Gugatan perwakilan kelompok bagi kepentingan masyarakat di Indonesia (suatu tinjauan dari aspek sosio-yuridis)

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Abstrak

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in its development of the last three years, there has been a new phenomenon in Indonesia jurisdiction; i.e. public claims made using a class action procedure. The utilization of such a procedure has been made so frequently and obtained legal forces because it has got us opportunity and justification in a variety of Indonesian legislations; among other things: law no. 23, 1997 concerning environmental management, law no. 8, 1999 regarding consumer protection and law no. 41 governing forestry followed up by a litigation procedure through the supreme court?s regulation no. 1, 2002. such a regulation has bridged the concept and legal theory which is subsequently used to execute .civil dalm procedures since there has been a shift from using an individual model to using a representative one. before the supreme court issued this regulation, courts had always' rejected collective claims on the ground that Indonesias civil law, especially section 123 of hir, a revised indonesia's law, stated that such claims could be brought up their claimants or by hiring Iavvyers. without a special authorization, however, lawyers could not represent class interest to be in session of court now, on the basis of article 4 of supreme court regulation to represent a ciass interest, the representative is not required to have this special authorization from the group he represents. social groups having the some case shoulclnot bring their case individually to prevent a recurrent case from happening. this oollective claim, class action, can be made at a lower cost so that the general public may bring their claims to court. in addition, to void mutually controversial verdicts, when each individual make his own claim, class action constitutes to be a more effident procedure. class action as a litigation procedure has its historical, social and cultural background in the common law system. therefore, class action as an effort of civil law reform in Indonesia has a tendency toward the civil law system; from legal comparison viewpoint, lt requires brillian thoughts on the part of judges in order to implement the existing laws actively; let alone, when we consider that the supreme court regulation no. 1, 2002 is but a way of transferring on America or Australian model. on the other hand, class action as a legal protection over Indonesian communities can be exercised as a social control; i.e. as social norms against deviant behaviours and their effects that include prohibitions, demands, condemnation and compensation. dispude resolution procedures with regard to compensation over unlawful deeds in class action should be prepared in detail, covering mechanism of its distribution for all members of a class including suggestions on court proving or panel to help distribute compensation more smoothly. when a compensation demand is approved, a judge isobliged to decide in detail the class grouping, compensation distribution mechanism`and steps to be taken by class representatives such as the obligation of notification. among the frequent cases are environmental function recovery, waste management improvement, pollution source eradication, compensation for the affected group and attitudinal changes among law breakers.
besides, class action as a tool of social engineering, that is, when a gap between law and social change appears, should find its solution whereas class action as a social emancipation means the equal right among

various aspects of social life.based on the fact that court decision in class action is binding to all, any interest group using this procedure should help reduce administrative problems. this new phenomenon in Indonesia jurisdiction, public claims using a class action procedure, ls relevant to Frederick Calvert's theory. the people?s interest represented by a class action is in accordance with the theoiy of utilitarianism proposed by Jeremy Bentham. judges, accordingly, should make their decision on the basis of equilibrium principle between individual and collective interests as put forward by John Rawls In his theory of justice. rules are then needed to avoid a conflict of interests, between individual and collective ones. law as an umpire is indispensable.