

The United States' Citizen Suit Adoption Into The States With Different Legal Systems: Learning From Indonesia And The Philippines

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Abstract

This paper demonstrates whether it is complex as Orücü argues for legal adoption between different legal systems. Through the functional approach, this study analyzes qualitatively the experiences of adopting the United States' citizen suit in Indonesia and the Philippines which have different legal histories and backgrounds. The result shows that it is not as complex as Orücü argues to adopt citizen suits from the U.S into the different legal system states. Indonesia adopts the citizen suit by adapting its benefits, function, and essential elements. Surprisingly, Indonesian judges make a moderate modification by broadening the citizen suit's benefits to enforce other public interest issues than environment law, such as education rights, labor rights, and other public services rights cases. Meanwhile, the Philippines, which is having the U.S colonization background, tend to follow the U.S citizen regime originally, with an adaption of the court jurisdiction aspect. The result valuable to support other legal adoption experiences between different legal systems. However, it is better to combine the functional approach in studying the U.S. citizen suit in the context to adopt it with the other techniques, such as legal culture and economics approach to make the adoption process functionally, culturally, and economically being accepted and work well.

Keywords: adoption, citizen-suit, Indonesia, legal system, the United States, the Philippines.

INTRODUCTION

Citizen-suit is a procedure for filing a lawsuit by one or more citizens against the violator of public interest or citizen civil rights mainly the State (Babich & Sousa, 2011; Miller, 2004). Mossop (1993) studied that it originated and developed in common law countries. It is especially in the United States [U.S]. Most civil law systems' governments do not recognize citizen suits originally based on a different legal standing principle.

Indeed, citizen suit has benefits for the citizen as a tool to enforce their rights, including (1) improving government accountability, (2) promoting open public policies, (3) realise the equal position of citizens in the public interest, and (4) to control over government policies (Sharaningtyas, 2016). Moreover, Mossop (1993) believes that citizen-suit is "the teeth" of public law. The enormous benefits of this procedure attract the civil law system countries, such as two ASEAN countries: Indonesia and the Philippines, to adopt it. In Indonesia, it began with the citizen suit practices through

judge-made law when several non-government organizations [NGO]'s brought it before the Court in early 2000 (Sundari, 2013). A similar experience is shown by the Philippines which started to adopt citizen suits in 2010 through the Supreme Court Rules of Procedure for Environmental Cases.

The practice of filing citizen-suit in Indonesia and the Philippines shows that citizens need a regenerative procedure to enforce their rights. Based on Friedman (1975) and Mertokusumo (2010) argue on the legal function as a response to persons' interest, looking into the citizen suits benefits, and considering the Association of South East Asia Nations [ASEAN] (2020) commitment as declared in Article 1 of ASEAN Charter, among others to provide ASEAN people with equitable access to opportunities for human development, social welfare and justice, it is essential to promote citizen suits' adoption in ASEAN which have no such procedure originally. Nevertheless, Orücü (2000) reminds us that the adoption process will become more complicated if there is a different legal system between the adopting and adopted countries, such as most ASEAN countries and The U.S. As Orücü (2000) and Efrat (2016) argued, this complex process includes adapting or harmonizing and modifying from the origin into the adapting country.

This paper will describe and analyze the citizen suit adoption experience in two ASEAN countries, Indonesia and the Philippines, which have a different historical colonization backgrounds. The first was colonized by Netherland, a civil law system country, while the second was colonized by the Spanish with civil law system and America with an Anglo-American legal system. The first part of this paper begins by describing the citizen suit regime in The U.S. The second part will explore the civil litigation system in Indonesia and the Philippines. Third, explaining the learning how to adapt or modify the origin citizen suit from the U.S. into the Indonesian and the Philippine context.

MATERIALS AND METHODS

This study uses normative legal research/doctrinal legal research as the study by Ali et al. (2017) and Gawas (2017) by examining the primary and secondary legal material of The U.S. citizen suit regime, as the adopted country, and the Indonesian and the Philippine civil litigation system comparatively, as the adopting countries, including the theory of adoption process. The data will be analyzed qualitatively to explain the U.S adoption process in the Indonesian and the Philippine legal system comparatively, which focuses on the functional aspects of the citizen suit, including the benefits, functions, scope, elements, and legal framework, which are generally considered for law adoption.

RESULTS AND DISCUSSIONS

This section will begin with a description of the U.S Citizen suit regime briefly. Followed by explaining Indonesia and the Philippines' civil litigation situation in which the civil suit will be adopted. Its adoption experiences will be analyzed at the end of the paragraph.

The United States' Citizen Suit Regime.

Among common law countries, the United States is the common law state that real impetus the development of citizen suit, particularly in federal environmental law. Plater (1998) highlights the American citizen suit regime as essentially American legal process innovation. On the other hand, Australia as the influenced common law system has a solid reluctance to adopt citizen suit for a specific fashion. Instead, Australia prefers using the traditional judicial review of the ombudsman to remedy breaches of Commonwealth environmental laws (Mossop, 1993). Learning about The United States' citizen suit as the suitable model to adopt become relevant. Below will describe it to understand its benefit, function, elements, and its legal framework.

The U.S. introduces citizen suits by providing it in main Codes, namely The United States Code [U.S.C] and The Code of Federal Rules [C.F.R]. The related statutes then reaffirm it, such as 33U.S.C§1365 (2012) reaffirmed in the Clean Water Act [C.W.A], 42U.S.C.§7604 (2012) as

specified in the Clean Air Act [C.A.A], 42U.S.C. §6972 (2012) implemented in the Resource Conservation and Recovery Act [R.C.R.A], and 16U.S.C. §1540 (2012) to enforce the Endanger Species Act [E.S.A]. It shows that citizen suit generally are established for environmental law enforcement. The others, such as 5U.S.C. §702 (2006), introduce citizen suit to support equal justice administration as specified in the Administrative Procedure Act [A.P.A], 21C.F.R 10.30 establish citizen suit to enforce food, drug, and public health law, and antitrust issue as provided in Sherman Act and other related-acts. Not all permanent laws as codified in The U.S.C. authorizes citizen suit, such as domestic security law. The detailed legal framework, the practices, and comments describing as follows.

Title 33U.S.C §1365(a) promulgates an authorization and a jurisdiction of citizen suit by stating:

[any citizen may commence a civil action on his 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 allegedly violates (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State concerning such a standard or limitation, or (2) against the Administrator who allegedly fails to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title] (Office of The Law Revision Counsel, 2020).

Further, 33U.S.C§ 1365(b) states:

[No action may be commenced— (1) under Subsection (a)(1) of this section— (A) before sixty days after the plaintiff has

given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or (B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right—(2) under Subsection (a)(2) of this section before sixty days after the plaintiff has given notice of such action to the Administrator, except that the citizen may bring such action immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. The plaintiff shall give notice under this Subsection in such manner as the Administrator shall prescribe by regulation] (Office of The Law Revision Counsel, n.d).

The provision shows that the term “citizen” who may become the plaintiff means a person or persons having an interest that may be adversely affected or violated. This is what 33U.S.C§1365(g) governs as the standing of a citizen. The defendant(s) in the citizen suit may be (1) the State, any governmental agency, the Administrator, and (2) any alleged violator, including a company, organization, or other legal entity. Adelman and Glicksman (2019) divided into two categories of citizen suit: against regulated entities for regulatory violations, and agencies for noncompliance with statutory mandates. The citizen here uses the action to force the state or governmental agencies or any violator to regulate or otherwise act under court-ordered timelines (Sara et al., 2017), even, under 33U.S.C§1365(a) to apply any appropriate civil penalties. These are the relief which may be claimed. The Rule is clear that citizen suit may be commenced only by State's authorization, in the district court's jurisdiction, which has original authority to hear all civil cases brought under the Constitution, laws, or treaties of the United States (See, 28 U.S.C.§1331).

Based on 33U.S.C. §1365(b), a citizen may not file a citizen suit:

- 1) before sixty days after the plaintiff has given notice of the alleged violation, or
- 2) if the State, Administrator, or any alleged violator has commenced and diligently comply with the order, limitation, or standard as claimed, with a specific exception. The Court does not set the notification since the Administrator will do it.

By relating to environmental cases, 33U.S.C. §1365(c) regulates that the district court in which such waste discharge source is located has the jurisdiction to hear citizen-suit. The Subsection also provides the plaintiff to copy the complaint to the Attorney General and the Administrator.

The other exciting framework of citizen suit is about attorney fee, where, based on 33U.S.C. §1365(d), the Court may reward any prevailing party. Supporting Florio's opinion (2000), attorneys' fees in environmental citizen suits encourage private citizens to enforce environmental statutes.

Title 42U.S.C. §7604(2012) provides citizen suit to enforce the Clean Air Act, which has a similar legal framework to enforce the Clean Water Act, except for additional promulgation of a penalty fund. This kind of fund may be claimed together with a civil penalty as stated in Subsection (g) for financing air compliance and enforcement activities by the Administrator or beneficial mitigation projects according to the provision and enhancing public health or the environment. 42U.S.C. §7604 uses the term 'person; not 'citizen.' The term 'person' in this section includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or labour thereof.

Citizen suit provision to enforce Resource Conservation and Recovery Act [RCR] in 42U.S.C. §6972 (2012) also has a similar legal framework to the Clean Water Act' citizen suit. A variation made in time-limit prohibited from commencing an action that is sixty days and ninety days according to related conditions, as

stated in Subsection (b). Subsection (b) also promulgates more unlawful activities than those in Clean Water Act citizen suit. For jurisdiction, as stated in Subsection (a), the litigation may be brought in the district court in which the alleged violation or endangerment occurs.

Title 16U.S.C. §1540(g) introduces a somewhat different design of citizen-suit to enforce The Endangered Species Act [E.S.A]. Subsection (g) uses specific terms of citizen-suit as a civil action:

[(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who allegedly violates any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, under section 1535(g)(2)(B)(ii) of this title, the prohibitions outlined in or authorized according to section 1533(d) or 1538(a)(1)(B) of this title for the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.] (Office of The Law Revision Counsel, n.d).

Citizen suit for E.S.A enforcement has specific claims relating to its particular' condition and against whom the action commenced. Subsection (g)(3)(A) also sets a specific jurisdiction that the citizen may file a citizen suit in the district court in which the violation occurs. E.S.A. citizen suit entitled the plaintiff to seek injunctive relief based on E.S.A. and the right that may have under any common law or statute to look for enforcement of any limitation or standard.

Provision 5U.S.C. §702 as a supporting codification to A.P.A. (1946) entitles citizens the right to review. This form of civil litigation has an entirely different meaning from an original citizen suit, which permits a person suffering legal wrong, adversely be affected or aggrieved because of agency action, within the meaning of

a relevant statute, to commence the judicial review. It may seek relief other than money damages, stating a claim that an officer or agency or labour thereof acted or failed to act in an official capacity or under complexion of legal authority. The specific claim with this is reviewing agency action whether it makes a person suffering legal wrong, adversely affect or aggrieve, in the meaning of a relevant statute. It is an individual claim.

Another Codification that also provides citizen litigation is 21C.F.R§10.30 in enforcing food, drug, and public health statutory through a citizen petition model (National Archives, n.d). In this model, a citizen may apply a petition, application, or other document requesting the Commissioner to establish, revoke, or amend an order or regulation, or to take or not to take any other form of administrative action, under the laws administered by the Food and Drug Administration [F.D.A.]. A citizen here includes an individual, partnership, corporation, association, or other legal entity. If F.D.A. fails to act on a citizen's petition, a citizen then has a right to claim F.D.A. through the District Court. Such as a citizen petition case against F.D.A. to remove a higher-dose version of an Alzheimer's drug from the market through The District Court of Columbia (Bompey, 2012).

The U.S. Code does not provide citizen suit procedures in detail. The guidelines then fall into the general civil practices governed in The Federal Rules of Civil Procedures [F.R.C.P] or other specific provisions. Unlike a class action, as provided in Rule 23(c) and (d) of F.R.C.P, there is no specific provision relating to a court certification to determine whether the action may be certified as a citizen suit. Even no provision relating an order to the plaintiff notifies all interested citizens. It means that a citizen suit needs no certification and notification. The related statutes notify the legal ground of citizen suit. It is about the alleged violation of laws, any effluent standard or limitation by the U.S, any other governmental instrumentality or agency, or the Administrator's failure to perform any act or duty, which is not his discretion. Since the plaintiff may not claim other than those as notified in the statutes, it makes sense that no need for notification about the claim to all

citizens.

The public interest has an ambiguous meaning in *Acorda Therapeutics vs. Apotex* in early September 2011. In that case, the Second Circuit's decision is likely to recognize the brand-name drug companies to file a sham citizen petition based on their self-interest for the sole purpose to delay or altogether preclude generic competition and extend their monopolies (Franklin, 2017). It will harm more significant consumers in the form of higher drug prices and diminished choice. From that case, it learns that there may be a citizen suit that was brought on behalf of self-interest or group interest, rather than public-at-large interests. It is important then, to take into account Mossop's point of view (1993) that the parties' motivation to bring such actions should base on an altruistic basis, namely enforcing public law or the public interest, not their interests.

Thus, the environment law' citizen suits draw in three forms. First, a private citizen can bring a lawsuit against a citizen, corporation, or government body for engaging in violation of the statute. Second, a private citizen can bring a lawsuit against a government body for failing to perform a nondiscretionary duty. In the final form, less common form, citizens may sue for an injunction to reduce a potentially substantial and imminent endangerment involving the generation, handling, or disposal of waste, regardless of whether or not the defendant's conduct violates a statutory prohibition. Needless to say that today, most anti-pollution laws provide citizen suits as become a powerful means to ensure environmental law compliance.

The life of the U.S. citizen suit depends on the presidential administration's posture. For instance, the legislators in the Bush presidential administration posture criticize the citizen suit as a frivolous allegation, threatens to disrupt agency priorities, imposes crushing burdens on agencies, and defeats progress on key government initiatives such as infrastructure projects (Adelman & Glicksman, 2019). They also criticize that citizen suit undermines federal agencies' constitutional authority to implement the law by allowing citizens to

enforce rules without the mediating influence of political accountability (Johnson, 2014). While Adelman & Glicksman (2019) proved that the critiques misconceive both how the litigations' usage in practice and their potential value by finding that the Court recognized citizen suit by winning 46 to 47% of the cases 210 citizens environmental litigation from 2001 to 2016. It depicts that the Presidential administration's compliance with the statutes was weak. It also proves the subsequent critiques. Citizen suits brought by Public-interest environmental law organizations, such as Earthjustice and the Tulane Environmental Law Clinic (Earthjustice, 2021; Chambliss, 2021; Manupipatpong et al., 2020; Grafe, 2021; Environmental Law Clinics Tulane University, 2020; Smullin, 2020; Weissman, 2021) support what Adelman & Glicksman argue about.

Before analyzing how to adapt or modify citizen suits from The U.S. into the Indonesian and the Philippines context, below will describe the Indonesian and the Philippines litigation's system, places that will receive legal adoption.

The Indonesian and the Philippines Civil Litigation History

Historically, Netherland colonialism in Indonesia influenced the Indonesian' legal system, including the civil litigation system. Het Herziene Indonesisch Reglement [HIR] S.194 No.44. for Java and Madura Islands jurisdiction, and Recht Reglemen Buiten Gewijsten [RBg] S.1927 No.227 for out of Java and Madura Island, are those colonialist legal products which are still in effect today. Both do not recognize citizen suits, even class actions that come from the common law system. Otherwise, provide a "parties in joinder" procedure to commence a civil case involving many people. HIR, and RBg, adhere to point d'interet point d'action principle. The principle states that only an interested person has the right to sue. In another word, any person can't file an action on behalf of any other person's interest, including public or citizens' interests without a permit.

Differently, as studied by Luyt (2019) and Serizawa (2019), the Philippines is influenced by

the colonial-American legal system more than the Spanish legal system. For instance, as Roush (2019) found, providing the U.S procedural law, such as class action in the previous Philippine Rules of Court 1964 (Rule 3. Sec.12), as being reformed in 1997 (Rule 3. Sec.12).

Recently, Indonesia has developed its legal standing doctrine. It starts by adopting the class action and N.G.O.'s legal standing from the U.S. regime to enforce the area of consumer law (Law No.8 of 1999), environmental law (Law No.32 of 2009), forestry law (Law No.41 of 1999), aviation law (Law No.1 of 2009), and other public-tort laws. The Supreme Court Regulation No.1 of 2002 regulates class action procedures in detail. It makes sense arguing N.G.O.'s legal standing is 'the teeth' of public law by authorizing N.G.O. to commence litigation on behalf of their public interest advocacy. While previously, the Indonesian citizens' participation only extends to supervising and reporting on alleged violations or noncompliance of public law, not to 'the teeth' by authorizing citizens to take action to assist in government law enforcement tasks. The Indonesian and the Philippine civil litigation background and development show that the legal adoption may be considered in the legal development, even between different legal systems, such as Indonesia and the U.S. Nevertheless, the colonization makes the adoption process earlier to be made.

Comparatively, the Indonesian and the Philippines' civil action originally consist of (1) an action, (2) brought by a person or persons having an interest which is or may be adversely affected as a plaintiff or plaintiffs, (3) against a person or persons who violate the other party's right or interest, on the ground that the defendant breaches the contractor violates the law which caused injury to the plaintiff(s), (4) seeking for declaratory(s), constitutive(s), or condemnatory relief for personal injury or damages (Article 8 no.3 of BRv; Rule 1(3), Rule 2(2), Rule 3(1) of 1997 Rules of Civil Procedures; Mertokusumo, 2010). A person as the element means an individual, a group, a private or public legal entity. The nature of the claim in a civil action is commonly an individual's right or individual interest, not the public interest.

The general court which authorized to hear general civil cases in Indonesia, as stated in Article 2 of Law No.8 of 2004, is the District Court. The State may create a specific court under the structure of the District Court to hear specific civil cases, such as Business Court and Industrial Relation Court. Another court body is the Religious Court, which is authorized to examine civil matters relating to Islamic law issues or for Muslim people, as governed by Law No. 7 of 1989 as amended by Law No.3 of 2006 and Law No.50 of 2009.

In the Philippines, based on Rule 5. Sec.1 of 1997 Rules of Civil Procedures, The Municipal Trial Courts and the Regional Trial Courts have general jurisdiction to hear ordinary civil cases. The Municipal Trial Courts and the Regional Trial Courts also have the power to hear civil, crime, and special civil actions involving enforcement or violations of environmental, and other related laws, rules and regulations as regulated by the Supreme Court Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC).

There is a principle that the Court burdens the parties with paying the filing fees. In Indonesia, it can be seen in Articles 181, 182, 183 HIR. While in the Philippines, it is provided in A.M. No. 17-12-09-SC, as well as shown by R.14 s.1, R.20 s.6, R.40 s.5, R.42 s.1, R.43 s.5, R.45 s.3, R.46 s.3, R.62 s.7, R.64 s.4, R.67 s.12 of the Philippines 1997 Rules of Civil Procedures. This principle implies that if the parties request court assistance to adjudicate their claims, the costs must be borne by them, not by the State, considering that the interests to be perpetrated are individual, not public interests (Mertokusumo, 2010). On the other hand, as governed in Indonesian Law No. 24 of 2003, the parties filing a case at the Constitutional Court have no obligation to pay court costs. It means that in the public law cases, such as in Constitutional court cases, the litigants have no obligation to pay proceeding costs. The state should bear such a cost. Differently, the Philippines Supreme Court burden the petitioner to pay the legal fee for any En Banc cases under the 1987 Philippine Constitution (The Supreme Court of the Philippines, n.d).

Considering Lenaerts and Gutman's (2016) and Albert's (2016) view, Indonesia and the Philippines may use comparative law studies to develop the law by adopting foreign laws. Adopting foreign law may take a functional approach from the seven approaches to studying laws comparatively (Sundari, 2014). Studying the U.S. citizen suit functionally may focus on its benefits, functions, scope, elements, and legal framework. Refer to Orücü (2000), Efrat (2016) and Sara et al. (2017) arguments, below will describe comparatively the adoption process of the U.S citizen suit with the functional approach in Indonesia and the Philippines, to show whether it leads to a 'mismatch' and a complex condition, or not.

Indonesia and the Philippines' Experiences in Adopting The U.S Citizen Suit

Indonesia adopted the U.S citizen suit in the early of 2000 (Sundari, 2013) through judge made-law in Nunukan case No.28/PDT.G/2003/PN.JKT.PST (Republic of Indonesia Supreme Court, n.d) where Munir Cs sued against the Government on the basis that the Government allegedly neglected the migrant workers who were deported in Nunukan. The other citizen suits commenced, in the variate areas of issues, such as the increment of national electricity tariff, military emergency in Aceh, primary and secondary school national examination policy, social security policy, legal protection for domestic workers, drinking water management by the private sector, public road service, pollution of river water and groundwater, Juanda Airport security services, supervision of financial services activities, protection of cultural heritage areas' cases (Sundari, 2013; Republic of Indonesia Supreme Court, n.d). This occurrence breaks Orücü point of view (2000) that the adoption process will become more complicated between two different legal systems.

It describes that the citizen suit practices by the Indonesian judges have been used in a broader area of law than the U.S origin which was particularly established for the environmental law enforcement. Even if no citizen suit legislation was established and only the Republic of

Indonesia Supreme Court Letter No.036/KMA/SK/11/2013 which provides citizen suit for environmental law enforcement, the variate citizen suit practices express how the Indonesian citizens need a regenerative procedure to enforce their rights.

The first adoption of citizen suit in the Philippines also comes by judge-made law in *Oposa v. Factoran* (G.R. 101083, July 30, 1993), the first major environmental case (The LAWPHIL Project, n.d), in which the plaintiffs on behalf of their children and future generations, asking the Court to order the government to cancel all existing timber license agreements in the Philippines and to stop issuing new licenses. Furthermore, The Philippines, as well as Indonesia, establishes the citizen suit that focuses on environmental law enforcement through the Supreme Court Rules of Procedure for Environmental Cases 2010 (A.M. No. 09-6-8-SC). The Supreme Court has that power under Article VIII Sec.5(5) of the Philippines' Constitution 1987 provision. Nevertheless, A.M. No. 09-6-8-SC has no detailed procedures to bring a citizen suit (The Government of the Philippines, n.d.; The Supreme Court of the Philippines, n.d). One environment law that provides citizen suit is R.A No.9003 of an Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for Other Purposes.

Contrary to Indonesia's experiences that surprisingly broaden citizen suits practices for various legal issues, the Philippines only focuses on the environmental and related issues. Such as, *Victoria Segovia et al vs. The Climate Change Commission, et al* (G.R No.211010, March 7, 2017) about The Road Sharing Principles issue for all-weather sidewalks and bicycling. It is not surprising that the Philippines follow the U.S citizen suit regime originally, relating to the colonization background.

The Adoption, Adaption, and Modification through Functional Approach

Key (2017) argues that adoption may adopt one originated if there is no difference exists. This section will describe how the argument works in Indonesia and the Philippines' adoption experiences, using the functional approach, as Zweigert and Kötz's point of few (J.H.M van Erp, 1999). It will look into the benefits, the function, and the essential elements of citizen suit as adopted law, to make it be accepted and may work in the adopting country's context by adopting originally, adapting, or modifying.

The benefit.

Firstly, it is better to understand the citizen suit benefit before adopting. As provided in 33U.S.C§1365(a), the U.S citizen suit has an advantage for citizens to claim their interest or the public interest through court adjudication. This procedure is equal to implementing citizens' access to justice as a part of human rights, so that may be accepted by every country that provides human rights. Article 5 of Indonesian Law No.39 of 1999 and Section 11 of the Philippines Constitution 1987 provide that citizen-access with justice rights. Considering Mossop (1993) and Sharaningtyas (2016) argue, citizen suit has a meaningful impact on implementing public participation in the democratic state principle as 'the check and balance' instrument. Since Indonesia and the Philippines are democratic states, the benefits of citizen suit may be adapted as recognition of citizens' access to justice rights.

The function.

The U.S. authorization for an ordinary citizen to assist the State in enforcing public law supports what Mossop (1993) believes that citizen suit is "the teeth" to public law and public rights. This phenomenon was similar to Indonesia which introduces a similar form of 'the teeth' under the N.G.O.'s legal standing model, as a part for citizens to advocate or assist the State in enforcing public law. The function of Indonesian N.G.O.'s legal standing model and the U.S. citizen suit have similarities, as the 'teeth' of public law or public interest. Flores (2021), Chambliss (2021), Manupipatpong et al.(2020), Grafe (2021), and Environmental Law Clinics Tulane University (2020) found that The U.S. environmental law' N.G.O.'s to bring environmental citizen suits supports that

similarity. By the reasoning of analogy, this similarity may become the adaptation to adopt a citizen suit. No 'mismatch' exists here as Orücü is concerned (2000) since only broadening the scope of the plaintiff to strengthen 'the teeth' by authorizing a citizen to do so. Based on Adelman and Glicksman (2019), Hodas (1995), and Johnson's (2014) argument, adopting citizens suit means Indonesia commits to broadening the 'the teeth' to public law or public interest enforcement, depicting citizen suit as an essential legal innovation, and do not criticize citizen suit as undermines the Government's constitutional authority to implement the law.

Contrarily, the Philippines intends to adopt the U.S legal system, including citizen suits, since, in the beginning, the Philippines commit to adopting the colonized' U.S law, especially in the justice system. A little bit of difference exists only about the way to promulgate. Despite providing citizen suits in the principal Codes then reaffirming in certain statutes relating to environmental law, as originally in the U.S, the Philippines directly establish citizen suits particularly to enforce environmental law.

Commonly, the U.S. only recognises citizen-suit in the environmental laws. While the other area of rules, such as food, drug, ad public health statutory, uses a different form of civil litigation, namely a citizen-petition model, as governed in 21[C.F.R.] § 10.30. Similarly, the Philippines adopt that petition model to claim another citizen's rights as provided under Rule 65 of the Rules of Court. It is shown in Isabelita C.Sinuya et al vs.Hon. Executive Secretary et al (G.R. No. 162230, April 28, 2010) related the Japan invasion victims against the general waiver of claims made by the Philippines government in the Treaty of Peace with Japan. Differently, despite adopting the U.S petition model, Indonesia broadens the use of the citizen suit model to claim another citizen's rights.

The elements of citizen suit.

Referring to the citizen suit provisions, such in The U.S.C., F.C.R., and the statutes, it shows six elements, that are:

- 1) A civil action,
- 2) By a citizen or person, having an interest

which is or may be adversely affected, as the plaintiff(s),

- 3) Primarily against the State or Government, or broadly against every public law' violator, as the defendant(s),
- 4) On the ground that the defendant (s) allegedly violates an effluent standard, limitation, an order, or failure to perform any act or duty in the area of public laws,
- 5) Relief against the defendant(s) to enforce such an effluent standard, limitation, or such an order, or to order the defendant(s) to perform such act or duty, and to apply any appropriate civil penalties, and
- 6) Authorized by the State.

The essential element in a citizen-suit is authorising an ordinary citizen to enforce public law through civil litigation. It is a different concept for Indonesia previously that in a civil action, an individual even a group claim for their interests, not for public law or public interest as stated in Article 8 No.3 BRv, and Mertokusumo (2010) point of view. The judge made law and the Supreme Court through Letter No.036/KMA/SK/11/2013 have broken the conventional concept by recognizing an individual citizen to claim on behalf of public interest or all the citizens' interest through the citizen suit model. Even, citizen suit in the Philippines also collapses the traditional rule on personal and direct interest (The Government of the Philippines, n.d).

Based on the Supreme Court Letter No.036/KMA/SK/11/2013 which regulates guidelines for handling environmental cases, the elements of a citizen suit consist of:

- 1) A civil action,
- 2) by any Indonesian as a plaintiff on behalf of the public interests, including the nation and the state's interest, the public or community services, and the development in various fields,
- 3) Primarily against the State or Government, even private as the defendant,
- 4) On the ground that the defendant (s) allegedly doing unlawful, omission or not perform of obligations.

The Supreme Court Letter No.036/KMA/SK/11/2013 in Indonesia is similar to the Supreme Court Rules of Procedure for

Environmental Cases 2010 (A.M. No. 09-6-8-SC) in the Philippines where set citizen suit through the Supreme Court Regulation, and where both provide a specific procedure of environmental law enforcement.

No relief was stated as an element of the Indonesian citizen suit. It is not as complete as The Philippines and the U.S have. Based on Rule 2. Section 5 of A.M. No. 09-6-8-SC), the citizen suit elements include:

- 1) civil action
- 2) by any Filipino citizen in the representation of others, including minors or generations yet unborn, 3) to enforce rights or obligations under environmental laws.

The relief is separately regulated under Rule 5. Section 1 of A.M. No. 09-6-8-SC, where the judges may grant to the plaintiff proper reliefs, includes the protection, preservation or rehabilitation of the environment, require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose.

Surprisingly, the U.S which commonly uses judge-made law as the main tool in law-making requires State authorization for any person to bring a citizen suit. Indeed, ignoring the State authorization element as Indonesia and the Philippines do, has merit for any person to bring citizen suit broadly, as shown in Indonesia's practices. Nevertheless, in forthcoming, it makes sense if Indonesia and the Philippines adapt by providing citizen suits under the legislation even including State authorization as the element to support certainty and since Indonesia puts the written law as the primary legal source (Sundari & Sumiarni, 2015).

The attorney fee payment model.

The attorney fee payment model is important as a tool to give incentive for a citizen to bring a civil suit. If the Indonesian legal system has accepted the benefit, function, scope, and essential elements of citizen-suit, it is more manageable to adopt its legal framework with or without adapting or modifying it. One of the citizen legal frameworks which may become a handicap in Indonesia is the plaintiff's financial ability

(Sundari, 2013). Following Florio's (2000) argument, an attorney fee is a specific issue that encourages citizen-suit. 33U.S.C§1365(d) set an attorney fee as a cost to whoever represents the party in person to commence a citizen suit.

Indonesian has no attorney fee rule as well as 33U.S.C§1365(d) set. In practice, it is difficult for a litigant to pay the required attorney fees under society's economic conditions. It looks like impossible then to adopt the attorney fee model in Indonesia which may create a burden to whoever voluntarily commences a citizen suit. Indeed, the model principal analogues with a form of incentive to bring a civil suit. Hence, Indonesia may modify the required attorney fee model by enlarging the "free of charge" court cost policy for an indigent litigant, as set in Law No.16 of 2011, as an incentive to those who commencing citizen suit.

Comparatively, The Philippines adopts initially the required attorney fee model from the U.S. Chapter VII. Section 52 (c) of R.A No.9003 promulgates that reasonable attorney's fees shall be awarded if the citizen as plaintiff failed. Moreover, the Philippines also provides a form of special incentive, as set in Rule 2. Section 12 of A.M. No. 09-6-8-SC, by deferring the payment of filing and other legal fees by the plaintiff until after judgment unless the plaintiff is allowed to litigate as an indigent. It shall constitute a first lien on the judgment award. These double policies are supposed to encourage a citizen to initiate a civil suit.

Court jurisdiction.

The U.S. civil justice means justice other than for criminals, which includes administrative cases. As promulgated in 33U.S.C §1365(a), a citizen-suit is a civil action of public law or public interest. It may consist of administrative issues. The district court has jurisdiction to hear it.

Differently, Indonesia's civil justice means justice other than for criminals and administrative cases and falls into the District Court jurisdiction, as set in Law No.2 of 1986. So, when a citizen brings a citizen suit relating to administrative matters, it should fall into the Administrative Court to hear, not into the District Court as the U.S. authorizes. Adopting court jurisdiction for

citizen suit from the U.S regime will bring out a 'mismatch.' The Indonesian Government can modify, for instance, by authorizing both District Court and Administrative Court to hear citizen suits, relating to the citizen suit' legal basis and relief.

Since the citizen suit is a special procedure for environmental causes, the environment court in the Philippines has jurisdiction to hear the citizen suit. The Supreme Court highly support the environmental law enforcement by designing 117 environmental courts, comprising first and second level courts, to handle all types of environmental cases arising from at least fourteen environmental laws, including Revised Forestry Code, Marine Pollution Law, Toxic Substances and Hazardous Waste Act, People's Small-Scale Mining Act, National Integrated Protected Areas Act, Philippine Mining Act, Indigenous People's Rights Act, Philippine Fisheries Code, Clean Air Act, Ecological Solid Waste Management Act, National Caves and Cave Resources Management Act, Wildlife Conservation and Protection Act, Chainsaw Act, and Clean Water Act. It is a modification in the Philippines, while the U.S and Indonesia put the citizen suitcases under the general court jurisdiction, such as District Court.

Conclusions

Its common sense for any state to adopt the U.S citizen suit, considering the U.S is the common law state who has the real impetus for the development of citizen-suit, as well as considering its benefits to advocate public interest. Despite the differences in legal system existence as Orücü warned in 2000, today Indonesia and the Philippines' experience show that it may be adopted broadly in other states.

The Philippines follows most of the U.S citizen suit regime initially, since having the same legal system under the colonization background. The original adoption includes the environmental cases in which citizen suit procedure is mainly being brought, the elements of a citizen suit, and even the attorney fee payment model as required by the failed plaintiff. Meanwhile, it differs in the court jurisdiction to hear citizen suits. Despite bringing to the general court such as District

Court, the Philippine setting environment a special court to hear citizen suits.

Indonesia also shows a good experience of adopting the U.S citizen suit regime even though has a different legal system background. The fact shows that it's not as complex as Orücü argues (2000) to adopt the U.S into Indonesia. Through the functional approach, as Zweigert and Kötz point out (J.H.M van Erp, 1999), considering its benefits, function, and essential element, the U.S citizen suit may be adopted in Indonesia with any adaption, modification, and originally adoption of its specific legal ideas and frameworks. Compared with the Philippines, Indonesia shall make more adaption and modifications, such as the attorney fee payment model as the incentive to bring citizen suits, and the court jurisdiction to hear citizen suits. On other hand, Indonesia shows a moderate modification by broadening the areas of the law in which citizen suit procedures may be brought, other than environmental law enforcement.

This research is significant to contribute to the possibility to make adoption between countries with different legal system backgrounds. However, it is better to combine the functional approach in studying the U.S. citizen suit in the context to adopt it with the other techniques, such as legal culture and economic approaches. The two methods together with the State's commitment make the adoption of citizen suit functionally, culturally, economically, and politically accepted and work well.

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