

Unraveling the ambiguity of the commonality element in Indonesian class action litigation

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Abstract: The meaning of commonality in Class Action (CA) lawsuits in Indonesia, which remains abstractly formulated, leaves room for judges to interpret it differently, potentially leading to "disparities in rulings and legal uncertainty." This research aims to compare the regulation of CA in Indonesia and the United States, specifically regarding the concept of commonality, and to formulate a more concrete and applicable concept for the Indonesian legal system. The normative legal research used in this study employs a legislative and comparative law approach. Based on the study, this research found that in the United States, commonality has developed more clearly through jurisprudence by emphasizing a single core issue (common contention) and the dominance of a shared issue (predominance), unlike Indonesia, which still lacks a definite standard. From this condition, this research takes a firm position that commonality should not be merely interpreted as a general similarity, but rather as a unity of substantive issues that can be proven and resolved collectively in a single decision. On this basis, it is necessary to formulate a norm that is "concrete, measurable, and operational" so that the CA mechanism can truly provide legal certainty.

Keywords: Commonality; Legal Certainty; Civil Procedure Law.

INTRODUCTION

In the Supreme Court of the Republic of Indonesia's Annual Report for 2025, the number of civil cases entering the cassation level was 7,945 cases (general civil) and 1,450 cases (special civil). Furthermore, in the general court environment (first instance level), the number of civil cases reached millions, totaling 2,178,682 (Indonesia, 2025). This condition indicates the large number of cases handled by judges from the first instance to cassation; thus, there is a need for an effective and efficient case resolution model to prevent cases from "piling up." One mechanism for collective civil case

resolution (not one by one) is through the Class Actions (CA) representative lawsuit institution.

Positively, the Supreme Court of the United States (1980) praised this mechanism by stating that "aggrieved parties may not have an effective legal remedy unless they can use the CA mechanism" (Choi & Spier, 2022). In Indonesia, this CA lawsuit is regulated under Article 91 of the Republic of Indonesia Law Number 32 of 2009 concerning Environmental Protection and Management (Law No. 32 of 2009) (Sudiarawan et al., 2022). Paragraph (1) grants the public the right to file a CA lawsuit, and paragraph (2) stipulates that this CA lawsuit can be filed if it meets the criteria of "commonality of facts or events, legal basis, and types of claims between the group representative and its group members. "Substantively and procedurally, this CA lawsuit is then regulated in the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2002 concerning Class Action Lawsuits (PERMA No. 1 of 2002).

Sams, like Law No. 32 of 2009, according to PERMA No. 1 of 2002, one of the elements of a CA lawsuit according to Article 1 letter a is that it must have "commonality of facts or legal basis between the group representative and the group members. " Not far from this provision, Article 2 letter b stipulates that a CA must have "commonality of facts or events and commonality of the legal basis used that is substantial, as well as commonality of the type of claim between the group representative and the group members." The provision regarding "commonality" as contained in Law No. 32 of 2009 and PERMA No. 1 of 2002 is still "abstract and does not provide clear operational parameters regarding the limits or measures of the intended 'commonality,' whether in terms of facts, legal basis, or type of claim."

The absence of clear and concrete indicators opens the space for judges to interpret it in various ways, potentially leading to disparities in rulings, whereas the Indonesian legal system, characterized by civil law with written law as the main source of law (Fuad et al., 2022), must ensure that every person has the same rights and that the protection of those rights results in similar rulings in every case (Eriksen, 2023). From this description, it shows that there is a legal gap in the form of "legal uncertainty in the regulation of the element of 'commonality' in CA lawsuits"; thus, there is an urgency to conduct the research *a quo*.

Various previous studies have examined CA lawsuits from diverse perspectives, including the effectiveness of dispute resolution mechanisms, litigation strategies, judicial behavior, technological innovations, and the economic consequences of collective lawsuits (Hong & Le, 2026) (Wang et al., 2022) (Cui et al., 2024) (Kaya & Şahin-Şengül, 2024) (Brogaard et al., 2024). However, these studies have primarily focused on institutional performance and the external impact of CA. There has yet to be research specifically addressing the conceptual and operational meaning of commonality as a primary requirement for class action certification, particularly in civil law countries like Indonesia, which demands legal certainty through clear normative formulations and measurable criteria.

However, various studies have focused more on institutional performance and the external impact of CA, and have not specifically discussed the conceptual and operational meaning of commonality as a fundamental requirement for class action certification. The existence of such a gap becomes particularly important in civil law countries like Indonesia, which demands legal certainty through clearly written norms and measurable criteria. The current regulations in Indonesia still contain ambiguities

and do not provide objective parameters for assessing commonality, which has the potential to cause disparities in judicial decisions. Therefore, this research compares the regulation of CA in Indonesia and the United States to identify the similarities and differences between the civil law and common law approaches. The results of this comparison serve as a basis for formulating a concrete, applicable, and character-consistent concept of commonality with the Indonesian legal system. The significance of this research lies in its effort to clarify abstract legal requirements, reduce interpretative uncertainty, and offer a model of legal reform relevant to other countries facing similar issues.

The novelty of this research lies in the concept of commonality, which is no longer theoretical but in a concrete and operational form. Where this concept is formulated and articulated by adapting regulations from the United States but without transplanting them as they are, instead adjusting them to fit the Indonesian legal system.

METHODS

This research uses a normative legal research method with a statutory approach and a comparative legal approach (Marzuki, 2008), aimed at analyzing the regulation of CA in Indonesia and the United States, particularly concerning the element of commonality. The legal materials used include primary legal materials in the form of legislation and jurisprudence, as well as secondary legal materials in the form of literature and relevant previous research. The analysis is conducted qualitatively by examining the normative gaps in the Indonesian legal system, then comparing them with the development of the concept of commonality in American legal practice to formulate a more concrete and operational concept.

RESULTS AND DISCUSSION

Regulation of Class Actions in Indonesia and Its Comparison with the United States

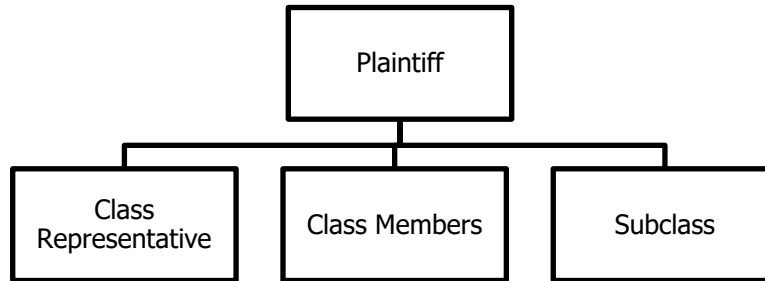
Regulation of Class Actions in Indonesia

In CHAPTER XIII on Environmental Dispute Resolution Juncto in Part Three on Environmental Dispute Resolution Thru the Court, specifically in Paragraph 5, it regulates the "community lawsuit right" as stipulated in Article 91 of Law No. 32 of 2009 (Wantu et al., 2023). Upon closer examination, the community's right to sue leads to a CA lawsuit, where paragraph (1) grants the community the right to file a "class action lawsuit," and then in paragraph (2) it is stipulated that such a lawsuit exists when there is "commonality of facts or events, legal basis, and types of claims between the group representative and its group members." The mechanism for examining this lawsuit is not regulated in Law No. 32 of 2009, and Article 91 paragraph (3) mandates that "provisions regarding the community's right to sue shall be implemented in accordance with statutory regulations."

Since Law No. 32 of 2009 does not yet specifically regulate CA lawsuits, as long as it does not contradict this law, the CA regulations in PERMA No. 1 of 2002 apply (Kurniawan et al., 2025). Article 1 letter a defines "Class Action Lawsuit" as "a procedure for filing a lawsuit in which one or more persons representing a group file a

lawsuit for themselves and, at the same time, represent a large number of people who have commonality of facts or legal basis between the group representative and the group members in question." Then, for the composition of the plaintiffs in the CA lawsuit, it can be seen in the following table:

Figure 1. Composition of Plaintiffs in a Class Action Lawsuit



Source: Author's Elaboration, 2026.

The figure shows the composition of the CA plaintiffs, which differs from that in a regular lawsuit. Whereas in a regular lawsuit, there are no "representatives, members, and subgroups." PERMA No. 1 of 2002 defines these three terms, briefly, a group representative is one or more persons who suffer losses and file a lawsuit while representing a larger group (Article 1 letter b); a group member is several people who also suffer losses and whose interests are represented in court (Article 1 letter c); while a subgroup is a smaller grouping of group members based on differences in the level of suffering and/or types of loss (Article 1 letter d).

Article 2 of PERMA No. 1 of 2002 stipulates that a case may be filed through a CA lawsuit if the group members are "so numerous" that it would be ineffective to file the case individually or collectively in a single lawsuit (letter a). Then, in the case, there must be "commonality of facts or events and commonality of the legal basis used that is substantial, as well as commonality of the type of claim between the group representative and its group members" (letter b). In addition, the group representative must possess honesty and sincerity in protecting the interests of the group members they represent (letter c) (Meilany, 2024).

The judge in the CA lawsuit case plays an active role to ensure that the interests of all group members are optimally protected. This role is reflected, among other things, in the judge's authority to provide directions to the group representative, including suggesting the replacement of legal counsel if it is proven that the actions of the legal counsel are contrary to their duty to defend and protect the interests of the group members.

In line with this, Article 3, paragraph (1) of PERMA No. 1 of 2002 also requires that a CA lawsuit must be composed by fulfilling the elements: "the complete and clear identity of the group representative as the legitimate representative; the specific formulation of the group definition without having to include all members but still allowing for adequate identification; and the availability of group member information for notification purposes to ensure their right to participate."

Additionally, the factual description of the case must be presented in detail and clearly, encompassing the overall conditions experienced by both identified and unidentified group members. In cases where there are differences in types of claims or losses, it is possible to divide into subgroups to maintain substantive justice. So in this context, the claim for compensation must be formulated clearly, including the distribution mechanism and the proposal for the formation of a team or panel tasked with managing the implementation of the distribution. This is necessary to provide legal certainty and effectiveness in the restoration of the group's members' rights (Pradnyana, 2025).

The above requirements must be met because the judge will examine them during the trial. Article 5, paragraph (1) of PERMA No. 1 of 2002 stipulates that at the beginning of the trial examination process, the judge is obliged to examine and consider the criteria for the CA lawsuit as stipulated in Article 2. Then, in paragraph (3), if the judge declares the CA lawsuit valid, it will be recorded in the court's decree. In paragraph (5), it is determined that if the CA lawsuit is invalid, "the examination of the lawsuit is terminated by the judge's decision."

From the explanation above, it can be understood that the CA lawsuit undergoes a strict examination to be processed further. Its function is to ensure that the cases examined through this mechanism truly meet the characteristics of a legitimate collective, are not misused as a means of ordinary lawsuits "wrapped" en masse, and still guarantee that the interests of each group member both identified and unidentified are proportionally protected.

Although Indonesia has regulated CA lawsuits, the operational regulations remain at the level of Supreme Court Regulations rather than law, which should comprehensively regulate both substantive and procedural aspects. In addition, PERMA Number 1 of 2002 requires that the lawsuit meet the criteria of "commonality of facts or events, commonality of substantial legal basis, and commonality of types of claims between the group representative and the group members" (see Article 2, letter b). However, it does not provide further explanation regarding the meaning and limits of the concept of "commonality." The ambiguity of this norm can lead to disparities in judicial assessments, resulting in different rulings on similar cases.

This issue has become urgent because PERMA No. 1 of 2002 does not specify operational indicators for when commonality of "facts, legal basis, or type of claim" is sufficient to meet the commonality element for filing a CA lawsuit. The consequence is that judges are given very broad discretion to assess commonality on a case-by-case basis, without a uniform standard. In this situation, one court may accept a CA, while another may reject a substantially similar case due to differing interpretations. This creates legal uncertainty, whereas the law should ensure predictability for those seeking justice. Indonesia, which is deeply rooted in the civil law system where written norms serve as the primary guidelines, thus the absence of measurable parameters regarding

commonality indicates a fundamental regulatory deficiency. In this case, the issue of commonality in the study *a quo* is not merely a procedural matter, but also intersects with the need to ensure "equality of treatment, consistency of decisions, and guarantees of access to justice."

Class Action Regulation in the United States

In the United States, CA lawsuits are governed by Rules 23(a)-(h) of the Federal Rules of Civil Procedure (FRCP) (Zimmerman, 2022). Where the regulations relate to the basic requirements of the lawsuit, types of CA, certification process, notification to group members, legal consequences of the decision, trial management, settlement approval, and the appointment of group counsel. The *a quo* research departs from the unclear definition of "commonality of facts or legal basis between the group representative and group members. However, the FRCP regulates many matters; to keep the study focused, it addresses only Rules a and b.

A CA lawsuit under Rule 23(a) can be filed by "one or more" group members acting as representative parties for and on behalf of all group members, as long as it meets several predetermined prerequisites. This provision requires that, for a lawsuit to meet the CA qualifications, the number of group members must be so large that combining all members into a single lawsuit becomes impractical, making the representative mechanism relevant. In addition, there must be commonality regarding the legal or factual questions applicable to all group members, so that there is a common basis for filing the lawsuit. The claims or defenses put forward by the group representative must also be typical of, or consistent with, those of other group members, indicating a shared legal interest. The group representative, in this context, must ensure the fair and adequate protection of the interests of group members, allowing the CA lawsuit process to proceed while upholding the principles of collective justice and proper representation.

Requirements 1 to 4 are "cumulative," meaning that the CA lawsuit must meet all of them. Furthermore, Rule 23(b) stipulates that, in addition to meeting the provisions of subsection (a), the CA lawsuit must also meet the following criteria:

The requirements in points 1 to 4 are cumulative, meaning that the CA lawsuit must meet all of these elements simultaneously. Furthermore, Rule 23(b) stipulates that in addition to meeting the provisions in subsection (a), the CA lawsuit must also meet certain additional criteria. In this case, the filing of separate lawsuits by or against each member of the group has the potential to result in different or inconsistent judgments, thereby creating conflicting standards of behavior for parties dealing with the group or producing judgments against some members that will practically determine or affect the interests of other members who are not parties to the case and significantly hinder their ability to protect their interests. In addition, a class action lawsuit is also relevant if the party facing the group has acted or failed to act based on reasons that generally apply to the group, making the issuance of a general order or legal declaration appropriate. The court in this case must assess that the commonality of legal or factual issues among group members is more dominant than individual issues and that the representative action mechanism is a more appropriate and efficient way to resolve the dispute. In making that assessment, the court considers the interest of group members in controlling their cases individually, the extent to which and how other cases related to the same dispute have been filed, the level of necessity or appropriateness of

centralizing the examination of the case in a particular forum, and the potential difficulties that may arise in managing the CA lawsuit.

When examining the issue of "commonality of facts or legal basis between the group representative and group members" comparatively, we can see this in Rule 23(a)(2), which emphasizes that one of the requirements for a CA lawsuit must meet the criterion of "there being a common legal or factual question for all group members."

From this comparison, it is evident that in both Indonesia and the United States, there is still no certainty when interpreting this rule. However, in the United States, this issue has developed through various lines of jurisprudence. In the case of *Wal-Mart Stores, Inc. v. Dukes* (2011) (Laguerre, 2022), the United States Supreme Court affirmed that commonality means there is "one core issue" for all group members, based on one main allegation and can be resolved with one legal answer in a single ruling; this commonality must be real, supported by evidence of the same practices or policies, and not disturbed by fundamental differences among members, so that the judge can assess it strictly to ensure the case is indeed suitable for collective resolution (States, 2011).

The United States Supreme Court in the case of *General Telephone Co. v. Falcon* (1982) rejected the CA lawsuit (Patel et al., 2023), because the element of commonality was not met because the issues experienced by the plaintiff were personal and related to discrimination in promotion, which were not the same as the issues faced by the group he represented, which also included discrimination in hiring. In this case, it is understood that a CA lawsuit is not sufficient if all parties merely "claim to be discriminated against," but there must be an issue that is truly the same, which, if resolved, will apply to all group members (States, n.d.).

Furthermore, the Supreme Court of the United States in the case of *Amchem Products, Inc. v. Windsor* (1997) essentially recognized commonality in a limited manner in the case at hand there was indeed commonality among the class members who were all exposed to asbestos however, this was not sufficient to justify the lawsuit being filed in the form of a CA (Carroll, 2024), because according to the Supreme Court, commonality was outweighed by the numerous fundamental differences among class members, whether in terms of the type of exposure, timing, health conditions (some were already ill, some were not), or the applicable laws. Such a situation indicates that the existence of this general commonality lacks strong coherence, as the more dominant issues lean toward "individual" matters (States, 1997).

Furthermore, in *Comcast Corp. v. Behrend* (2013) (Levitin, 2021), the Supreme Court of the United States affirmed that predominance refers to common questions that are truly more dominant than those that differ among class members, especially in proving damages. In the *a quo* case, this requirement was not met, despite the presence of a common issue related to the "alleged" violation of competition law, as the calculation for each class member could not be performed using a "one consistent and uniform method." The proposed model mixed "various possibilities" of loss causation without distinguishing which were truly relevant to the recognized violation theory, so in this context, each class member had the potential to suffer losses in "different ways and amounts" (States, 2013).

In the case of *Tyson Foods, Inc. v. Bouaphakeo* (2016) (Lloyd, 2023), the United States Supreme Court affirmed that predominance is met when "the common issue is truly the heart of the dispute and can be proven in the same way for all class members," although individual differences still exist. In the case at hand, the main issue is whether time spent putting on and taking off work gear should be paid; this is the same question for all workers and can be resolved collectively. Although there are differences in working hours among individuals, the Supreme Court held that this does not diminish the common issue because it can be addressed with reasonable representative evidence. From this ruling, it is understood that, as long as the core issue is more dominant and its proof generally applies to all class members, predominance is satisfied (States, 2016).

The jurisprudence of the United States Supreme Court shows that CA certification based on Rule 23 has evolved into a cohesive doctrinal construct. In this case, commonality serves as an initial threshold requiring at least one common legal or factual issue that can yield the same answer for all group members. Typically, functions as a guaranty of representation, ensuring that the claims or defenses of the group representative arise from the same series of events and are substantially aligned with the interests of the represented group members. Meanwhile, predominance, which has developed more strongly in Rule 23(b)(3), is a stricter test requiring that common issues must be more dominant than individual issues, so that collective resolution remains superior, efficient, and fair. The development of rulings from Falcon to Wal-Mart, then Amchem, Comcast, and Tyson Foods, reflects the evolution of class certification, in which the court can conduct a substantive-functional assessment of whether a dispute is truly suitable for collective resolution.

From the explanation above, to understand more deeply and structurally the "commonality of facts or legal basis between group representatives and group members" in the CA lawsuit, the Author formulates it in the following table:

Table 1. Indicators of Commonality of Facts or Legal Basis (Commonality)

Indicator	Explanation
The core of the same issue	There must be one main issue that is the same and binds all group members.
Concrete commonality	Commonality must be real, based on the same facts or policies, not general assumptions.
Consistency of claims between representatives and members	The group representative's claim must be substantially aligned with the group members' claims.
Not just general commonality	It is not enough to have the same label or type of loss without identical substance.
Dominance of shared issues	The common issue must be more dominant than individual differences.
Collective proof	The main issue must be provable in the same way for all members.
Can be resolved in one ruling	The decision on the issue must directly apply to all group members.

Source: Author's Elaboration, 2026.

The table shows that commonality in the CA lawsuit not only demands the presence of "commonality" but also requires a unity of issues that can be resolved collectively. This emphasizes the need to integrate "facts and legal basis" for group representatives and group members. In this context, when the lawsuit is based on more dominant individual issues, the resolution should not be through CA, but through a regular lawsuit. Thus, the stronger the integration between the facts and legal basis experienced by the group representatives and group members, the greater the justification for using the CA mechanism; conversely, if individual differences are more dominant, then individual resolution becomes more appropriate.

Comparison of Commonality Regulations in Class Action Lawsuits in Indonesia and the United States

Marieke Oderkerk argues that the comparative approach in legal research has two objectives: normative and non-normative. First, the normative objective aims to evaluate and reform the law by seeking the "best solution" for the legal system. Second, the non-normative objective serves to describe and elaborate on "legal phenomena objectively" to understand the existing conditions (Oderkerk, 2025).

In this section, the main focus is to explore the non-normative purpose, to describe the condition of commonality regulation between Indonesia and the United States, "as it is." Then, for normative purposes, the Author will elaborate in a separate section on the ideal regulatory concept for Indonesia. To shorten and clarify the comparison, the Author visualizes it through the following table:

Table 2. Comparison of Commonality Indonesia vs United States

Aspect	Indonesia	United States
Legal Basis	PERMA No. 1 of 2002	Rule 23 of the FRCP
Formulation of Commonality	Commonality of facts, legal grounds, and claims	Common questions of law or fact
Parameters	Not specifically defined	Clearly defined (common contention, predominance)

Source: Author's Elaboration, 2026.

The table shows a fundamental difference between Indonesia and the United States in the regulation of commonality. In Indonesia, there are no clear parameters for assessing "commonality." On the other hand, in the United States, it has rapidly developed through jurisprudence, making the formulation of commonality more legally certain. The regulation in the United States provides greater legal certainty, thereby preventing lawsuits that should be filed individually from being bundled into "CA lawsuits."

Formulating Ideal Commonality in Class Action Lawsuits in Indonesia

The Spirit Underpinning Class Action Lawsuits

In criminal cases, a speedy trial refers to a process in which the defendant must be tried and sentenced within a reasonable time after their arrest. The trial process must also be conducted "within a reasonable time." One reason is to prevent the defendant from being detained for too long (Liyew, 2024).

Speedy trial is often associated with criminal justice, but that does not mean it is irrelevant to civil justice. The guarantee of a speedy trial in Indonesia is general in nature. It applies to all judicial environments, as this can be implicitly understood from the constitutional mandate of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "everyone is entitled to recognition, guaranty, protection, and legal certainty that is fair and equal treatment in the eyes of the law" (Susilo et al., 2024).

In this regard, Article 2 paragraph (1) of the Republic of Indonesia Law Number 48 of 2009 on Judicial Power (Law No. 48 of 2009) mandates that the administration of justice should not only be swift but also "simple and inexpensive" (Susilo et al., 2025). Just imagine if a case involves many parties and they are required to file their lawsuits "one by one," then such a judicial process does not reflect the mandate of the constitution and the law on judicial power.

Such a situation will lead to the accumulation of cases, which has already become a classic problem, especially if there is no regulation regarding CA. Such a backlog can exceed the court's capacity, resulting in delays in examining or even deciding cases (Whalen-Bridge, 2019). Based on the 2025 Annual Report of the Supreme Court of the Republic of Indonesia, the number of civil cases reaching the cassation level was 7,945 (general civil) and 1,450 (special civil). Furthermore, in the general court system (first instance), the number of civil cases reached millions, totaling 2,178,682 (Indonesia, 2025). This condition further underscores the urgency of CA lawsuits; in addition, their existence can enhance access to justice, an important principle in the administration of justice (Kang & Hong, 2025).

In a country, access to justice is important not only within the judiciary but also in the governance of a modern, effective administration. The OECD reinforces this in its report titled "Towards Inclusive Growth – Access to Justice," which found that the inability to resolve legal issues not only impacts the legal aspect itself but can also extend to the economic aspect. Even according to the World Justice Project (2019), around 5 billion people worldwide still lack access to justice (Taylor, 2025).

The presence of CA indicates a positive outcome, enabling access to justice for those in need. When judges handle cases with a proportional workload, it will also impact the "quality of the verdict" itself. This is in line with the findings of Federica Viapiana et al., who assert that "judges working under high pressure, especially due to case load, affect the quality of their work" (Viapiana et al., 2023).

Furthermore, the proportionality of the case load handled by judges also helps prevent judicial errors, as this not only affects the law but also has social repercussions, making it essential to minimize them as much as possible (Luppi & Parisi, 2010).

The explanation shows that the CA lawsuit is not only an institution for combining parties in a single case but also a means to implement a more fundamental principle: achieving a fast, simple, and low-cost judiciary. Through this mechanism, cases with similar characteristics that meet the requirements do not need to be filed separately, thus avoiding disparities in decisions. The existence of CA also strengthens access to justice, as the judicial process can reach communities in weak economic or social positions, while ensuring that the judiciary is used appropriately and effectively and provides real benefits to society.

Implications of the Ambiguity of the Meaning of Commonality in Class Action Lawsuits

Various perspectives hold that legal certainty is often regarded as one of the standards of a rule-of-law state, in which this principle demands that the law has "clarity of basis, purpose, and content of a regulation." This is so that everyone can predict the legal consequences of their actions (Shcherbanyuk et al., 2023). Without this certainty, the law will become a gray area where interpretations differ from one person to another.

The main reference for the CA lawsuit in Indonesia is PERMA No. 1 of 2002, but the Commonality in this PERMA is not specific. Commonality can be found in Article 1, letter a, which outlines the definition of a CA lawsuit, where one of its elements is "having commonality of facts or legal basis between the group representative and the group members in question." In line with that, Article 2, letter b, also establishes Commonality, which can be understood from the phrase "There is commonality of facts or events and commonality of the legal basis used that is substantial, as well as commonality of the type of claim between the group representative and the group members."

Although there are regulations regarding Commonality, both of these articles are abstract, raising the question: what is meant by Commonality of facts or legal basis? The absence of this boundary can lead judges to issue disparate rulings, meaning one judge may classify a case as a CA lawsuit, while another may not. Such a situation creates legal uncertainty for those seeking justice (Mu'in et al., 2023).

Such disparity not only fails to provide legal certainty but also undermines the fundamental principle of a fair trial, namely the guarantee of "equality before the law" (Sellers, 2022). Moreover, without limiting Commonality, it allows judges to examine and decide cases that are not CA, so in the evidence presentation, each member's interest and loss must be proven. In contrast, the concept of CA should make the examination, especially the evidence presentation, easier, because once one is proven, the losses of the other group members are also proven.

This condition indicates the need for strict, concrete, and operational regulations governing the measurement of Commonality in CA lawsuits, aimed at truly simplifying the litigation process, providing legal protection to seekers of justice, and ensuring consistent court rulings.

The Ideal Concept of Commonality in Class Action Lawsuits in Indonesia

Based on the explanation above, there is an urgent need to develop an ideal concept for the issue of Commonality in CA lawsuits in Indonesia. The concept offered is inspired by Rule 23(a)(2) FRCP and several relevant jurisprudences, such as in the case of *Wal-Mart Stores, Inc. v. Dukes* (2011), which emphasizes the existence of a common contention, and *Comcast Corp. v. Behrend* (2013), which underscores the predominance of common issues.

To achieve normative goals in comparative law, this research concretely formulates the norms that should be regulated regarding CA lawsuits. *First*, it must include a provision stating that CA lawsuits can only be filed if there is substantial commonality in both facts and legal grounds between the group representative and the group members. *Second*, commonality is considered fulfilled if the losses experienced by group members stem from "the same event, action, or policy, and there is at least one legal or factual issue that serves as the basis for determining the defendant's liability." *Third*, the claims

made by the group representative must substantially align with the claims of the group members, and the proof of the disputed issue can be conducted using the same evidence or proof method. *Fourth*, commonality is deemed not fulfilled if the determination of the defendant's liability depends on the individual circumstances of each group member or if the losses and their proof must be assessed separately. *Lastly, or fifth*, to ensure the proper application of this standard, the judge is obligated to assess the fulfillment of the commonality element at the initial stage, before entering the main examination of the case.

The concept is built to provide a clear boundary and a concrete formulation for the embodiment of Commonality in CA lawsuits. The provision in paragraph (1) is intended so that "commonality" must be substantial, meaning it is directly related to the basis of the lawsuit, and not just the Commonality of the situation or background of the events. Then, in paragraph (2), it serves as a concrete indicator aimed at facilitating the judge's initial assessment of whether the lawsuit in question falls under CA, using the criteria of common contention and predominance, ensuring that the collective resolution of the case is truly efficient and not fragmented. Then, paragraph (3) serves as a negative limitation intended to prevent abuse of the CA mechanism. Finally, paragraph (4) clarifies and positions the judge as the gatekeeper who must assess the element of Commonality from the outset, ensuring that cases proceeding under the CA mechanism genuinely meet the element of Commonality.

It should also be emphasized that Indonesia is a country that leans more toward the civil law tradition (Wardhani et al., 2022) (Chouaibi et al., 2022), where the legal system is primarily based on codification (written law or legislation) as the main source of law, and the role of judges in this system tends to apply the law systematically and structurally. The character of the Indonesian legal system differs from that of the United States, which leans toward the common law tradition, where precedents and the creative role of judges in shaping the law through their decisions are the main and strong sources of law. This fundamental difference certainly has implications for the way CA is regulated and applied. Given these differences, the concept developed and inspired by the United States is not transplanted outright but rather adopted through a process of conceptual adaptation, adjusted to the character of the Indonesian legal system. Because the concept being developed is a concrete, operational norm, it can be incorporated into future legal reforms.

As a practical contribution, the research a quo formulates a roadmap for reform to be implemented in stages: *First*, formulating clear, measurable, and operational norms specifically regarding Commonality to serve as practical guidelines for seekers of justice in drafting lawsuits and for judges in assessing CA lawsuits. *Second*, in practice, it should be directed toward strengthening harmonization through the consistency of court decisions. *Third*, the most crucial point: the regulation of CA must be elevated to the level of "law," not through Supreme Court regulations as it is now, to ensure this positive norm has a strong, broad, binding force and provides greater legal certainty.

CONCLUSIONS

The main issue with the regulation of CA lawsuits in Indonesia lies in the ambiguity of the "parameters" for establishing the Commonality element, which creates room for disparities in judicial decisions and ultimately leads to legal uncertainty. In comparing laws with those of the United States, it was found that although the basic norms are

similar, in several jurisdictions, Commonality has taken concrete form: a CA lawsuit must have one common core issue (common contention) and a predominance of common issues (predominance). The research takes the position that Commonality is not merely a reference to general similarity. However, it must have a substantive unity of issues that can be "proven and resolved collectively through a judge's ruling." In this connection, the formulation of an ideal norm that is "concrete, measurable, and operational" is urgent, so that the CA mechanism is truly beneficial in achieving speedy trials, access to justice, and preventing judicial error. This research recommends legal reform to regulate CA lawsuits, with an emphasis on formulating concrete, operational "commonality parameters" at the legislative level, accompanied by technical guidelines for judges to assess the feasibility of CA. Additionally, it is necessary to encourage consistent rulings by strengthening jurisprudence, so that, in the future, CA in Indonesia can not only provide legal certainty but also become an ideal institution for achieving speedy, simple, and low-cost justice, as mandated by the judicial power law.

IPR

This research does not produce patents, copyrights, or any other forms of intellectual property. All concepts and formulations presented in this manuscript are developed for academic and scientific purposes. They are intended to contribute to the development and reform of law, particularly in the regulation of class action mechanisms in Indonesia.

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