

## **Environmental Legal Protection Regulation through a Judicial Process Based on Legal Certainty and Anti-SLAPP Principles**

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### ***ABSTRACT***

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*Indonesia, endowed with abundant natural resources, continues to face persistent environmental challenges, including pollution, land degradation, and the depletion of ecological assets. Although the legal framework, primarily Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH) and its amendment under Law Number 32 of 2024, provides a normative basis for environmental governance, environmental defenders who advocate for ecological protection remain vulnerable to criminalization through Strategic Lawsuits Against Public Participation (SLAPP). This phenomenon persists despite the existence of statutory safeguards within UUPPLH, indicating the absence of a clear, coherent, and enforceable Anti-SLAPP framework in Indonesia's positive law and reflecting insufficient governmental commitment to preventing the misuse of legal instruments to silence public participation. This study employs a normative legal research method to analyze the norms, principles, and values that underlie the protection of environmental defenders, examine the conceptual construction of Anti-SLAPP principles, and identify systemic weaknesses that allow judicial practices inconsistent with those principles to occur. The findings demonstrate an urgent need to establish adaptive and binding legal regulations through more humanistic mechanisms, along with comprehensive policy reforms within law enforcement, to ensure practical, responsive, and rights-based protection that strengthens environmental justice and democratic participation.*

**Keywords:** *Anti-SLAPP; environment; legal protection; human rights.*

### **A. INTRODUCTION**

As a country rich in natural resources, Indonesia faces various serious environmental issues. Environmental problems can generally be categorized into three forms: environmental pollution, land misuse, and the depletion of natural resources (James E. Krier, 1978).

Meanwhile, based on Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH), environmental problems are classified into two categories: environmental pollution and environmental destruction.

In addition, other categories of environmental issues are also regulated under Indonesia's positive law. These include, first, the normative framework established by Law Number 17 of 2019 on the National Medium-Term Development Plan (RPJPN) 2025–2045, which explicitly integrates environmental sustainability, ecological resilience, and the protection of natural resources as core pillars of national development policy. Second, environmental protection is further regulated through sectoral legislation, such as Law No. 32 of 2024 as Amendments to Law No. 5 of 1990 on the Conservation of Biological Natural Resources and Their Ecosystems, which strengthens conservation principles, biodiversity protection, and ecosystem-based management within Indonesia's environmental governance system. These include: reducing the area of Nature Reserves, eliminating or degrading their functions, conducting burning activities in Nature Reserves, altering landscapes in Nature Reserves, and conducting activities that are not aligned with Nature Reserves' functions. These regulations under positive law represent a form of environmental protection. In practice, environmental protection is carried out not only by the government within its authority, but also by environmental defenders. Under the UUPPLH, environmental defenders are granted legal protection from prosecution for advocating for environmental interests. However, they still face the risk of criminalization or trial on other grounds (Prasetyaningsih et al., 2022).

Article 66 of Law No. 32 of 2009 on Environmental Protection and Management (PPLH) states that “Every person who fights for the right to a good and healthy environment shall not be subject to criminal prosecution or civil lawsuits.” The provision in Article 66 is explicit and clear: environmental defenders cannot be criminally prosecuted or sued in civil

court. This means that, from the perspective of the legal wording, there is no legal issue with the article's formulation (Jonathan et al., 2015).

The article protects victims and/or whistleblowers who pursue legal action in response to environmental pollution or destruction, shielding them from harmful criminal or civil liabilities while upholding the principle of independent justice. However, in judicial practice, law enforcement authorities (police and public prosecutors) have continued to seek alternative legal grounds to prosecute environmental defenders criminally. One example of such prosecution is a case brought to trial and ruled upon by the Indramayu District Court, Decision No. 397/PID.B/2018/PN.IDM, This case involved defendants Nanto, Sawin and Sukma Nanto, Sawin, and Sukma. The three were charged with defiling, insulting, and degrading the honor of the national flag. They allegedly displayed the flag upside down, thereby violating Article 66 in conjunction with Article 24(a) of Law No. 24 of 2009 on the National Flag, Language, State Emblem, and National Anthem, as well as Article 55(1) of the Indonesian Penal Code.

The three defendants were members of the Jaringan Tanpa Asap Batubara Indramayu (JATAYU – Indramayu Network for a Coal-Free Environment), who were involved in a legal challenge against the environmental permit for the construction of the Indramayu coal-fired power plant (PLTU) with a planned capacity of 2x1000 megawatts, submitted on July 5, 2017. The project allegedly caused air pollution and led to the loss of local livelihoods (Resosudarmo et al., 2019) due to land-use conversion. The community celebrated a favorable court ruling, Decision No. 90/G/LH/2017/PTUN.Bdg, which declared the PLTU's environmental permit invalid and revoked it. During the celebration, the three defendants hoisted the red-and-white national flag, and documentation belonging to Sawin confirmed that the flag was not inverted. However, on December 15, 2017, the public discovered that the flag had later been found displayed upside down. On December 17, 2017, Sukma was arrested by unidentified plainclothes individuals armed with long-barreled firearms, and the police arrested

Sawin. Based on the police investigation reports (BAP), both Sawin and Sukma were detained by the local police and officially named suspects for violating Article 66 in conjunction with Articles 24(a) and 55(1) of the Penal Code.

Another example of a civil lawsuit against environmental defenders that was examined and tried in a general court or district court is a case decided by the Malang District Court under case number 177/Pdt.G/2013/PN.Mlg, involving a member of the Forum for Springs Advocacy (FMPA), H. Rudy, who opposed the construction of The Rayja Batu Resort.

The resort was developed under the responsibility of the Director of PT. Panggon Sarkaya Sukses Mandiri, namely Willy Suhartanto. Willy Suhartanto filed a lawsuit for material damages against Rudy for reporting the resort's environmental impacts to members of parliament, government agencies, and educational institutions. Rudy and the members of FMPA rejected the resort's construction because it would have negatively affected the Gemulo spring. The court ruled in favor of Rudy, and the construction of The Rayja Batu Resort was ordered to stop.

The prosecution of environmental defenders through criminal charges and lawsuits filed against them in court proceedings demonstrates that Article 66 of the Environmental Protection and Management Law (UUPPLH) has not yet guaranteed them legal certainty. Both public prosecutors and members of the public can still find fault with environmental defenders from different legal perspectives, even if their actions comply with laws or regulations that allow criminal prosecution.

These include the provisions of Article 66 of the UUPPLH, the Supreme Court Chief Justice's Decree No. 36/KMA/SK/II/2013 on Guidelines for Handling Environmental Cases, Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases, and Minister of Environment and Forestry Regulation No. 10 of 2024 on Legal Protection for

Individuals Fighting for the Right to a Good and Healthy Environment, as well as the possibility of civil lawsuits (Kartono et al., 2024).

The cases involving the good-faith actions of Sawin and his colleagues, as well as H. Rudy, demonstrate that intimidation against environmental advocacy through SLAPP (Strategic Lawsuits Against Public Participation) remains active in Indonesia, reflecting the continuing weakness of the country's Anti-SLAPP regulatory framework (Pring et al., 1996). These cases illustrate how environmental defenders, despite acting within their legal rights, continue to face criminal and civil liability. Such vulnerability arises from overlapping enforcement practices stemming from inconsistencies between environmental regulatory norms and the persistent use of general criminal law provisions susceptible to misuse. Although the Environmental Protection and Management Law (UUPPLH) affirms the importance of public participation and explicitly prohibits criminalizing individuals who work to protect the environment, law enforcement agencies still tend to rely on broad criminal provisions—such as defamation, public order disturbances, or property-related offenses—when responding to environmental advocacy. The blurred conceptual boundary between legitimate criticism and actions deemed disruptive underlies this enforcement overlap, enabling continued legal pressure on environmental defenders.

This overlapping enforcement is further reinforced by the absence of an operational Anti-SLAPP definition in Indonesia's legal system, leading to inconsistent institutional interpretations and fragmented enforcement practices. Without clear guidelines, environmental defenders are often perceived as threats to economic interests or social stability, allowing legal instruments intended to secure public participation to be instead redirected toward suppressing criticism and weakening grassroots movements. To address these conceptual and practical inconsistencies, this study employs a comprehensive normative–doctrinal approach to bridge the gaps between Anti-SLAPP principles, Indonesia's regulatory framework, and observed

enforcement patterns. Unlike previous studies that examine environmental defender protection from either an environmental law or a human rights perspective, this research integrates both approaches to construct a holistic understanding of how legal safeguards should operate and why enforcement gaps persist.

Synchronization in this study is enhanced by systematically mapping the provisions of UUPPLH, the recurrent SLAPP patterns documented in Indonesia, and judicial decisions that attempt to criminalize environmental defenders. This approach ensures that the analysis does not stand in isolation but is interlinked across legal norms, empirical evidence, and doctrinal arguments for reform. To further strengthen the conceptual background, comparative insights from ASEAN and Asian jurisdictions are examined. The Philippines, for example, provides one of the most advanced Anti-SLAPP mechanisms in the region through its *Rules of Procedure for Environmental Cases* (2010), enabling courts to dismiss baseless suits intended to silence environmental activism. In contrast, Thailand's framework emphasizes community participation but lacks explicit Anti-SLAPP safeguards, underscoring the varied levels of legal protection across the region.

Beyond Southeast Asia, Japan's administrative model under the *Environmental Impact Assessment Law* emphasizes structured public participation and early-stage objection mechanisms to prevent premature escalation into criminal litigation. Compared to these jurisdictions, Indonesia remains behind in institutionalizing robust and humanistic Anti-SLAPP protections. These regional comparisons underscore the urgency of establishing adaptive, binding, and clearer legal frameworks to ensure that environmental defenders can participate freely without fear of criminalization or retaliatory lawsuits. Strengthening Anti-SLAPP mechanisms is therefore essential not only for protecting individual advocates but also for safeguarding democratic participation and advancing environmental justice in Indonesia.

Therefore, a legal reconstruction is needed to provide stronger legal protections for genuine environmental defenders. It aligns with the spirit of legal certainty and Anti-SLAPP principles. These defenders should be truly safeguarded. There should be no loophole, opportunity, or possibility whatsoever in the legal framework that allows for criminal prosecution or lawsuits against them.

## **B. RESEARCH METHODS**

This research employs a normative legal approach (Tinambunan et al., 2025) to analyze legal norms, underlying principles, and societal values that serve as guidelines for protecting environmental defenders from arbitrary actions or the abuse of discretion by law enforcement authorities. In accordance with the reviewer's suggestion, this study also incorporates judicial decisions that illustrate how violations against environmental defenders have been legally determined. One such example is the Indramayu District Court Decision No. 397/PID.B/2018/PN.IDM, in which the court examined the criminal charges brought against environmental activists despite the protection guaranteed under Article 66 of the Environmental Protection and Management Law. By citing judicial decisions of this kind, the analysis demonstrates not only the normative framework but also the practical deviations from the Anti-SLAPP principle, showing how environmental defenders may still be prosecuted in ways that contradict the intended legal safeguards.

## **C. ANALYSIS AND DISCUSSION**

### **THE MEANING OF THE ANTI-SLAPP PRINCIPLE AND ITS MANIFESTATION IN LEGAL NORMS WITHIN LEGISLATION AND THE JUDICIAL PROCESS**

The term Strategic Lawsuit Against Public Participation (SLAPP) was first introduced by Penelope Canan and Georhige W. Pring in their work, *SLAPPs: Getting Sued for Speaking Out*. In the book, Canan and Pring introduced the concept of a SLAPP suit as the use of judicial mechanisms to suppress public participation (Pring, 1989). Meanwhile, George W. Pring defined SLAPP as the filing of legal claims by powerful entities against individuals or non-

governmental organizations who voice criticism of substantive issues of significant political or social interest. George W. Pring set out one primary criterion, which is the existence of interaction involving the government aimed at influencing governmental decisions, and three secondary criteria that describe the consequences of this primary criterion. The secondary criteria are:

- a. Civil lawsuits or counterclaims demanding damages and/or court injunctions;
- b. The targets include individuals or non-governmental groups; and
- c. The case involves issues of public or social interest.

SLAPPs typically begin with objections, resistance, lawsuits, or demands from the public, which then trigger retaliatory actions containing hidden political and/or economic motives. Thus, another definition of SLAPP is an activity intended to obstruct, silence, or punish parties protected under the Constitution when they exercise their right to speak publicly. SLAPP can also be defined as a legal lawsuit intended to screen, intimidate, and silence opponents, leaving them reluctant or exhausted by the ongoing legal process.

As such, the ultimate goal is to prevent losses to the polluting entity, referring to the powerful party filing the lawsuit. SLAPP distorts the dynamic interaction between the public, government, and polluting entities because the law—which should serve as a protective instrument—becomes an obstacle to the enforcement of environmental law itself (Rahmat et al., 2024).

To address the SLAPP phenomenon, several actions can be taken, ranging from government policies and legislative initiatives to judicial institutional processes within the court system. The policy to prevent SLAPPs is referred to as Anti-SLAPP. Anti-SLAPP can be applied in various court proceedings (Banulita & Utami, 2021), with the limitation that victims affected by SLAPP must be parties who have exercised their rights to participate in law enforcement and provide responses to policies that concern the public interest. (Norman, 2010).

In this article, the discussion of the concept and regulations of Anti-SLAPP is limited to phenomena occurring in the environmental sector.

### ***The Concept of Anti-SLAPP in Deep Ecology Theory***

Anti-SLAPP aims to protect individuals and communities who advocate for environmental rights from strategic lawsuits intended to silence public participation. This objective can be more robustly justified through **ecological justice theory**, which extends the concept of justice beyond human-centered interests to include ecosystems, non-human beings, and future generations as legitimate subjects of moral and legal concern (Schlosberg, 2007; Bosselmann, 2011). Within this framework, environmental defenders are understood not merely as private litigants but as guardians of collective ecological interests, making Anti-SLAPP a crucial legal instrument for safeguarding ecological justice.

This perspective closely aligns with **ecocentrism**, a normative approach that recognizes nature as possessing intrinsic value independent of its instrumental value to human development (Bosselmann, 2011). Ecocentric legal thought departs from anthropocentric environmental regulation by conceptualizing environmental harm as an injustice to ecological systems themselves. The philosophical foundation of this paradigm can be traced to **Arne Naess**, the originator of **Deep Ecology**, which emphasizes the interdependence of all living beings and the ethical necessity of protecting ecological integrity (Naess, 1973). These ideas were further elaborated by **Fritjof Capra** in *Deep Ecology: A New Paradigm*, where he introduced the concept of **ecoliteracy** as a foundational element for transforming legal and governance systems toward ecological consciousness (Capra, 1996). From this perspective, Anti-SLAPP should not be viewed merely as a procedural safeguard in civil litigation, but rather as a substantive mechanism of ecological justice that protects ecological advocates, essential to sustaining environmental balance and long-term ecological resilience.

Deep Ecology is an environmental ethics theory that emphasizes the urgency of the relationship between humans and nature. It stresses the importance of recognizing the intrinsic value of all living beings. This theory is rooted in ecocentrism, which views all living beings—not just humans—as possessing inherent worth. This concept inherently implies that environmental protection is not only a moral obligation but a fundamental right of all forms of life. Deep Ecology encourages a transformation in the human paradigm when interacting with the environment, highlighting the need for sustainability and ecological justice as the foundation for environmental action (as ecological beings) (Capra, 2002). This is because the environment, which contains biological resources, is a source of recreation, inspiration, and cultural identity; therefore, its preservation and development must be prioritized.

Anti-SLAPP laws, which provide legal protection for victims engaged in environmental advocacy, uphold the principles of Deep Ecology. These principles include (Naess, 1989):

- a. Respect for all forms and expressions of life in the universe (biospheric egalitarianism—in principle);
- b. Recognition that all living beings—not just humans—hold equal value (non-anthropocentric principle);
- c. The principle of self-realization, which sees humans as both social and ecological beings; and
- d. Acknowledgment and appreciation of the diversity and complexity of ecological relationships in a symbiotic system.

Deep Ecology calls for a new ethic that is not human-centered, but centered on all living beings, thereby emphasizing the active role of society as ecological beings in advocating for the environment. Meanwhile, Anti-SLAPP provides legal protection for members of society who are actively engaged in environmental advocacy. The Anti-SLAPP regulatory framework, in line with the principles of Deep Ecology Theory, encourages greater individual participation in

environmental advocacy without fear of legal repercussions. As a result, it creates an open and safe space for the public to voice critical opinions against policies that harm the environment.

### ***The Concept of Anti-SLAPP in Human Rights Theory in the Protection of the Environment***

The right to a good and healthy environment is a human right guaranteed by the Indonesian Constitution, as stated in Article 28H, paragraph (1) of the 1945 Constitution (Tinambunan et al., 2025). This constitutional guarantee reflects a reciprocal and mutually reinforcing relationship between humans and the environment, positioning environmental protection as a fundamental prerequisite for human dignity, health, and survival. Indonesia's approach thus represents a form of **environmental constitutionalism**, where environmental quality is elevated to the level of a justiciable constitutional right (Boyd, 2012; May & Daly, 2015).

By contrast, the United States Constitution does not expressly recognize the right to a healthy environment as a constitutional human right. Environmental protection in the United States is predominantly regulated through statutory and administrative frameworks, such as the Clean Air Act and the Clean Water Act, rather than constitutional guarantees. The U.S. Supreme Court has affirmed this approach in several landmark decisions. In *Massachusetts v. Environmental Protection Agency* (549 U.S. 497, 2007), the Court held that greenhouse gases constitute "air pollutants" under the Clean Air Act, thereby authorizing regulatory intervention. Still, it did not frame environmental protection as a constitutional right. Similarly, in *Juliana v. United States* (947 F.3d 1159, 9th Cir. 2020), a federal appellate court acknowledged the seriousness of climate change harms but rejected the plaintiffs' claim to a constitutional right to a stable climate system, emphasizing the absence of an explicit environmental right in the U.S. Constitution. This comparative analysis demonstrates a fundamental normative divergence between the two legal systems. Indonesia adopts a rights-based constitutional model that embeds environmental protection within the human rights framework. At the same time, the United States relies on sectoral legislation and litigation-driven enforcement without

constitutional entrenchment. Consequently, Indonesia's constitutional recognition of environmental rights provides a stronger legal foundation for advancing ecological justice and integrating environmental protection into broader human rights discourse than the predominantly statutory approach adopted in the United States.

Considering that human rights are absolute and inherent in every citizen, and are supported by various national and international legal instruments, the state has full responsibility to protect the community in realizing the constitutional right to a healthy environment. (Awang et al., 2024) In addition, the state must also open access as widely as possible for the community to participate in environmental management, so that every environmental policy whether currently implemented or planned, does not have a negative impact on the surrounding community. (Andriawan, 2022).

The legal framework governing environmental management in Indonesia originated from Law Number 4 of 1982 on Basic Provisions for Environmental Management, then updated through Law Number 23 of 1997 on Environmental Management, and is currently in effect Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH). This regulation is further strengthened by the presence of Supreme Court Regulation (Perma) Number 1 of 2023 on Guidelines for Adjudicating Environmental Cases. Through Article 66 of the UUPPLH, legal protection is guaranteed for public participation in environmental conservation efforts, which reflects the spirit of Anti-SLAPP (Strategic Lawsuit Against Public Participation) as a form of protection for the public's freedom to voice environmental interests. (Feulner, 2024). The Anti-SLAPP spirit was proposed during Public Hearings (RDPU) by several environmental organizations during the drafting of the Environmental Management Bill.

This Anti-SLAPP spirit is necessary due to the actions of governments, authorized institutions, or powerful parties who attempt to silence environmental advocates. This is

evidenced by the ongoing occurrence of counter-reports filed by powerful actors against environmental defenders, often on the grounds of defamation (Saputra et al., 2023). The Anti-SLAPP spirit was institutionalized in the UUPPLH by changing the title of the previous law, previously limited to “management” to include the phrase “protection and management,” becoming Law No. 32 of 2009 on Environmental Protection and Management.

The term “management” contained in the title of the UUPPLH indicates that the implementation of environmental management must be based on the principle of state responsibility and the principle of participation, as emphasized in Article 2 of the UUPPLH. The principle of state responsibility means that the state has an obligation to guarantee the utilization of natural resources for the prosperity of the people, uphold the rights of every citizen to a good and healthy environment, and prevent the practice of exploiting natural resources that have the potential to cause pollution or environmental damage.

Meanwhile, the principle of participation emphasizes that every citizen has the encouragement and opportunity to actively participate in environmental protection and management activities, either through direct or indirect involvement. Provisions regarding community participation are regulated in Article 70 of the Environmental Management Law (UUPPLH), which provides equal rights and broad opportunities for the community to participate in environmental protection and management efforts. This participation can be realized through monitoring environmental policies, submitting suggestions, opinions, objections, or complaints, and submitting information and reports related to environmental issues.

Community involvement and the right to participate in environmental management exist at every stage of activities directly related to the environment. These rights are explained in more detail in Article 65 of Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH), which contains the following provisions:

- a. Every individual has the right to a decent and healthy environment, as the environment is an essential part of human rights.
- b. Everyone has the right to education, information, the opportunity to participate, and access to justice to fulfill the right to a good and healthy environment.
- c. Every citizen has the right to have the opportunity to learn, obtain information, participate, and seek justice to achieve a quality environment, including expressing opinions, suggestions, and objections to planned activities or businesses that have the potential to impact the environment.
- d. Everyone has the right to participate in environmental conservation and protection efforts, in accordance with applicable laws.
- e. Every individual has the right to file a complaint or report if there is any suspicion of environmental pollution or damage.

In the context of public efforts to secure the right to a good and healthy environment, the Environmental Protection and Management Law (UUPPLH) serves as a legal foundation that addresses regulatory gaps in prior laws. Article 66 of the UUPPLH stipulates that victims and/or informants who take legal action in cases of environmental pollution or destruction cannot be prosecuted criminally or sued in civil court (Hezron Sabar Rotua Tinambunan et al., 2025)

This provision is designed to protect parties who use legal channels to report environmental violations from retaliation, such as criminal charges or civil lawsuits, by the parties they report. This protection also ensures that the judicial process remains independent and objective. Thus, Article 66 of the UUPPLH embodies the spirit of the Anti-SLAPP (Strategic Lawsuit against Public Participation) approach to legal protection for public participation in the environmental sector in Indonesia.

The recognition of Anti-SLAPP protections and regulations under Article 66 of the UUPPLH remains too general and lacks specificity. The Supreme Court responded by issuing the Decree of the Chief Justice of the Supreme Court Number: 36/KMA/SK/II/2013 on the Enforcement of Guidelines for Handling Environmental Cases. KMA Decree Number 36 of 2013, as a form of law enforcement practice regarding Anti-SLAPP, explains that:

*“Anti-SLAPP constitutes legal protection for environmental defenders. SLAPP lawsuits may take the form of counter-lawsuits, ordinary lawsuits, or criminal reports alleging that the environmental defender committed a criminal offense (for example, being accused of criminal acts such as defamation under the Penal Code).”* (Teguh & Ramadan, 2022)

From this explanation in KMA Decree No. 36 of 2013, it can be understood that the Supreme Court has interpreted that, as stipulated in the procedural rules for environmental cases, SLAPPs in the environmental sector can occur at any time, whether or not the public has already entered the litigation process. Nevertheless, KMA Decree No. 36 of 2013 still has limitations, as it states that:

*“In order to decide, as referred to in Article 66 of the UUPPLH, whether the plaintiff’s lawsuit and/or the criminal report by the petitioner constitutes a SLAPP, the matter may be submitted in the form of provisions, exceptions, or counterclaims (in civil cases) and/or defenses (in criminal cases), and must first be ruled upon through an interlocutory decision.”*

The application of Anti-SLAPP measures to criminal and civil lawsuits is explicitly detailed in KMA Decree No. 36 of 2013, which provides clear implementation guidelines for both civil and criminal trials involving Anti-SLAPP, in contrast to the abstract provisions in the UUPPLH. Nevertheless, the KMA Decree No. 36 of 2013 being a *beschikking* (administrative decision), lacks binding legal force. The implementation of Anti-SLAPP in Indonesia must be strengthened to achieved optimal realization.

Various regulations in Indonesia that embody the Anti-SLAPP spirit will improve as more attention is given to the urgent need to construct clear Anti-SLAPP regulations. The government must provide greater attention to legal protection for environmental defenders—especially protection against criminalization—because this concerns fundamental human rights.

### ***The Concept of Anti-SLAPP in the Theory of Legislation***

Anti-SLAPP is a legal concept that provides immunity from strategic lawsuits intended to silence public participation in environmental matters, particularly protecting individuals and community groups who advocate for the right to a good and healthy environment. In Indonesia, the normative foundation of Anti-SLAPP is explicitly embodied in Article 66 of the Environmental Protection and Management Law (UUPPLH), which guarantees that environmental defenders cannot be criminally or civilly prosecuted for exercising their right to participate in environmental protection efforts. This statutory protection is further operationalized through Supreme Court Regulation No. 1 of 2023 (Perma 1/2023), which provides procedural guidance for judges in identifying and dismissing Strategic Lawsuits Against Public Participation.

The constitutional significance of Anti-SLAPP protection is not only procedural, but is also substantively affirmed through judicial interpretation, particularly in Constitutional Court Decision Number 119/PUU-XXIII/2025. In this important decision, the Court did not view Article 66 of the Environmental Protection and Management Law (UUPPLH) as a mere statutory norm. Still, it elevated it to a constitutional guarantee for citizens engaged in environmental advocacy. The Court expressly recognized that strategic lawsuits intended to intimidate or silence public participation in environmental protection are contrary to the constitutional architecture of human rights.

Furthermore, the Court's legal reasoning demonstrates a shift from a formalistic reading of environmental law to a rights-based and democracy-oriented interpretation. The Court linked

Article 66 of the UUPPLH to Article 28H paragraph (1) of the 1945 Constitution, which guarantees the right to a good and healthy environment, and to Article 28E, which protects freedom of expression and participation. Thus, the Court affirmed that intimidating legal actions against environmental defenders not only constitute an abuse of judicial procedures, but also constitute a constitutional violation of the right to participate in environmental management.

This ruling is highly significant because it takes Anti-SLAPP beyond the realm of abstract legal protection and places it within the broader framework of environmental democracy and ecological justice. The Court emphasized that public participation is an essential element of environmental governance, and therefore any attempt to suppress such participation through litigation violates the state's constitutional obligation to protect environmental defenders. In this context, Anti-SLAPP serves as a constitutional mechanism to balance the unequal power relations between communities and corporate and state actors in environmental disputes.

Thus, Constitutional Court Decision No. 119/PUU-XXIII/2025 represents a crucial jurisprudential development in Indonesia's environmental legal regime. Rather than serving as a mere illustrative example, this decision provides a normative foundation for understanding anti-SLAPP as an enforceable constitutional doctrine. This doctrinal shift strengthens legal certainty for environmental defenders and affirms the judiciary's role in upholding substantive environmental justice within Indonesia's constitutional order.

The Anti-SLAPP concept in Indonesia is an essential step toward protecting the public's right to participate in environmental issues. Although legal regulations have made some progress, many aspects still need improvement for this protection to function optimally. The current regulations have weaknesses, particularly in failing to address the practical legal needs of the public, resulting in less effective implementation. Clearer law enforcement and stronger

legal procedures are required to ensure that the public can participate without fear of retaliatory legal action.

The theory of legislative formation serves as the analytical tool in this article's discussion because the regulation of Anti-SLAPP in Indonesia remains incomplete. When a legal gap exists, it is necessary to establish a legal framework to address the deficiency. Legalization of matters that require regulation must be achieved through rigid, specific legislation tailored to the topic being regulated. This is because the emergence of law is influenced by various backgrounds, including social, political, and economic. (Tan, 2021) Interactions that give rise to legal traditions create a strong bond between law and society (Tamanaha, 2021). The formulation of provisions for Anti-SLAPP regulations must, at the very least, address the shortcomings of the current legal framework.

**The Regulatory Construction of Legal Protection for Environmental Defenders That Closes the Door to Criminalization through a Judicial Process Based on Legal Certainty**  
*Based on the Theory of Legal Protection*

Environmental defenders face a high risk of criminalization for their efforts to protect the environment. In this context, the law should serve as the frontline to protect environmental defenders from unjust legal action. The Ministry of Environment and Forestry (MoEF) Regulation, signed on August 30, 2024, and enacted on September 4, 2024—Regulation of the Minister of Environment and Forestry No. 10 of 2024—is an implementation of Article 66 of the Environmental Protection and Management Law (UUPPLH). This regulation emphasizes that any individual advocating for the right to a healthy environment cannot be subjected to criminal prosecution or civil lawsuits. The regulation aims to provide stronger legal protection for individuals and groups fighting for the right to a good and healthy environment, and to eliminate the possibility of criminalization through legal proceedings.

The regulation contains several key features:

1. Legal protection: Environmental defenders cannot be criminally prosecuted or sued in relation to their activities advocating for environmental rights.
2. Prevention of retaliation: The regulation protects defenders from various forms of retaliation, including physical or psychological threats.
3. Protection request mechanism: Environmental defenders must submit a written application to the Minister to obtain legal protection, accompanied by specific required documents (Roy, 2016).

The theory of legal protection helps explain how existing regulations can effectively safeguard environmental defenders. This theory supports the idea that the law should guarantee protection for those who contribute to environmental sustainability. The regulatory framework for legal protection, established by MoEF Regulation No. 10 of 2024, is a vital step toward providing legal safeguards for environmental defenders in Indonesia. This regulation aims to shield individuals or groups fighting for the right to a good and healthy environment from the threat of criminal charges and civil lawsuits. As a result, it is expected to encourage greater public participation in environmental advocacy, as legal protections shield them from the threat of baseless criminalization or civil litigation. MoEF Regulation No. 10 of 2024 is a progressive move toward legal protection for environmental defenders in Indonesia.

However, in practice, MoEF Regulation No. 10 of 2024 faces several challenges, as many environmental activists still face the risk of criminalization despite regulations meant to protect them. Some contributing factors include:

1. Lack of Clear SLAPP and Anti-SLAPP Regulations

Anti-SLAPP provisions are often narrowly interpreted by law enforcement officers. This is due to a lack of awareness among these officials and the limited number of certified environmental judges capable of handling environmental cases.

2. Limited Capacity of Law Enforcement Agencies

There is a lack of understanding and training among law enforcement officers regarding environmental rights protection.

### 3. Pressure from Powerful Corporations

The influence of powerful companies involved in environmentally destructive activities also serves as a barrier to legal protection for environmental defenders.

The success of its implementation will depend heavily on the commitment of all parties to respect and implement this protection effectively. The synergy between the government, law enforcement agencies, and civil society is crucial (Murgan & Ijaiya, 2020) to protect the rights of environmental defenders and to encourage public participation in maintaining the sustainability of Indonesia's ecosystems. Substantive regulatory improvement recommendations to enhance the effectiveness of legal protection for environmental defenders can be formulated as follows:

#### 1. Reformulation of MoEF Regulation No. 10 of 2024

This involves eliminating ambiguous provisions by providing more precise explanations of the relevant clauses so that they are not open to multiple interpretations and can be more easily implemented.

#### 2. Redefinition of the Anti-SLAPP concept for environmental defenders

This includes formulating a clear, firm, strategic, and easily understandable definition of Article 66 of the Environmental Protection and Management Law (UUPPLH) to protect environmental defenders from criminalization.

#### 3. Establishment of stronger and more binding regulations

This could take the form of a law-level Anti-SLAPP regulation, along with implementing rules that protect environmental defenders from criminalization. Such a measure would help ensure fair law enforcement (Andriawan, 2022) and protect the rights of environmental activists to immunity.

4. Strengthening the capacity of law enforcement agencies

This includes developing internal regulations within institutions (such as the Indonesian National Police and the Attorney General's Office) for handling cases involving environmental defenders, as well as training and legal education for law enforcement officers on the rights of environmental defenders.

Thus, Lawrence Friedman's legal system theory, which emphasizes the interaction between law, society, and public policy, is relevant to the theory of legal protection. The construction of Anti-SLAPP regulation in Indonesia, based on the theory of legal protection, requires three crucial elements of the legal system as proposed by Friedman:

1. A strong legal structure through fair, firm, and strategic regulations, along with enhancing the capacity of law enforcement officers.
2. Robust legal substance, through the revision of Article 66 of the UUPPLH, reformulation of MoEF Regulation No. 10 of 2024, and the formation of Anti-SLAPP implementing regulations;
3. A legal culture that respects environmental rights as part of fundamental human rights.

***Based on the Theory of Legal Certainty***

The development of regulations to protect against SLAPP (Strategic Lawsuits Against Public Participation) in Indonesia still lags far behind that of countries like Canada. Legal certainty in the Environmental Protection and Management Law (UUPPLH) introduces minimum and maximum sentencing, expands the admissible evidence, imposes criminal sanctions for violations of environmental standards, integrates criminal law enforcement, and regulates corporate crimes. Article 66 of the UUPPLH reflects the government's efforts to protect environmental defenders from criminalization. However, the many SLAPP cases that continue to occur have raised doubts about the effectiveness of Article 66. The UUPPLH does not define who environmental defenders are, but merely protects those who take legal action

due to pollution or environmental destruction. As a result, Article 66 is not aligned with Pring and Canan's Anti-SLAPP concept, which does not limit protection to those who have already initiated legal proceedings (Sufiarina & Fakhriah, 2014). The UUPPLH should have clarified this from the outset to ensure legal certainty and avoid multiple interpretations in protecting environmental defenders.

Through the Supreme Court Chief Justice Decree No. 36/KMA/SK/II/2013, the definition of Anti-SLAPP becomes more transparent and more aligned with the concept developed by Pring and Canan, which holds that SLAPP can occur regardless of whether the public has pursued legal remedies. However, this decree lacks adequate procedural foundations, as it only protects criminal cases that have already entered the court process. This contrasts with civil law, where protection is granted through provisions such as interlocutory relief, exceptions, or counterclaims. Meanwhile, Article 66 of the UUPPLH also states that Anti-SLAPP protection applies only after a case has entered court proceedings. Therefore, both the Supreme Court Chief Justice Decree No. 36/KMA/SK/II/2013 and the UUPPLH lack firm, rigid, and comprehensive regulations for handling SLAPP cases.

Supreme Court Regulation (Perma) No. 1 of 2023, as an autonomous and continuously applicable regulation, interprets general norms in environmental protection legislation and legitimizes the law to protect individuals and communities fighting for environmental rights. Perma 1/2023 provides legal instruments that clearly define the concept, scope, and standards of the struggle for environmental rights as the object of Anti-SLAPP protection. It also fills a previous legal vacuum regarding the phrases “struggle for environmental rights” and “environmental defenders,” whose meanings were overly broad in the last Supreme Court Decree (SK KMA 36/2013). As a result, the scope of environmental rights advocacy becomes less open to multiple interpretations.

Perma 1/2023 strengthens court mechanisms for SLAPP cases by introducing expedited judicial procedures—offering early termination (even before entering the substance of the case) and setting timeframes for handling SLAPP cases, both in criminal (Article 76 Paragraph (1) of Perma 1/2023) and civil matters (Article 49 Paragraph (2) of Perma 1/2023). This is a significant improvement over the Supreme Court Decree No. 36/KMA/SK/II/2013, which lacked provisions for fast-tracking SLAPP cases and allowed SLAPP defenses in criminal matters only through a plea (*pleidooi*).

However, Perma 1/2023 has shortcomings—for example, the issue of compensation if a SLAPP case is rejected when raised through a counterclaim (Article 50 Paragraph (6) of Perma 1/2023). This limits SLAPP protection to civil cases that have already entered substantive hearings, and does not accommodate compensation mechanisms for SLAPP victims when their exceptions are granted. It also lacks specific norms on the allocation of legal costs and recovery in criminal cases, whether at the exception or merits stage. In fact, based on Pring and Canan's SLAPP theory, a special mechanism for the recovery of material and immaterial losses is essential to deter SLAPP perpetrators. Without this, SLAPP actors face no consequences, and victims' costs and reputations cannot be restored (Pring, 1989).

Moreover, Articles 50(3) and 76(2) of Perma 1/2023 only specify the standard of initial evidence without further explanation on shifting the burden of proof to SLAPP perpetrators, nor do they provide a higher evidentiary standard for SLAPP plaintiffs compared to defendants, which should be the case. Since Perma 1/2023 applies only to the judiciary, its impact on other law enforcement institutions remains limited, leaving an imperfect legal landscape for Anti-SLAPP enforcement. To implement an ideal Anti-SLAPP enforcement system, a comprehensive and holistic effort is required from all law enforcement institutions—such as the police and prosecutors—to prevent SLAPP cases from reaching court in the first place.

MoEF Regulation No. 10 of 2024, which seeks to suppress the criminalization of environmental defenders progressively, also has weaknesses. It is still limited to criminal matters and does not cover the full scope of police duties and authorities. As a result, police officers are not directly bound by this regulation unless it is translated into relevant internal police regulations. Therefore, there is a need for law-level regulation to govern Anti-SLAPP procedures, police authority in environmental protection contexts, and other related issues, given the complex nature of the Anti-SLAPP concept.

In addition, the administrative process in the MoEF Regulation is quite complex. Articles 9 and 10, for instance, require environmental defenders seeking legal protection to apply to the incumbent Minister of Environment and Forestry formally. The relevant team will then verify their application. This bureaucratic process risks reducing the paradigm of environmental human rights to mere administration. In reality, under the framework of human rights, a healthy and clean environment is a fundamental right that the state should fulfill without administrative obstacles (Usman, 2018).

When discussing legal certainty, the role of judges, through their decisions, becomes pivotal in upholding the law, certainty, and justice in environmental protection and management. Judicial considerations are vital in assessing fairness, legal certainty, and utility for the parties involved in a ruling. Therefore, Indonesian judges, through their decisions, must apply the concept of legal certainty while ensuring justice for communities who are victims of environmental pollution or destruction (e.g., forest fires) caused by corporations.

### ***Based on the Theory of Criminal Sentencing***

Criminal law enforcement in the environmental sector remains based on the principle of *ultimum remedium*, meaning that criminal instruments are used as a last resort after administrative law enforcement mechanisms are deemed ineffective or fail to achieve the expected results.(Naibaho, 2021). The application of the *ultimum remedium* principle is limited

to certain types of formal crimes, particularly those related to violations of wastewater quality standards, emissions, and environmental disturbances, which may be subject to criminal sanctions.

Law is considered less effective or even ineffective when there is a disparity between legal reality, which refers to the public's awareness and implementation of the law, and legal ideals, which reflect the aspirations embodied in the substance of the law. This disparity necessitates restructuring or reformulating the legal framework. The high levels of pollution and environmental destruction caused by corporations, coupled with the public's low compliance with environmental preservation, indicate that law enforcement in environmental management remains far from ideal. Therefore, it can be said that the implementation of the Environmental Protection and Management Law (UUPPLH) has not yet been effective. This is due to the difficulty of proving environmental violations and the stagnant oversight of environmental control and management, despite legal and political efforts to amend environmental law in line with societal changes.

In continuation of the shortcomings of the Minister of Environment and Forestry Regulation (Permen LHK) No. 10 of 2024 mentioned earlier, this regulation is challenged by other laws of a higher legal hierarchy. For instance, Articles 73 and 74 of Law No. 21 of 2014 on Geothermal Energy stipulate that individuals may be criminally charged for obstructing business activities. Similarly, Article 162 of Law No. 4 of 2009 on Mineral and Coal Mining provides that individuals who interfere with mining business activities may be criminally prosecuted.

In the digital sector, criticisms are also subject to criminalization under Law No. 11 of 2008 on Electronic Information and Transactions. These laws clearly open the door to criminalizing environmental defenders, as the relevant articles could be used to treat protests

against environmental destruction as interference with business activities and thus subject them to criminal charges.

Permen LHK No. 10 of 2024 exists in a dilemma. While it represents a progressive step toward Anti-SLAPP regulation, its legal standing is vulnerable to being overridden by the principle *lex superior derogat legi inferiori* (a higher law overrides a lower one). The legal consequence is that the norms contained in this regulation may become ineffective in providing environmental defenders with protection or legal certainty.

### ***Based on the Theory of Legislative Formation***

The following are the shortcomings in the regulation of Anti-SLAPP (Strategic Lawsuit Against Public Participation) within Indonesia's environmental law:

1. Indonesia's legal framework lacks a clear definition and procedure for effectively addressing SLAPP cases. Provisions in Article 66 of the Environmental Protection and Management Law (UUPPLH), Supreme Court Regulation (Perma) No. 1 of 2023, and Ministerial Regulation of Environment and Forestry (Permen LHK) No. 10 of 2024 offer limited protection, primarily applicable when a case reaches court proceedings. This implies that potential victims often face intimidation before formal legal actions can protect them.
2. Anti-SLAPP application focuses primarily on lawsuits. As a result, public participation activities, such as demonstrations and protests, remain unprotected from strategic litigation intended to silence critics, allowing SLAPP practices to persist.
3. Unclear burden of proof. Perma No. 1 of 2023 introduces a *prima facie* (Herlitz, 1994) standard of evidence but fails to clarify how this burden is placed on the defendant accused of SLAPP. Additionally, there is no requirement for the plaintiff to meet a higher standard of proof than the defendant, which complicates case management.
4. Inadequate enforcement mechanisms related to Anti-SLAPP slow down the processing of SLAPP cases. There is no environmental certification for law enforcement officials, nor are

there internal guidelines for handling SLAPP cases, hampering responsive, effective legal action. Anti-SLAPP regulation in Indonesia is still far from sufficient when compared to international best practices. Countries like Canada offer more comprehensive protection through more precise definitions and broader procedural frameworks, making their systems more effective in preventing SLAPP practices. Canada's regulatory framework has even been adopted by the Philippines (Court, n.d.), making it a recommended model for Indonesia, especially given the cultural similarities between Indonesia and the Philippines.

Canada's SLAPP regulation is not limited to the environmental sector. It defines SLAPP as civil lawsuits aimed at individuals or organizations to obstruct, intimidate, and silence public criticism and advocacy for change. Its most notable legal instrument is the Protection of Public Participation Act (PPPA), which includes a 60-day deadline for SLAPP court proceedings after a motion is filed. The defendant has the authority to request dismissal of the suit if they can prove that the lawsuit restricts their freedom of expression. Furthermore, the PPPA shifts the burden of proof to the plaintiff, who must justify the lawsuit's legitimacy (Kanada, n.d.). If the lawsuit is found to be a SLAPP, the plaintiff must pay legal costs and damages (Kanada, n.d.).

Therefore, it is necessary to establish rigid and specific SLAPP and Anti-SLAPP regulations—not in the form of a *beschikking* (administrative decision), but as binding legislation at the level of a law, along with implementing regulations in Indonesia's legal system. The strong rationale for requiring such binding Anti-SLAPP legislation lies in the growing vulnerability of environmental protection efforts and environmental defenders (Kuswahyono & Ula, 2020). Since the enactment of the Omnibus Law (Job Creation Law), the industrial sector has gained a privileged position in environmental affairs. Businesses operating in forest areas are granted a tolerance if they meet the requirements within three (3) years. The provisions in the Omnibus Law that grant amnesty to business actors do not require restoration of damaged forest areas, allowing perpetrators to escape liability as long as they pay fines.

However, Canada's SLAPP regulations apply only in civil cases, whereas Indonesia's regulations cover both civil and criminal domains. A shared feature is the requirement that plaintiffs pay legal fees and damages if the lawsuit is deemed a SLAPP. The progressive spirit and substance of environmental protection embedded in existing regulations must be preserved and further developed to ensure broader and more effective enforcement. Therefore, adaptive and urgent legal steps are needed in the form of statutory regulation, or, at the very least, government regulation.

A practical strategy would be to impose automatic case-cost burdens on SLAPP perpetrators through a special motion that allows victims to immediately seek compensation for financial, emotional, or social harms. Such a mechanism would serve as a strong deterrent, ensuring both rapid dispute resolution and effective victim recovery. To reinforce this approach, a precise and weighted burden-of-proof system for SLAPP cases is also necessary (Riyadi & Hadi, 2021). Drawing on Canada's model, the burden should shift to the plaintiff once preliminary evidence indicates that the defendant's actions constitute legitimate environmental rights advocacy. Implementing these procedural safeguards, however, must be aligned with the substantive principles that guide courts in determining environmental harm at the international level.

Examining how other countries address court decisions on environmental protection reveals that the effectiveness of Anti-SLAPP mechanisms is closely tied to the application of core international environmental law principles. These include the precautionary principle, which requires preventive action amid scientific uncertainty; the prevention principle, which obliges states and private actors to avoid causing significant ecological damage; and the polluter pays principle, which mandates accountability for those responsible for environmental harms. The Philippine Supreme Court, through its *Rules of Procedure for Environmental Cases*, applies these principles by permitting the early dismissal of lawsuits intended to suppress

public participation. Likewise, Japan's administrative and judicial review processes incorporate the principle of state responsibility, ensuring environmental harm is assessed in accordance with internationally accepted standards. In contrast, Indonesia has yet to consistently integrate these principles into judicial reasoning, as reflected in cases involving Sawin and H. Rudy. This inconsistency contributes to uneven recognition of environmental damage. It allows SLAPP practices to persist, underscoring the urgency for Indonesia to harmonize its judicial approach with internationally recognized principles for determining environmental harm.

In addition, legal protections for communities and environmental activists must be adapted more practically and responsively to the human rights paradigm. Reformulation of law enforcement within the Kepolisian Republik Indonesia is also needed to support societal democratization, especially for environmental defenders fighting for the right to a healthy and sustainable environment. Their active and proactive participation is crucial, and they must be guaranteed optimal safety and protection at all times.

#### **D. CONCLUSION**

The absence of a precise formulation of the Anti-SLAPP concept in the Indonesian positive legal system reflects the government's minimal commitment to addressing the criminalization of environmental defenders. It demonstrates the weak implementation of legal protections for this group. Although the Law on Environmental Protection and Management (UUPPLH) and various implementing regulations related to Anti-SLAPP have been enacted, their implementation remains ineffective, as evidenced by the continued rise in cases of criminalization of environmental activists and defenders in Indonesia.

The minimal legal protection for environmental defenders opens the door for criminalization by powerful corporate actors through SLAPP actions. Furthermore, the substance and progressive spirit of Anti-SLAPP contained in the existing regulations must be preserved and further developed through immediate and adaptive legal measures, by drafting

a law or, at the very least, a government regulation. Moreover, provisions for the legal protection of communities and environmental activists must be more practically and responsively aligned with the human rights paradigm. In addition, police level policy reform is necessary to support the democratization of society in the fight for the right to a healthy environment.

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