-1 (S-1) Departemen Hukum Perdata, Fakultas Hukum, Universitas Gadjah Mada.
[2] Dosen Departemen Hukum Perdata, Fakultas Hukum, Universitas Gadjah Mada.

UNIVERSITAS
GADJAH MADA
Disparitas Pertimbangan Hakim mengenai Citizen Lawsuit dalam Perkara Perdata di Indonesia
Lidya Margaretha, Herliana, S.H., M.ComLaw., Ph.D.
Universitas Gadjah Mada, 2026 | Diunduh dari http://etd.repository.ugm.ac.id/

DISPARITIES IN JUDICIAL REASONING REGARDING CITIZEN LAWSUITS IN INDONESIAN CIVIL CASES

By

Lidya Margaretha[1] dan Herliana[2]

ABSTRACT

This legal research aims to identify and analyze the reasons why certain judges accept civil Citizen Lawsuit cases even though the mechanism has not been specifically regulated in Indonesian legislation, as well as the disparities in judicial reasoning and their relationship with legal certainty, based on six decisions: (1) Supreme Court Decision 2560 K/Pdt/2023; (2) Medan High Court Decision Number 549/Pdt/2021/PT MDN; (3) Jakarta High Court Decision Number 404/PDT/2012/PT.DKI; (4) Supreme Court Decision Number 841 PK/Pdt/2018; (5) Supreme Court Decision Number 490 K/Pdt/2018; and (6) Supreme Court Decision Number 189 PK/Pdt/2026.

This legal research uses a juridical normative method, using secondary data obtained from literature research in the form of regulations, court decisions, legal principles, books, and academic journals. The secondary data are supported by interviews with judges, academics, and public interest lawyers. All data were analyze qualitatively and presented descriptively.

The research yields two findings. First, the acceptance of civil Citizen Lawsuit cases by certain judges rests on judicial law-finding (rechtsvinding) grounded in juridical, philosophical, and sociological considerations, elaborated into five reasons: recognition of the mechanism's formal existence through jurisprudence and judicial practice; prioritizing the examination of the substantive unlawful act under Article 1365 of the Indonesian Civil Code over the absence of procedural regulation; recognition of citizens' right to access legal protection and to advance the public interest; the view that the Citizen Lawsuit constructively compels the government to perform its legal obligations; and the prevention of a legal-protection vacuum through acceptance in the General Courts. Second, the disparities in judicial reasoning occur on the axes of jurisdiction, the qualification of interest, the involvement of non-governmental parties, and the pre-action notification requirement. These disparities relate to legal certainty on two levels. At the concrete level, certainty is still realized because each case obtains a decision that determines the parties' legal position and becomes final and binding, while the differing law-finding that accompanies it is a natural consequence. At the normative level, legal certainty remains limited because no general norm is yet available that can be known before a case is filed. The disparities are therefore a symptom of the regulatory vacuum surrounding the Citizen Lawsuit.

Keywords: *Disparities, Judicial Reasoning, Citizen Lawsuit, Legal Certainty*

[1] *Student of Department of Private Law, Faculty of Law, Universitas Gadjah Mada.*

[2] *Lecturer of Department of Private Law, Faculty of Law, Universitas Gadjah Mada.*