



The Critical Importance of Strengthening Anti-Strategic Lawsuit Against Public Participation Arrangements for Environmental Activists in Indonesia

Santia Elfina; Eko Sopoyono

Master of Law, Faculty of Law, Diponegoro University, Indonesia

E-mail: santiaelfina111@gmail.com

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Abstract

Strategic participation against public participation is a strategic response to public participation through litigation pathways. In order to protect the rights of people that contribute to active participation in the public matter of strategic against public participation has emerged the anti-strategic participation concept against public participation. Anti-strategic against public participation in Indonesia has already been implemented in some regulatory regulations, but in fact there is still a lot of criminalization among environmental fighters. The study is done with the aim of knowing how effective anti-strategic against public participation in providing legal protection for environmental fighters and what breakthrough it is to overcome the rising and rising anti-strategic against public participation for environmental fighters in Indonesia. The type of research used is normative-law research with a cryptological data analysis technique. With the result of research, Indonesian regulatory measures implementing anti-strategic against public participation have not been effective in protecting environmental against public participation, as they have been unable to overcome the strategic participation against public participation in Indonesia. The anti-strategic against public participation in Indonesia will need reinforcement with the strategic against public participation and anti-strategic against public participation, a subject that can provide protection from anti-strategic barriers against public participation, the counter-strategic against public participation in the country, Strategic governance criteria against public participation and anti-strategic governance against public participation. As for the breakthrough in overcoming strategic against public participation in Indonesia, it is adopting anti-strategic against public participation not only in material law but also formal law.

Keywords: *Anti-Strategic Participation Against Public Participation; Strategic Participation Against Public Participation; Laws of the Environment*

Introduction

Public participation is one of the manifestations of democratic systems. In a democracy, public participation is a major role in the democratization process that should be addressed to realizing democratic countries. In a country that espouses democracy, public participation becomes a must. The citizen view views as having a right to public participation, the right of the people to participate (*Right to Public Participation*).¹ Public participation is the role of citizens in identifying issues within the environment, elections and decision making in an effort to solve problems that involve many people or the general population.²

Public participation or community participation can be done in any realm, one of which is public participation in the environment. This community participation plays an important role in environmental management, especially in a healthy and healthy environment as a fulfillment of its rights according to chapter 28h of the verse (1) the 1945 constitution, which is governed more fully in article 65 (1), (3), and (4) the 2009 number 32 act on environmental protection and management.³ Public participation or community participation has long been governed since 1982 act number 4 on the terms of basic environmental management to 2009 on environmental protection and management.

Communities that have always participated in and actively participated in the fight for a good and healthy environment are commonly known as ward workers or ward fighters. The role of the environmentalist as governed by article 66 of act 32 in 2009 that states "no person who fights for the right to a good and healthy environment" in this chapter makes it clear that the requirement arises to protect every good individual, neither groups nor corporations that fight for their right to a healthy and healthy environment can be prosecuted nor prosecuted. The explanation of chapter 66 affirms this provision to protect both victims and whistleblowers who followed the legal path. This protection in chapter 66 is intended to anticipate reprisals or counterreports, both criminal and civil demands by abiding independent justice.⁴

Protection against environmentalists was also provided by the court of justice by referring to Indonesia's republic of Supreme Court's guidelines No.36/KMA/SK/II/2013 regarding the establishment of an environmental development guidelines. This Supreme Court decree explains that in the handling of environmental matters, judges must appeal to the environment's profitability. The ruling also states that article 66 of the zero-32-year law on protection and management of the environment is the legal basis of anti-strategic participation against public participation (anti- SLAPP), hence that chapter 66 is known as anti-SLAPP.

Anti-SLAPP corresponds to article 66 of the law no. 32 in 2009 and the 36/2013 Supreme Court decision is a law that provides legal protection for environmental fighters. Anti-SLAPP itself is a concept that resists the action of strategic against public participation (SLAPP). SLAPP is a strategic move through litigation or judicial channels to eliminate community participation or public participation.⁵ From the SLAPP's understanding it can be seen that it aims to either shut down or eliminate community participation in public matters. SLAPP's actions by those involved often intimidate society and threaten to play an active role in environmental protection and management. Although under section 32 in 2009 in

¹ Usman, Yudi. (2015). Partisipasi Publik Untuk Kebijakan Yang Lebih Baik. Diakses pada tanggal 9 November 2021, <https://www.kompasiana.com/yusdi.usman/54f9231ea33311af068b47b4/partisipasi-publik-untuk-kebijakan-yang-lebih-baik>.

² Adi, Isbandi R. (2007). *Perencanaan Partisipatoris Berbasis Aset Komunitas Dari Pemikiran Menuju Penerapan*. Jakarta: FISIP UI Press.

³ Sembiring, Reynaldo. (2017). Menyoal Peraturan Anti Eco-SLAPP Dalam Undang-Undang Nomor 32 Tahun 2009. *Jurnal Hukum Lingkungan*, 3(2), h. 12.

⁴ Hukmah, Muftia N. dkk. (2019). Efektivitas Penerapan Pasal 66 Undang-Undang Nomor 32 Tahun 2009 Terhadap Perlindungan Aktivis Lingkungan. *Simposium Hukum Indonesia*, 1(1), h. 3

⁵ Merriam, D.H. dkk. (1993). Identifying and Beating a Strategic Lawsuit Against Public Participation. *Duke Environmental Law & Policy Forum*, 1(1).

section 66, it has progressively provided protection to the environmentalists as a form of public participation in order to ensure that participation by citizens and ward fighters is neither criminal nor civil, but in reality there are still many of the SLAPP cases that fall on the environmental fighters involved in undermining environmental destruction or pollution by those involved.

The rule in article 66 does not qualify optimally because in practice the people who fight for their right to a healthy and healthy environment are very easily sued criminally. The weak and low rules that protect environmental fighters are among the easy causes of prosecuting and prosecuting in name of other cases. Not only is this the case with environmentalists but it is widespread to refer to experts who give court information.⁶

Cases of rights violations or attacks on environmental SLAPP ers such as the iceberg phenomenon. This is because only a few published cases of glacial peaks, ranging from January 2020 to April 2020, according to data compiled by the society's study and advocacy (ELSAM), there are 22 cases of environmental fighters, public study and advocacy (ELSAM), and for 2019, 27 criminalized cases involving environmental fighters, The case caused 128 individuals and 50 groups of people to adopt the legal route.⁷ According to data from the Indonesian environment vehicle (WALHI), it is recorded that the number of criminalized crimes against environmental fighters from 2014-2019 has 146 cases taken on the island of Java in precisely Jakarta, west Java, central Java and east Java.⁸ The national commission on human rights notes there are 11 complaints of criminalization coming from individuals, public and legal aid agencies during 2020. On the other hand, civil society organizations noted more cases with 116⁹ Meanwhile, the English center for environmental law (icel) identifies five separate SLAPP cases, which are closed in two civil cases and three criminal cases.¹⁰ Based on this data we can see how the rules of environmental law in Indonesia provide protection to environmental fighters. Reporting back both charges and lawsuits against environmentalists is often indicative of coercion and verdict. Environmentalists are often suspected of defamation, flagellation, destruction of public or property, sedition, the spreading of communism, illegal claims, land grabbing, and so on.¹¹

A crime against environmental fighters as SLAPP efforts on the part of one is the budi pego case. In this case budi pego was accused of spreading the issue of communism. The budi pego case stems from a protest that took place on April 4, 2017, which turned down the gold mine, there is an unknown video recording that shows the presence of banners bearing a hammer and iron image. The presence of the banner is what led to the ensnare of 127th article criminal criminal.¹² Another case, the joko prianto who rejected the establishment of a criminalized cement factory in the rembang, joko prianto was indicted

⁶ Hukmah, Muftia N. dkk. *Op.Cit.*, h. 178

⁷ Digest, Forest. (2020). Pejuang Lingkungan Rentan Mendapat Kekerasan. Diakses pada tanggal 21 September 2021, <https://www.forestdigest.com/detail/728/pejuang-lingkungan-rentan-mendapat-kekerasan>.

⁸ Anon. (2019). Walhi: terjadi 146 Dugaan Kriminalisasi sepanjang 2014-2019. Diakses pada tanggal 21 September 2021, <https://nasional.kompas.com/read/2019/12/10/13120081/walhi-terjadi-146-dugaan-kriminalisasi-sepanjang-2014-2019>.

⁹ Ady, Thea, D.A. (2020). Catatan Minus Terhadap Perlindungan Pembela HAM. Diakses pada tanggal 11 Januari 2022, <https://www.hukumonline.com/berita/baca/lt5fcfb19c80b68/catatan-minus-terhadap-perlindungan-pembela-ham?page=3>.

¹⁰ Indonesian Center for Environmental Law (ICEL). (2021). Prosiding Webinar "Penguatan Mekanisme Anti-SLAPP Dalam Sistem Hukum Indonesia". Diakses pada tanggal 10 Januari 2022, <https://icel.or.id/wp-content/uploads/Prosiding-Penguatan-Mekanisme-Anti-SLAPP-dalam-Sistem-Hukum-Indonesia.pdf>

¹¹ Sembiring, Boy, J.E. (2019) *Tinjauan Lingkungan Hidup Walhi 2019: Membawa Beban Masa Kini Ke Masa Depan*. Jakarta: Walhi Eksekutif Nasional, h. 65

¹² Walhi jatim. (2019). Budi Pego Korban SLAPP. Diakses pada tanggal 21 September 2021, <https://walhijatim.or.id/2019/01/budi-pego-korba-slapp/>.

under article 263 of criminal code relating to document forgery.¹³ The darno and dian purnomo cases found guilty of criminal ACTS under article 170 of criminal law regarding outright and with the mutual force of violence against people or objects. Darno and dian are accused of damaging pt cipitra development's assets in the sepat reservoir on June 6, 2018. Darno and dian were convicted and sentenced to 2 months and 15 days in prison.¹⁴

The growth of SLAPP action by those involved in the fight against environmentalists and the high risk to the environmentalists is the result of an anti-SLAPP rule in the 2009 no. 32 article 66 article and the 2013 Supreme Court ruling on environmental affairs guidelines. It must be acknowledged that the act of no. 32 in 2009 has provided legal protection for environmental fighters. But in fact the rules have no significant implications to protect environmentalists from criminal actions.

The weak anti-SLAPP arrangement as a protection against environmental fighters is a major cause of difficulty and the lack of it in Indonesia. The English center of environmental law (icel) argues that the rules and guidelines contained in the 2009 no. 32 /KMA/SK/II/2013 Supreme Court decree were not enough to address the major issues of SLAPP's actions.¹⁵ The rules regarding anti-SLAPP in Indonesia are not very clear, whether in terms of SLAPP definition, the direction of SLAPP, the custom criteria and anti-SLAPP operations that are actively established in environmental law as well as in the legal systems of civil events and criminal events. It has been the leading factor in the anti-SLAPP concept in Indonesia.

The problem in this study is how anti-SLAPP policies are effective in protecting the law for environmental fighters and what is the breakthrough in strengthening anti-SLAPP rules for environmentalists in Indonesia. The objective of this research is to find out how effective anti-SLAPP policies are in providing legal protection for ward fighters and what is the breakthrough in coping with the tides of anti-SLAPP arrangements for ward fighters in Indonesia.

Formulation of the Problem

- 1) How is the effectiveness of anti-SLAPP policies in legal protection for ward fighters?
- 2) What will be the breakthrough in reinforcing the anti-SLAPP rules for environmental fighters in Indonesia?

Research Methods

The study USES normative legal research methods. The kind of study that USES literature studies, which put the law as a building system of values to review the application of positive rules or laws.¹⁶ Normative legal research USES secondary data as a primary source of data. Secondary data are data obtained from legal materials such as books, journals, previous research, documents, literature studies and constitutional regulations. Secondary data in this study include primary, secondary and tertiary legal material. In the study, the data obtained is processed using a prescriptive method, which is

¹³ Kompas.Com. (2018). Jadi Tersangka Pemalsuan Dokumen, Joko Prianto Ajukan Praperadilan. Diakses pada tanggal 22 September 2021, <https://regional.kompas.com/read/2018/01/02/14000181/jadi-tersangka-pemalsuan-dokumen-joko-prianto-ajukan-praperadilan>.

¹⁴ Helmi Supriyanto. (2019). PN Surabaya Putuskan Bersalah Terhadap Terdakwa Darno Dian. Diakses pada tanggal 11 Januari 2022, <https://www.harianbhirawa.co.id/pn-surabaya-putusan-bersalah-terhadap-terdakwa-darno-dan-dian/>.

¹⁵ Mappifhui.org. (2018). Diskusi *Indonesian Center for Environment Law (ICEL)* "Anti SLAPP dan Perlindungan Terhadap Kriminalisasi Aktivistis. Diakses pada tanggal 27 September 2021, <http://mappifhui.org/2018/02/13/diskusi-indonesian-center-environment-law-icel-anti-slapp-dan-perlindungan-terhadap-kriminalisasi-aktivis/>.

¹⁶ Dr. Mukti Fajar ND & Yulianto Achmad. (2019). *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta: Pustaka Pelajar, h. 34.

the method of analysis that provides investigation about the objects. Analysis was done by systematically compiling legal material and building arguments for explanations and exposure to the study.¹⁷

Discussion

1. The Effectiveness of Anti-SLAPP Regulations in the Protection of Environmental Fighters

The concept of anti-SLAPP has been essentially adopted in the rule of legislation in Indonesia, which can be seen from the constitution of 1945 and in the 1999 constitution on human rights. Both rules can actually protect each citizen who participates in public participation without fear of SLAPP's action, although it is not explicitly stated that this rule can be applied to the anti-SLAPP concept. As SLAPP knows, it is a strategic action to silence public participation through litigation pathways or judicial mechanisms. SLAPP's action is one of those that violate human rights because public participation in Indonesia is an act recognized as part of human rights as embodied in the Indonesian constitution the fundamental 1945 act found in article 28c (2) which mentions a person's right to participate collectively in the fight for his right to build public interest. Second, in chapter 28e verse (3) that reads "everyone has the right to freedom of association, to assemble and to make an opinion." It clearly states that each individual has the right of constitutionally to express his or her thoughts and to state his or her opinions, both in speech and in written form.

Basically everyone has the right to participate actively in public participation as a fighting form of his rights to the public good. Public participation often carried out by society is usually in the form of both oral and written opinions. Even when it comes to public opinion, it is governed specifically by the 1998 act of independence to present public opinion. Article number 39 of 1999 chapter 23 of 1 verse (2) states that "each person is free to have, to express and promote opinions according to his conscience, by word of mouth and by written or written in both print and electronic media by observing values, religion, decency, public order, and national integrity." This clearly explains that public participation in the public good by speaking out is a right that should be protected from SLAPP action by the state.

The act of the 32 year 2009 gives stronger recognition of society's rights. The birth of this 2009 act of number 32 is based on the view that the right to a healthy environment is part of human rights. Improved environmental guarantees on the environment under act 32 in 2009 lie:¹⁸

- a. Acknowledge the right to a good and healthy environment is part of human rights
- b. Recognition of the access rights to information, participation and environmental justice.
- c. Legal protection for anyone who fights for the rights to the environment. These provisions strengthen the two guarantees of above rights by ensuring that the law should protect everyone who championed the rights to the environment.

Guarantees of legal protection under rule no. 32 in 2009 constitutes a rule that adheres to anti-strategic participation against public participation in the environment. The anti-SLAPP concept in the realm of the environment was first in this rule. The provision for protection of the right of the public to participate in the active role of keeping environmental issues is proposed that the CPPLH bill come from civil society. Then, at a public opinion meeting on July 13, 2009, with a nongovernmental representative from nongovernmental organizations (LSM), an environmental organization that is a member of the

¹⁷ *Ibid.* Hlm. 184

¹⁸ Pring & Canan. *Op. Cit.*, h 70

English center for environmental law (icel) suggested adding a scripture that applies the anti-SLAPP concept to community participation.¹⁹

The proposal appears against the background for two reasons, in that it is a record of repeated responses to citizens fighting for environmental interests and a reprisal of backreporting by exposing environmental cases to authorities.²⁰ The proposed terms on anti-SLAPP are accepted and approved by the formulators of environmental management laws. This rule was then passed on September 8, 2009, and was published on October 3, 2009, to the 2009 no. 32 law on environmental protection and management.²¹

The 2009 no. 32 act on environmental protection and management is the first regulation in Indonesia that applies anti-SLAPP concept to the domain of the environment commonly known as anti-eco-SLAPP. The terms on anti-SLAPP can be seen in chapter 66 that read "anyone who fights for the right to a good, healthy environment cannot be prosecuted either criminal or civil." It is then explained further in its explanation of the 2009 environmental protection and management act act no. 32 states that it expressly states that "the provisions in chapter 66 are intended to protect victims and or victims of the legal course of pollution and or environmental damage, This protection is intended to prevent retaliation from being reported through idleness and or civil suit by remaining concerned for judicial independence.

The provision of article 66 of act 32 in 2009 appears in response to the cases involved and is categorized in SLAPP actions. Although in this 2009 no definition of anti-SLAPP, the rule in section 66 has provided legal protection for both the community and activists who fight for his right to a healthy, healthy environment. The protection given in the pasla 66 is anti-SLAPP, hence section 66 is called the regulation on anti-SLAPP. The provision of this 66 chapter reinforces the assurance of the rights contained in section 65 and strengthens chapter 70 as well.

Although the law has established that protection of legal participation in the environmental interests of the society, SLAPP case in Indonesia is growing more and more, even SLAPP attacks have already begun targeting those outside the society and the environmentalists. The growing number of criminalized cases against ward fighters proves that article 66 is not optimally implemented and does not really protect the environment fighters from SLAPP attacks. This is because of the gaps and Spaces provided by section 66 that have caused SLAPP attacks to occur frequently.

The weakness in this 66 article of act no. 32 in 2009 is found in the contents of chapter 66 and in the contradictory and contradictory explanation of chapter 66. Chapter 66 of that passage USES the phrase "everyone." The meaning of each person has a broader meaning, each person may be understood with each individual and a group of people who fight for his rights to be protected whether they have made the legal effort or not. Whereas in its explanation article 66 protection is provided only to people who have gone along with the law. The explanation in chapter 66 can induce a multitafsir that may undermine the importance of public participation. The phrase "act of vengeance" in the explanation of 66 is often argued that the chapter is only valid if the victim is already in a legal way. SLAPP actions can happen at any time, both before and after the victim made a legal effort. George w. pring and Penelope canan do not restrict protection only when SLAPP victims have taken the law into their own hands.

In addition to the content of chapter 66 and its multitasking and contradictory chapter explanations. There are other drawbacks: the law does not govern any further as to who should be protected by anti-SLAPPer, the anti-SLAPPer direction, the anti-SLAPPer criteria and the operation of

¹⁹ *Ibid.* Hlm. 75

²⁰ Raynaldo, S. (2019). Merumuskan Peraturan Anti Strategic Lawsuit Against Public Participation di Indonesia. *Bina Hukum Lingkungan*, 3(2), h. 11.

²¹ Muftia Nisaul Hikmah, Wartiningih, *Loc.Cit.*

anti-SLAPPer rules. The concept of anti-SLAPP would certainly be better if it were translated into Indonesian law as it has been done by some countries such as the Philippines. The Philippines in the rules of procedure for environmental remedies has adopted the concept of anti-SLAPP not only on its material laws but on its enforcement laws as well. Development of the program law such as that of the Philippines can be developed in Indonesia in order to minimize criminalization of people who fight for its rights.²² The anti-SLAPP rule in 2009 law no longer has any understanding as to what constitutes anti-SLAPPer and an explanation from section 66 says multitaafsir ysng restricting protection only when it comes to justice. To what is explained in chapter 66 that is inverting the anti-SLAPP concept, the Supreme Court issued Supreme Court decree no. 36/ kma/sk/ii /2013 on the application of environmental case management guidelines as further direction and reinforcing the rule on anti-SLAPP section 32 in 2009.

This Supreme Court decree No.36/KMA/SK/II/2013 explains further and explicitly states that article 66 of the law number 32 in 2009 adheres to the anti-SLAPP legal system. SK Supreme Court No.36/2013 gives an explanation of what is meant by anti-SLAPP. According to the Supreme Court decree No.36/KMA/SK/II/2013, it is explained that "anti-SLAPP isa legal protection for environmental fighters, it can be a reverse ora returned-suit, a common or reporting that has committed crimes against environmentalists, for example, the act of blasphemy as set up by law." The explanation given by the Supreme Court is broader than that contained in article 66 of the law no. 32 in 2009.

In SK the Supreme Court is based on an explanation of the anti-SLAPP definition it can be seen that the Supreme Court interpreted that SLAPP actions could happen anytime and anywhere, regardless of whether people had followed the law's way or had not followed the law. This is in contrast with the explanations in section 66 that limit anti-SLAPP to only those who have gone the law way. This explanation in sk Supreme Court is in line with the rules of procedure for environmental case, an anti-SLAPP rule in the Philippines that has adopted the concept of anti-SLAPPer not only to its material law but also to its formula.²³

SK high court No 36/2013 also states that in civil event law and criminal law for the application of the anti-SLAPP concept has not been fixed in both HIR/Rgb and kuhap, nor has the application of anti-SLAPP in formal law been found in judicial practice. Explicit application of the anti-SLAPP concept in Indonesia's legal system of events both civil and criminal is actually a challenge in the justice practice that must be addressed immediately. However, to determine how the application of article 66 in the judicial process in Indonesia, SK Supreme Court gives guidelines that "to decide, as in article 66 of the republic of Indonesia act No. 32 in 2009 on the protection and management of the environment that the plaintiff and/or reporting crime from applicant is a SLAPP that can be filed both in provision, Conceptions as well as reconventions and/or pleadings (in civil suits) and/or pleadings (in criminal exchange) should be decided first in the intermediate verdict."

The explanation provides brief direction for law enforcement in dealing with SLAPP actions both in civil law events and criminal law events. However, since the effect is still in the form of a decision that allows for the scope of his behavior to be very limited, that is, to be internal among the Supreme Court and lack the strong legal force. This provides protection provided by SK Supreme Court No.36/KMA/SK/II/2013 only when the public is in a legal way. Whereas SLAPP actions can happen at any time, not having to wait for a case to enter the court of law first. Protection against environmental fighters in order to avoid SLAPP actions should be taken as early as possible.

Based on an explanation of anti-SLAPP in SK/KMA/SK/II/2013 Supreme Court, it is known that the protection provided by the Supreme Court to keep people involved in the active role of public interests out of the question only if people follow the legal path. The decision by the Supreme Court was

²² Reynaldo Sembiring, et al. *Op.Cit.* h. 80.

²³ *Ibid*

more detailed than article 66 of the constitution of nomor 32 in 2009. The high court is in line with the rules of procedure for environmental case, an anti-SLAPP rule in the Philippines that has adopted the concept of anti-SLAPP not only to its material laws but also to its formula laws. However, based on the SLAPP concept developed by George W. Pring and Penelope Canan that did not limit protection only when SLAPP's victims had taken legal action.²⁴

The description regarding the SLAPP affairs still had a loophole. The loophole is in the phase of criminal procedure. In civil cases, the Supreme Court gave the defendants the ideal of the victim of SLAPP's attacks, but it was different in criminal cases. In criminal proceedings, the suspect will have to go through steps of long criminal procedures starting with the investigative steps. Other drawback is a phase of criminal procedure in which free use of anti-SLAPP dalili in a plea level and must be cut off in a break-up decision. The thing that matters is this:²⁵

- 1) The defense phase in the law of criminal proceedings has entered the matter, and thus it cannot be cut off in the intermediate court.
- 2) The use of interrupted rules is a legal event, for according to the law of the civil event (HIR, Rgb) and the law of criminal events (KUHP) anti-SLAPP does not include objects that can be cut off in an interrupted verdict.

But, unfortunately the Supreme Court decision was a decision (beschikking) that had no binding power of the law and was merely internal. In the sense that this decision applies only to the scope of the Supreme Court, and cannot bind other law enforcement. In the handling of SLAPP's case, there is also the cooperation of the law enforcement apparatus that I, like the RI police, the attorney general. Since the Supreme Court decree applies only to the internal Supreme Court, protection against society that receives the SLAPP attack can only be provided if it enters the court.

In addition to the weaknesses and loopholes in anti-SLAPP legislation, Prof. Dr. Hartiwiningsih, S.H., M.Hum believes that the difficulty of enforcing anti-SLAPP rules in Indonesia is due to the lack of understanding of law enforcement officials in the environmental law enforcement system. In handling ward matters, the judge who will handle ward cases should have ward certification or have already received environmental training. In the enclosure of the case, law-enforcement personnel tend to overlook the background of action. Law enforcement personnel tend to isolate a case without prejudice against contamination and corruption.

It is the rise in the case of SLAPPs in Indonesia that proves that anti-SLAPP regulations in Indonesia have not been able to effectively protect public participation.

2. Breaking the Rules Anti-SLAPP for Environmental Fighters in Indonesia

Indonesia's anti-SLAPP arrangements are not working effectively to protect environmentalists from SLAPP's actions. This can be seen from the still rising of SLAPP's cases against the environmental fighters and the undefined handling of the causes that SLAPP identifies in the court. The many cases involving SLAPP's actions in Indonesia show that the rules and guidelines contained in the regulations governing anti-SLAPP are still failing to protect communities and environmental fighters. This is because of the drawbacks and limitations of article 66 of the law number 32 in 2009 and the letter of the Supreme Court number 36/KMA/SK/II/2013 as well as other anti-SLAPP regulations. The established anti-

²⁴ George W. Pring & Penelope Canan. (1989). SLAPPs: Strategic Lawsuit Against Public Participations. *Pace Environmental Law Review*, 7(1), h. 20

²⁵ Indonesian Center for Environmental Law (ICEL). (2021). Prosiding Webinar "Penguatan Mekanisme Anti-SLAPP Dalam Sistem Hukum Indonesia". Diakses pada tanggal 10 Januari 2022, <https://icel.or.id/wp-content/uploads/Prosiding-Penguatan-Mekanisme-Anti-SLAPP-dalam-Sistem-Hukum-Indonesia.pdf>.

SLAPPer rule in Indonesia still has not been able to address the underlying issue of SLAPP. It is difficult to implement this rule because no operator of SLAPP legal system in Indonesia is one of the main factors that block the implementation of anti-SLAPP.

The ambiguity regarding anti-slaps in Indonesian law enforcement provides a legal loophole for environmental polluters to fight both a civil suit and a criminal suit against the environmentalists. To address the SLAPP issues in Indonesia, Indonesia needs reinforcement of the rules. The strengthening of the rules for anti-SLAPP can be done by strengthening the mechanisms in the legal system in Indonesia. The I Gusti Agung Wardana, S.H., LL.M., Ph.D thinks that improving the antiSLAPPer's mechanisms can take two approaches:

- a. Subjective approach that focuses on the target. This approach requires comprehensive understanding of what constitutes the identity of total crime. This is to prevent law enforcement from misinterpreting the law, and to ascertain its proper compliance.
- b. Substantive approaches, this approach is done by viewing and verifying whether the substance has substantive substantives. This substantive approach involves detecting allegations of slaps early on. In a sense, when environmental pollution and environmental fighters are victims, it could be said that it falls into the SLAPP category without further merit investigation.²⁶

Some things that need to be done for the renewal or strengthening of anti-SLAPP rules, are:

- a. Protection of environmental fighters must be strengthened and amplified in laws.
- b. Any action that falls into the SLAPP category.
- c. Subject environmental law limiters.
- d. The criteria for nonlegal or permissible forms of defense, anything that cannot be criminalized, must be categorically clarified.
- e. Conduct criteria that can be criminalized for environmentalists.
- f. Process mechanism of law.

In addition to the need for reinforcing the regulations and anti-SLAPP mechanisms in Indonesian regulations so that SLAPP's case can be identified as early. Internal regulations of each law enforcement agency are required to stop SLAPP's case as early as possible. So that when the SLAPP case continues to the next level, law enforcement authorities responsible for the continuation of the case can determine that the matter is SLAPP's case and can stop it. In addition, there can be a common rule among law enforcement officials in the form of a joint decree to increase collaborative and synergistic understanding among law enforcement officials in dealing with the SLAPP case.²⁷

Conclusion

The anti-SLAPP concept of protection to environmental fighters in Indonesia was first implemented or implemented in the 2009 no. 32 act on environmental protection and management. Until then, in general anti-SLAPP had been adopted in Indonesia in some of its 1998 legislation on freedom to express public opinion, the 1999 law on human rights act, the 31 year 2014 law on the change to the number 13 of 2006 on the protection of witnesses and victims. Some of these legislation in general provide legal protection for public participation. The regulation is strengthened and further regulated in the Supreme Court decree no. 36/ kma/ii /2013 on the application of the environmental support guidelines. However, many rules governing anti-SLAPPer are not able to address the SLAPPer problem in Indonesia. Implementation of

²⁶ *Ibid.* h. 20.

²⁷ Etheldreda, E.L.T. dkk. (2021). Panduan Bagi Aparat Penegak Hukum Dalam Menerapkan Anti SLAPP. *Indonesian Center for Environmental Law (ICEL)*

the Indonesian anti-SLAPP concept in order to provide legal protection for Indonesian environmental fighters is not working effectively. In the light of certain cases, the court often ruled out the background of the consequence of the case and saw only what was being both accused and accused. Even the existing regulations have not been able to provide a clear spot of light on SLAPP's case. The lack of explanations regarding the anti-SLAPP rules allows law enforcement officials to have a different interpretation.

The breakthrough to address SLAPP's actions in Indonesia can be followed by a specific rule for protecting public participation (anti-SLAPP) from SLAPP's actions. These rules may be shaped in the form of a law, a minister's rule, a President's rule or other legislation in order to complete the flaws of the previous one. The need for regulatory mechanisms in the legal system of events in Indonesia in handling matters that are anti-SLAPP. The need for internal regulation of each law enforcement agency in order to identify and stop SLAPP's case as soon as possible. Until SLAPP's case moves to the next procedure, the law-enforcement authorities responsible for the case's continuation can determine that the case is SLAPP's case and can stop it. In addition, there can be a common rule among law enforcement officials in the form of a joint decree to increase collaborative and synergistic understanding among law enforcement officials in dealing with the SLAPP case.

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