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# Critical Analysis of Anti-Slapp Regulations in The Field of Criminal Law in Indonesia

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## ABSTRACT

This study examines the issue of SLAPP (Strategic Lawsuit Against Public Participation) and the appropriate Anti-SLAPP legal protections for environmental activists in Indonesia. It highlights how SLAPP serves as a tool for corporations to intimidate and silence environmental activists who oppose practices detrimental to society and the environment, particularly those resulting from the exploitation of natural resources. This study critically analyzes the existing Anti-SLAPP regulations in Indonesia, particularly within the context of criminal law, as outlined in various regulations. The study identifies significant shortcomings in these regulations, such as the lack of clear definitions of environmental activism, bureaucratic obstacles in seeking protection, and insufficient coverage throughout the entire criminal process. The results indicate that while legal protection for environmental activists is in place, it remains partial and inadequate, necessitating a more integrated and robust regulatory framework to better protect the rights and activities of environmental activists. This study offers suggestions for harmonizing Anti-SLAPP regulations across relevant legal institutions to ensure consistent and reliable protection for environmental activists.

**Keywords:** Environmental Activists, Anti-SLAPP, Criminal Law.

## I. Introduction

Natural resources play a crucial role in meeting human needs. They are widely used in the production of food, energy, building materials, clothing, medicines, and many other goods. This process involves the extraction, processing, distribution, and consumption of natural resources. However, the use of natural resources can have serious negative consequences, both for humans and the environment, when it is done exploitatively. This exploitative use is often driven by corporations whose primary goal is to accumulate capital or profit (Harvey, 2020). The exploitation of nature or living spaces leads to environmental degradation, reducing or even eliminating their functions. The communities living in these exploited areas are the most affected. These communities often fight back, both physically and intellectually, spreading their ideas through various media platforms. The corporations responsible for the exploitation understand that these ideas may attract others who share concerns about nature and its resources, leading to advocacy by what we call environmental activists. This, in turn, threatens the corporate activities aimed at profit generation. To combat this threat, exploitative corporations use their resources to intimidate, create fear, and ultimately silence those

impacted by their greed. This tactic is known as SLAPP (Strategic Lawsuit Against Public Participation) (Greenberg, 2023).

SLAPP is a form of abusive lawsuit used against environmental advocates. It has become a primary tool for corporations to suppress free speech, undermine people's power, and stop public participation in civil society. These harassing lawsuits intimidate environmental activists and discourage them from challenging powerful corporations in the future. SLAPP lawsuits often lack legal merit and do not require a legal victory to achieve the desired outcome. The main goal is to waste the time and energy of targeted environmental activists, causing financial and sometimes psychological harm through lengthy and costly legal battles.

The increasing use of SLAPP has raised awareness about the need for legal protection for environmental activists, leading to the development of Anti-SLAPP laws. Anti-SLAPP, a legal protection policy for individuals advocating for public interests, was first introduced in 1996 in the United States. It provides a legal framework based on constitutional rights and laws (Indrawati, 2023). In Indonesia, SLAPP cases are more commonly seen in the realm of criminal law. As of January 2024, at least 174 environmental activists, 940 farmers, and 120 individuals have been charged for their involvement in environmental activism (Salma, 2024). One example of SLAPP use in criminal law is the case of Budi Pego (BBC News Indonesia, 2023). Budi Pego, an environmental activist, along with many residents of Pesanggaran District in Banyuwangi Regency, East Java, organized a demonstration in 2017 to oppose the presence of a gold mine in their area. During the protest, a banner was allegedly introduced by the perpetrators of SLAPP, featuring the Hammer and Sickle symbol, which is associated with the Indonesian Communist Party. The display of this symbol is prohibited and considered a criminal act, leading to Budi Pego being charged with spreading communist ideology (Indonesia, 1999). Another example involves three farm workers from Indramayu, who were part of a group of villagers opposing the construction of a coal-fired power plant (PLTU) in their village. On December 14, 2017, they held a demonstration, displaying rejection banners alongside the Indonesian flag. After the demonstration, the banners and flags were left behind, but the following day, the red and white flags were found upside down, with the red at the bottom and the white at the top. The villagers were subsequently named suspects due to the incident, and during the police investigation, they were denied legal assistance. As a result of the criminal proceedings, the three Indramayu farm workers were found guilty under the Law on State Symbols, even though they had not committed the offense (WALHI Indonesia, 2018).

Anti-SLAPP provisions in Indonesia are outlined in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management, which is further elaborated in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 10 of 2024 concerning Legal Protection for Individuals Fighting for the Right to a Good and Healthy Environment. In addition to these two regulations, Anti-SLAPP is also governed by the Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases and the Prosecutor General's Guidelines Number 8 of 2022 concerning the Handling of Criminal Cases in the Field of Environmental Protection and Management. This research will critically examine the Anti-SLAPP regulations in Indonesia, particularly within the context of Criminal Law.

## II. Literature Review

The concept of Anti-SLAPP is closely related to the earlier emergence of SLAPP. SLAPP primarily aims to silence or eliminate freedom of speech and public participation (Aulia, Zafira, & Margarettha, 2021). The term SLAPP was first coined by George W. Pring and Penelope Canan, who defined it as a lawsuit initiated by the government with the intent to influence actions or outcomes in order to counter civil society demands concerning matters of principle and public interest from civil society or non-governmental organizations. Pring and Canan refer to a case involving an environmental lawyer in Denver (USA) who was defending a client's rights to a good and healthy environment, and was subsequently sued by the government and polluters (Indrawati, 2022). Lawsuits or criminal charges used to silence freedom of speech and public participation in environmental advocacy led to the birth of the Anti-SLAPP concept, which can be understood as a stance against the suppression of public participation.

Pring and Canan explain that fighting a SLAPP in court in the United States is relatively easy because SLAPPs lack a legal basis, especially when the target raises a defense based on human rights protected by the country's constitution. Similarly, in several Southeast Asian countries, SLAPPs are also easier to combat when the target raises a defense based on the protection of freedom of expression, and freedom of association and assembly, as outlined in the constitutions of these countries (Nelisa, 2021). SLAPPs come in several types (Handayani, Achmadi, & Apsari, 2021):

1. Textbook SLAPP, A lawsuit targeting environmental activists for their advocacy activities. This is typically a civil damages claim or a criminal charge directly related to the public participation of the activists, such as defamation or slander, whether written or verbal.
2. Concealed SLAPP, A lawsuit or criminal charge that uses criminal provisions not directly related to the public participation of environmental activists. This type of SLAPP is often seen in Indonesia. In Concealed SLAPP cases, the charges are cleverly framed to stop the public participation of environmental activists, disguising their advocacy as a criminal act subject to coercive measures. Concealed SLAPPs are unpredictable and uncertain, with the criminal provisions used to charge the activists varying widely, often manipulated through case manipulation and the use of ambiguous or "rubber/trash can" criminal provisions.
3. Sly SLAPP, A criminal charge against environmental activists for a crime that actually occurred. However, the crime was committed due to frustration and/or disappointment because the public participation efforts of environmental activists were ignored, not followed up, or dismissed for similar reasons. This frustration and/or disappointment stem from the fact that resolving environmental issues often takes a long time, and in some cases, the legal processes chosen by environmental activists reach a dead end due to the interests of authorities involved in development processes that violate the right to a good and healthy environment.

Historically, Anti-SLAPP gained recognition in Indonesia through discourse from environmental organizations during a Public Hearing Meeting on the Draft Law on Environmental Management. There are at least two reasons underlying the need for Anti-SLAPP regulations: first, the numerous cases of silencing individuals who advocate for environmental interests by the government or other authorities; and second, the frequent counterclaims made against public reports on environmental issues, often using defamation laws (Sembiring, 2019).

### III. Research Method

This research is a legal study within the framework of normative (doctrinal) studies (Marzuki, 2017). The type of research conducted is normative juridical, with the starting point being an analysis of statutory regulations concerning Anti-SLAPP. The approaches used in this study are the statute approach and the conceptual approach. The statute approach is applied because this study analyzes Anti-SLAPP regulations in Law Number 32 of 2009 concerning Environmental Protection and Management, the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 10 of 2024 concerning Legal Protection for Persons Fighting for the Right to a Good and Healthy Environment, and the Prosecutor General's Guidelines Number 8 of 2022 concerning the Treatment of Criminal Cases in the Field of Environmental Protection and Management. The conceptual approach is employed because this study focuses on the Anti-SLAPP issue related to criminal law, specifically to determine whether an act is a stand-alone crime or correlated with SLAPP, so that environmental activists facing criminal prosecution receive appropriate legal protection.

This study uses legal materials as research sources, which will be analyzed to find answers to the research problems. The technique for collecting research sources in this study was conducted through a literature review. All the legal materials obtained from this review are essential for addressing the research problems. The materials gathered include statutory regulations, such as Law Number 32 of 2009 concerning

Environmental Protection and Management, the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 10 of 2024 concerning Legal Protection for Persons Fighting for the Right to a Good and Healthy Environment, and the Prosecutor General's Guidelines Number 8 of 2022 concerning the Treatment of Criminal Cases in the Field of Environmental Protection and Management. The researcher then describes and connects these materials in a systematic manner to present the findings and answer the research questions.

#### IV. Result and Discussion

Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management, hereinafter referred to as the Environmental Protection and Management Law, provides general regulation on Anti-SLAPP, offering legal protection to environmental activists from criminal charges and civil lawsuits (Indonesia, 2009). However, this regulation does not define who qualifies as an environmental activist or specify the methods and forms of protection. It is only with the issuance of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 10 of 2024, hereinafter referred to as the Ministerial Regulation on Environment and Forestry, that Anti-SLAPP is regulated in more detail and with greater clarity.

The good faith behind the Anti-SLAPP regulation in the Ministerial Regulation on Environment and Forestry deserves appreciation, although it still warrants criticism due to several gaps in the regulation. First, Article 9 of the Ministerial Regulation on Environment and Forestry states that to obtain legal protection, environmental activists must submit a request for protection to the Minister (Minister of Environment and Forestry, 2024). This can be interpreted as centralizing the authority for handling legal protection in the minister, which also means it must go through a bureaucratic process that takes time. This is in contrast to the SLAPP perpetrators, who only need to coordinate with the lowest level of law enforcement, such as the police at the sub-district level, when criminal charges are involved. The Ministerial Regulation on Environment and Forestry does not explain how decisions regarding applications for legal protection for environmental activists are made, whether they are accepted or rejected, nor does it establish a timeline for the decision-making process. Additionally, this regulation does not specify the legal measures that can be taken in response to the decisions made.

Second, Articles 11 and 12 of the Ministerial Regulation on Environment and Forestry state that requests for legal protection must go through an ad hoc assessment team. While the regulation outlines the elements of this assessment team, it does not specify the qualifications for members who should understand Anti-SLAPP or, at the very least, have knowledge of environmental issues. This is similar to the qualifications for judges outlined in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases (Supreme Court, 2023), who are tasked with handling environmental cases. Furthermore, the selection process for the assessment team is not regulated, potentially allowing external interests to influence the process.

Third, this Ministerial Regulation on Environment and Forestry only provides legal protection for environmental activists who engage in advocacy through legal channels. This contrasts with SLAPP perpetrators, who can intimidate environmental activists before they take legal action, especially those activists who do not resort to legal action, such as through peaceful protests, journalistic reporting, or the dissemination of discourse and ideas. For example, activists fighting against corporations that exploit and destroy the environment may not pursue legal action, not because of their own will but due to circumstances such as being in remote or isolated areas where access to legal resources is severely limited.

The Ministerial Regulation on Environment and Forestry does not provide more specific legal protection for environmental activists in the field of criminal law. Comprehensive and clear regulations, particularly in criminal law, are found in the Prosecutor General's Guidelines Number 8 of 2022 concerning the Handling of Criminal Cases in the Field of Environmental Protection and Management, hereinafter referred to as the Prosecutor General's Guidelines. Legal protection for environmental activists is regulated in Chapter VI

of the Prosecutor General's Guidelines, which addresses Legal Protection for Individuals Who Fight for Environmental Rights (Anti-SLAPP).

Several crucial aspects are regulated in the Prosecutor General's Guidelines that can better guarantee legal protection for environmental activists. First, the Guidelines outline the activities that constitute the actions of environmental activists. These actions include: submitting proposals for the protection and proper management of the environment; lodging objections, complaints, or reports regarding pollution and/or environmental damage; reporting suspected criminal acts; filing administrative or civil lawsuits; expressing opinions in public; delivering testimony or information at trial; and/or communicating with ministries/institutions related to the right to a healthy and good environment, either verbally or in writing, directly or via electronic means. Additionally, the Prosecutor General's Guidelines specify that these actions must be carried out lawfully and in good faith to ensure access to information, participation, and justice in fulfilling the right to a good and healthy environment. As long as these actions are not unlawful and are carried out in good faith, they are permitted under the Guidelines.

Second, the Prosecutor General's Guidelines make a significant breakthrough regarding reports and criminal complaints directed at environmental activists. The alleged criminal acts must first be assessed in relation to the accused's status as an environmental activist and their activities. The motive behind the act must also be considered, even though it is not an element of the criminal act. However, in this case, the motive is taken into account under the Guidelines. This provision helps prevent and minimize fabricated accusations against environmental activists, as seen in several examples mentioned earlier.

Third, the Prosecutor General's Guidelines provide more specific protection for environmental activists if, in carrying out their activities, unlawful elements are involved. In such cases, prosecution can be stopped if the case is closed by law, as long as the activities with unlawful elements are properly justified. Proper justification includes the absence of alternative actions or choices other than unlawful ones (the principle of subsidiarity) and the necessity of the unlawful action to protect more significant legal interests or fulfill more important legal obligations (the principle of proportionality).

The Prosecutor General's Guidelines do regulate Anti-SLAPP better than other regulations in the field of criminal law. Unfortunately, these guidelines are only in the form of internal regulations that bind only the prosecutor's institution, as stated in Article 35, paragraph 1, letter (a) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 on the Prosecutor's Institution of the Republic of Indonesia. Criminal procedural law consists of several stages involving various state institutions, depending on the level of the process. According to criminal procedure law, the prosecutor's role is in the prosecution process, while the investigation and inquiry processes are carried out by the police before the prosecution phase. If the state intends to provide legal protection for environmental activists in the realm of criminal law by comprehensively regulating Anti-SLAPP, this protection should extend from the beginning of the criminal procedure process, including the investigation and inquiry phases at the police institution. As of the time this research was conducted, no regulations related to Anti-SLAPP exist for the police, unlike the prosecutor's office, which has the Prosecutor General's Guidelines, and the Supreme Court, which has issued Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases.

## V. Conclusion

Anti-SLAPP regulations in the field of criminal law are outlined in various rules but remain partial, applicable only institutionally and not universally, and lack comprehensive regulation. This is counterproductive to the concept of Anti-SLAPP, which aims to prevent the wasting of time and energy for environmental activists who are targeted, as well as avoid financial losses due to prolonged legal disputes—especially in criminal law, where the process is lengthy. It would be more effective if Anti-SLAPP regulations were harmonized through joint regulations between law enforcement institutions involved in criminal law or regulated in a separate law. This would make the regulations universally applicable, creating a unified framework that ensures greater certainty and stronger protection for environmental activists.

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