

Expanding the Scope of Legal Protection for Environmental Activists in Constitutional Court Decision Number 119/PUU-XXIII/2025

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Abstract

Indonesia, as a country with abundant natural resources, faces significant challenges in environmental management. Increasing environmental degradation, such as deforestation and pollution, threatens the sustainability of natural resources and the quality of life of its citizens. Environmental advocates, comprising activists, indigenous peoples, and civil society groups, play a vital role in advocating for the right to a healthy environment. However, they often face the threat of legal retaliation, including civil lawsuits and criminal charges based on Strategic Lawsuits Against Public Participation (SLAPP). In response to this, Constitutional Court Decision Number 119/PUU-XXIII/2025 expands the interpretation of Article 66 of the Law on Environmental Protection and Management, which was previously limited to formal litigation, to include preventive and non-litigation actions such as demonstrations and public campaigns. This study aims to analyze the legal protection framework for environmental activists before and after the Constitutional Court's decision, as well as the implications of this expanded interpretation of legal protection for the guarantee of

constitutional rights and the enforcement of environmental law in Indonesia. Using a normative legal method, this study demonstrates that although this ruling provides more inclusive protection, structural challenges such as uncertainty in law enforcement and the dominance of corporate interests remain obstacles to its implementation.

Keywords : *Legal Protection, Environmental Defenders, Constitutional Court Decision.*

A. Introduction

Indonesia, as an archipelagic nation with abundant natural resources, faces multidimensional challenges in managing its environment. Data from the Central Statistics Agency (BPS) in 2023 indicates that environmental degradation such as deforestation reaching 1.1 million hectares per year and water pollution in 70% of major rivers threatens the sustainability of natural resources.¹ Environmental protection encompasses not only the conservation of natural resources but also the constitutional right of citizens to live in a healthy and balanced environment, as guaranteed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia.² In this context, environmental advocates including activists, indigenous communities, and civil society groups play a crucial role on the front lines in fighting for these rights. However, they often face the threat of legal retaliation, such as criminal charges for example, regarding defamation or civil lawsuits based on Strategic Lawsuits Against Public Participation (SLAPP), which aim to silence public participation.

In response, Law Number 32 of 2009 on the Protection and Management of the Environment serves as the primary instrument. Article 66 of the Environmental Protection and Management Law explicitly states: “Any person advocating for the right to a good and healthy environment shall not be subject to criminal or civil prosecution” This provision explicitly provides legal protection for environmental human rights defenders against legal attacks or

¹ Badan Pusat Statistik (BPS), “Statistik Lingkungan Hidup Indonesia 2023,” 2023.

² Antono Adhi Susanto, “Reconstruction of the 1945 Constitution for Strengthening the Legal Framework of Indonesia Environmental Law,” *Jurnal Konstitusi* 21, no. 2 (2024), <https://doi.org/10.31078/jk2122>.

intimidation.³ However, its normative interpretation tends to be narrow, limited to “victims” or “complainants” who pursue formal litigation due to environmental pollution or destruction. This is supported by law enforcement practices, where preventive activists such as those opposing mining projects are often criminalized without protection.⁴

Phenomena such as the criminalization of and lawsuits against environmental defenders are becoming increasingly prevalent, as documented in a WALHI report (2022) that recorded 150 cases of criminalization of environmental activists from 2018 to 2022, including physical violence and SLAPP lawsuits worth billions of rupiah. An Amnesty International report also highlights similar cases in Indonesia, where 40% of environmental activists face legal repression, in line with a global trend where 227 killings of environmental activists were recorded in 2022.⁵ This disparity reflects the disconnect between the constitutional guarantees in Article 28D paragraph (1), 28G paragraph (1), and 28H paragraph (1) of the 1945 Constitution and the reality of law enforcement, which is often influenced by corporate and political interests.⁶

Constitutional Court Decision Number 119/PUU-XXIII/2025 marked a crucial turning point. This decision, which granted a judicial review of Article 66 of the Environmental Protection and Management Law, broadens the interpretation of legal protection to include not only victims in litigation but also anyone advocating for environmental rights through preventive or repressive measures, including non-litigation advocacy such as demonstrations or public campaigns.⁷ This affirmation aligns with international human rights principles, such as the 1972 Stockholm Declaration and Principle 10 of the 1992 Rio Declaration, which affirm that states must provide the right to public

³ Marsya Mutmainah Handayani, Julio Castor Achmadi, and Prilia Kartika Apsari, “Berbagai Wajah Fenomena SLAPP Di Indonesia,” *Jurnal Hukum Lingkungan Indonesia* 8, no. 1 (2021), <https://doi.org/10.38011/jhli.v8i1.369>.

⁴ Wahana Lingkungan Hidup Indonesia (WALHI), “Laporan Tahunan Kriminalisasi Aktivis Lingkungan 2018–2022,” 2022.

⁵ Global Witness, “Deadly Combat: Surge in Killings of Land and Environmental Defenders,” 2023.

⁶ Jimly Asshiddiqie, *Konstitusi Dan Ketatanegaraan* (Jakarta: Sinar Grafika, 2019).

⁷ Habibah Nurul Pasya, “Analisis Putusan Mk Nomor 119/Puu-Xxiii/2025: Perlindungan Hukum Oleh Negara Terhadap Pejuang Lingkungan Hidup Melalui Konsep Anti SLAPP,” *Laman Forum Mahasiswa Hukum Peduli Keadilan*, 2025, <https://formahpk.hukum.ub.ac.id/>.

information, participation, and access to justice in an environmental context.⁸ Constitutionally, this ruling strengthens the Constitutional Court's doctrine in interpreting environmental rights as progressive human rights.⁹

Nevertheless, the implementation of the ruling faces structural obstacles. A 2023 report by the National Commission on Human Rights (Komnas HAM) highlights the uncertainty among law enforcement officials in applying the Constitutional Court's ruling, compounded by the dominance of business interests in environmental policies such as the fact that 60% of mining permits are issued without adequate Environmental Impact Assessments (EIA).¹⁰ The 25% increase in SLAPP cases since 2020 underscores the need for systemic reform, including harmonization with Law Number 11 of 2020 on Job Creation, which often weakens environmental oversight.¹¹

Based on this background, this study aims to analyze how legal protection for environmental activists is regulated before and after Constitutional Court Decision Number 119/PUU-XXIII/2025, as well as to identify the implications of the expanded meaning of legal protection for the guarantee of constitutional rights and the enforcement of environmental law in Indonesia. This study will employ a normative legal method, using a comparative approach to examine existing legal provisions before and after the Constitutional Court's decision.

B. Research Method

This study employs a legal doctrinal research method, specifically a literature-based approach that focuses on analyzing written legal norms and relevant legal doctrines to address the research questions normatively.¹² This doctrinal approach is conducted through a review of primary legal sources such as the 1945 Constitution, the Environmental Protection and Management Law (specifically Article 66), and Constitutional Court Decision Number 119/PUU

⁸ "Rio Declaration on Environment and Development 1992" (n.d.).

⁹ Bagir Manan, *Teori Dan Politik Hukum Konstitusi* (Yogyakarta : FH UII PRESS, 2003, 2010), 42.

¹⁰ Komnas HAM, "Laporan Kekerasan Terhadap Aktivis," 2023.

¹¹ "Laporan Kinerja Tahunan KLHK 2023," n.d.

¹² Djulaeka Devi Rahayu, *Buku Ajar: Metode Penelitian Hukum* (Scopindo Media Pustaka, 2020).

XXIII/2025, as well as secondary legal sources in the form of academic literature, journals, and constitutional doctrine.

The primary focus of this doctrinal legal research is to understand the content and structure of applicable legal norms, as well as to assess the consistency and effectiveness of their application in practice.¹³ (Taufik Firmanto, 2024). Specifically, the research aims to understand the structure and content of legal protection norms for environmental activists before and after the aforementioned Constitutional Court decision, and to evaluate their consistency and effectiveness regarding the guarantee of constitutional rights in the enforcement of environmental law. The research is descriptive-analytical in nature, aiming to systematically outline the provisions of Article 66 of the Environmental Protection and Management Law prior to the ruling, as well as the implications of its expansion as reflected in the legal reasoning of Constitutional Court Decision Number 119/PUU-XXIII/2025. The descriptive approach describes the legal framework of proactive protection, while the analytical approach assesses its alignment with Article 28H paragraph (1) of the 1945 Constitution and the proportionality test doctrine.

The data used consists of secondary data obtained through a literature review of legal materials comprising Primary Legal Sources and Secondary Legal Sources.¹⁴ The research data is secondary in nature, obtained through library research from primary legal sources such as the 1945 Constitution (Articles 28D, 28G, 28H), the Environmental Protection and Management Law and Constitutional Court Decision Number 119/PUU-XXIII/2025 as the primary research subjects, as well as secondary data such as constitutional law textbooks, journals (Constitution Journal), reports from WALHI/the National Commission on Human Rights (Komnas HAM), and expert opinions on environmental constitutionalism and Anti-SLAPP.

Data collection techniques include library research from both print and digital sources (mkri.id, jdih.setneg.go.id). Qualitative data analysis was conducted using an inductive deductive approach, starting from Constitutional Court Decision Number 119/PUU-XXIII/2025, and

¹³ Taufik Firmanto et al, *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum* (Yogyakarta: PT. Sonpedia Publishing Indonesia, 2024).

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016).

linking it to the 1945 Constitution, constitutional theory, and legal doctrine to draw conclusions regarding constitutional implications

C. Legal protection provisions for environmental activists under Article 66 of the Environmental Protection and Management Law prior to Constitutional Court Decision Number 119/PUU-XXIII/2025

Article 66 paragraph (1) of the Environmental Protection and Management Law explicitly states that no person advocating for the right to a good and healthy environment may be prosecuted under criminal or civil law. This provision, born out of the spirit of post-Reform public interest environmental litigation, is fundamentally intended as a protective mechanism for individuals and groups engaged in environmental oversight against various forms of legal intimidation.¹⁵ However, prior to the development of interpretations through court rulings, the approach taken tended to be literal-grammatical. This is evident from the General Explanation of the Environmental Protection and Management Law, which narrowly links this norm to the context of formal litigation, particularly in relation to Article 65 regarding whistleblowers and Article 88 concerning criminal liability for environmental offenses.

This narrow interpretive approach then directly impacts the limitation of the scope of subjects eligible for protection. Normatively, protection tends to be reserved solely for parties with formal roles in judicial proceedings, such as victims, complainants, witnesses, or experts, as reflected in Article 91 of the Environmental Protection and Management Law. Consequently, environmental activists operating in the preventive sphere such as antimining activists or indigenous communities rejecting EIA documents are often not recognized as protected parties because they do not meet the legal standing requirements in litigation forums. This reality is reflected in judicial practice, notably in the case involving PT Newmont Minahasa Raya (PT NMR), which filed a lawsuit against Dr. Rignolda Djamaludin under the charge of Unlawful Acts (Article 1365 of the Civil Code) simply because

¹⁵ Nyoman Gede Aditya Jay Medhika, Julio Castor Achmadi, and Prilia Kartika Apsari, "Konsep Anti Eco-Slapp Dalam Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Interpretasi Hukum* 3, no. 1 (2022), <https://doi.org/10.22225/juinhum.3.1.4752.220-224>.

Djamaludin expressed his views through the Kompas Daily on July 20, 2004, and the Sinar Harapan Daily on July 21, 2004, regarding mining operations conducted by PT NMR that were alleged to have caused environmental pollution in Buyat Bay, North Sulawesi, thereby resulting in material and immaterial losses suffered by PT NMR.¹⁶

On the other hand, limitations are also evident in the scope of protection outlined in Article 66. The evolving legal framework tends to place protection within a reactive and restitutive framework, primarily through mechanisms for compensating losses after repressive actions have occurred.¹⁷ Thus, the available protection has not yet addressed the preventive dimension that should be capable of preventing intimidation from the outset, much like witness protection schemes in other legal systems. From a teleological perspective, this remedial orientation actually creates a chilling effect on public participation in environmental issues. Empirical data supports this, as WALHI's 2022 report indicates that approximately 70% of 150 cases of criminalization of environmental activists could not be prevented from the outset, with high-stakes Strategic Lawsuits Against Public Participation (SLAPP) serving as the dominant instrument employed by corporations.

This situation is further exacerbated by law enforcement practices that do not fully prioritize the protection of public participation. LBH Jakarta, for example, notes a 25% increase in SLAPP cases since 2020, indicating that civil legal mechanisms are frequently exploited to silence environmental advocacy outside formal litigation channels.¹⁸ This phenomenon fundamentally contradicts the spirit of the Environmental Protection and Management Law, which emphasizes the importance of public participation in environmental management. In practice, however, a “regulatory chill” has emerged, hindering collaboration between the state and the public in the enforcement of environmental law.

Furthermore, such a normative framework reveals inconsistencies with the higher constitutional framework. Restrictions on the

¹⁶ Hukum Online, “Gugatan Terhadap Newmont Ditolak,” 2007, <https://www.hukumonline.com/>.

¹⁷ Putri Mayessa Vegatasia Soetiyono et al., “Strategic Lawsuit Against Public Participation (SLAPP) From Indonesian Law Perspective,” *Jurnal Lex Publica* 12, no. 1 (2025): 238, <https://doi.org/10.58829/lp.12.1.2025.296>.

¹⁸ LBH Jakarta, *Laporan SLAPP Di Indonesia 2023* (Jakarta: LBH, 2023).

protection of environmental activists are inconsistent with the guarantee of the right to a good and healthy environment as stipulated in Article 28H paragraph (1) of the 1945 Constitution, as well as the principle of legal certainty in Article 28D paragraph (1) and the protection of freedom of expression and association in Article 28G paragraph (1).¹⁹ When subjected to a proportionality test, the restrictions on protection under Article 66 prior to the Constitutional Court's ruling demonstrate inconsistency because they fail to meet the elements of suitability and necessity in balancing the existing interests.²⁰

Thus, overall, it can be concluded that the provisions of Article 66 prior to judicial intervention reflect a legislative lag in responding to the escalating dynamics of environmental degradation and the increasing criminalization and lawsuits against environmental activists.²¹ These provisions have not been able to function as effective instruments in supporting environmental constitutionalism, particularly in ensuring comprehensive protection for public participation. It is this limitation that subsequently prompted the filing of a constitutional review, which culminated in Constitutional Court Decision Number 119/PUU-XXIII/2025 as a turning point toward a more progressive and inclusive interpretation

D. Implications of the expanded meaning of legal protection in Constitutional Court Decision Number 119/PUU-XXIII/2025 for the guarantee of constitutional rights in the enforcement of environmental law in Indonesia

Constitutional Court Decision Number 119/PUU-XXIII/2025 marks a significant turning point in the interpretation of Article 66 of the Environmental Protection and Management Law through an expansive-systemic approach. In this decision, the Court no longer interprets "environmental activists" narrowly but expands the term to

¹⁹ Irene Angelita Rugian, "Prinsip Proporsionalitas Dalam Putusan Mahkamah Konstitusi (Studi Perbandingan Di Indonesia dan Jerman)," *Jurnal Konstitusi* 18, no. 2 (2021), <https://doi.org/10.31078/jk1829>.

²⁰ Iza Rumesten RS et al., "Protection Of Human Rights Against The Environment In The Indonesian Legal System," *Journal of Law and Sustainable Development* 11, no. 10 (2023), <https://doi.org/10.55908/sdgs.v11i10.570>.

²¹ Nani Indrawati, "Perlindungan Hukum Terhadap Partisipasi Masyarakat (Anti SLAPP) Dalam Penegakan Hukum Lingkungan Hidup Di Indonesia," *Jurnal Media Juris* 5, no. 1 (2022), <https://doi.org/10.20473/mi.v5i1.33052>.

include actors engaged in preventive and non-litigious spheres. Similarly, the concept of “legal protection” is no longer understood reactively but is expanded to be proactive through mechanisms to prevent various forms of threats. This decision explicitly states that activities such as demonstrations, campaigns, and public advocacy are an integral part of the environmental struggle that must be protected, in line with the living constitution doctrine consistently developed by the Constitutional Court of the Republic of Indonesia.

This expansion directly reinforces the constitutional guarantee in Article 28H paragraph (1) of the 1945 Constitution, which establishes the right to a good and healthy environment as a derivative of the right to life itself.²² Consequently, there has been a paradigm shift from a repressive approach to a participatory approach in the enforcement of environmental law. The practical implications are evident in the increased effectiveness of citizen lawsuit mechanisms as stipulated in Article 91 of the Environmental Protection and Management Law as environmental advocates now receive more comprehensive protection against SLAPP threats. This strengthening also demonstrates consistency in the development of Indonesia’s constitution, which increasingly positions environmental protection as an integral part of citizens’ constitutional rights, while affirming that such constitutional recognition must be accompanied by strengthened implementation through public participation in environmental decision-making.²³

On the other hand, the dimension of legal certainty has also seen significant strengthening. By recognizing preventive mechanisms against legal threats, this ruling provides clearer guarantees for environmental activists, particularly those who do not hold formal positions within the judicial process. This reduces legal uncertainty, which previously served as a major barrier to public participation. In a broader context, this approach aligns with the principle of protecting the freedoms of association and expression as part of citizens’ constitutional rights, thereby mitigating the chilling effect that has long

²² Afif Muhni et al., “Integration of Anti-SLAPP in the Reform of the Indonesian Criminal Procedure Code in an Effort to Protect Human Rights,” *SIGN Jurnal Hukum* 7, no. 1 (2025): 439, <https://doi.org/10.37276/sjh.v7i1.485>.

²³ Aris Susanto, Sapto Baralaska, and Aan Jaelani, “Constitutional Rights and Environmental Protection in Indonesia from a Legal and Policy Perspective,” *Journal of Law Science* 2, no. 2 (2024): 125, <https://doi.org/10.62885/legisci.v2i2.484>.

hindered public oversight of processes such as the preparation of Environmental Impact Assessments (EIA).

Furthermore, this ruling carries fundamental constitutional implications, namely the transformation of the paradigm of environmental law enforcement from a command-and-control approach toward collaborative governance.²⁴ Under this paradigm, environmental activists are positioned as strategic partners of the state, as supported by Article 65 paragraph (3) of the Environmental Protection and Management Law, which states that the public has the right to report suspected environmental violations as a form of public participation, as well as Article 74, which mandates that the government facilitate such public participation in environmental management. The expanded protection under Article 66 provides legal certainty for activists to actively serve as reporters and monitors, operationalizing these provisions in a preventive manner. Thus, this ruling has the potential to curb the criminalization of environmental activists and strengthen the environmental rule of law in Indonesia.

Moreover, this ruling demonstrates an increasingly strong harmonization between national law and international human rights principles. The Constitutional Court implicitly adopts the values contained in the 1992 Rio Declaration on Environment and Development, particularly Principle 10, which emphasizes the importance of access to information, public participation, and justice in environmental issues. Furthermore, a similar spirit can be found in the Aarhus Convention, which affirms that public participation is an enforceable right (justiciable right).²⁵ Within the constitutional framework, this reinforces the Court's role as an environmental guardian that balances the state's control over natural resources as stipulated in Article 33 paragraph (3) of the 1945 Constitution through a proportionality test.²⁶

²⁴ Olivia Anggie Johar, "Realitas Permasalahan Penegakan Hukum Lingkungan Di Indonesia," *Jurnal Ilmu Lingkungan* 15, no. 1 (2021), <http://dx.doi.org/10.31258/jil.15.1.p.54-65>.

²⁵ **UNEP, Aarhus** Convention Implementation Report 2023 (Geneva: UNEP, 2023).

²⁶ Rifandy Ritonga, Rudy Isharyanto, and Aulia Oktarizka Vivi Pusita Sari A.P, "Hak Negara Untuk Mengontrol Sumber Daya Alam Di Indonesia: Review Putusan Mahkamah Konstitusi," *AS-SIYASI: Journal of Constitutional Law* 1, no. 2 (2021), <http://ejournal.radenintan.ac.id/index.php/assiyasi/index/AS-SIYASI5>.

Nevertheless, the implementation of this ruling is not without various structural challenges. One of the main obstacles is the phenomenon of regulatory capture by corporate interests, reflected in the still high number of business permits particularly in the mining sector that are problematic from both legal and environmental perspectives.²⁷ Furthermore, inconsistencies in law enforcement officials' interpretations of the substance of the aforementioned decision also have the potential to hinder the effectiveness of implementation on the ground. Therefore, concrete steps are needed in the form of the establishment of subsidiary regulations, such as a Presidential Regulation, to operationalize protection mechanisms, including schemes resembling witness protection for environmental activists.²⁸

From a doctrinal perspective, this ruling makes a significant contribution to the development of Indonesian constitutional law, particularly in strengthening progressive constitutionalism. As stated by Jimly Asshiddiqie, the constitution must be understood as a living document capable of responding to social dynamics, including environmental crises.²⁹ In this context, the right to a healthy environment is no longer positioned as an additional right, but rather as a core right that holds strong binding power over all branches of state power. Its long-term implications could even drive legislative reform, including revisions to the Job Creation Law to explicitly adopt anti-SLAPP mechanisms.

Thus, the expansion of the meaning of Article 66 through this Constitutional Court ruling not only revitalizes constitutional guarantees but also transforms the direction of environmental law enforcement in Indonesia to be more ecocentric and inclusive. However, to ensure its effectiveness, systemic harmonization is required at both the regulatory level and in law enforcement practices.³⁰

²⁷ KLHK, *Laporan Kinerja Lingkungan* (Jakarta: KLHK, 2023).

²⁸ Agus Salim and Liberthin Palullungan, "The Challenges of Environmental Law Enforcement to Implement SDGs in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 518, <https://doi.org/10.6000/1929-4409.2021.10.60>.

²⁹ Jimly Asshiddiqie, *Konstitusi Dan Konstitualisme Indonesia* (Konstitusi Press, 2005).

³⁰ Anna Triningsih and Oly Viana Agustine, "Putusan Mahkamah Konstitusi Yang Memuat Keadilan Sosial Dalam Pengujian Undang-Undang," *Jurnal Konstitusi* 16, no. 4 (2019): 858, <https://doi.org/10.31078/jk1648>.

Such efforts are key to realizing sustainable constitutionalism, where environmental protection is not merely a normative standard but a reality consistently implemented in the life of the state

E. Conclusion

Constitutional Court Decision Number 119/PUU-XXIII/2025 not only brings about a change in the interpretation of Article 66 of the Environmental Protection and Management Law, but also serves as a breakthrough in expanding the scope of legal protection for environmental activists in Indonesia. By introducing a more proactive concept of protection, this decision expands the scope of protection not only to direct victims or plaintiffs in litigation but also to actors involved in preventive and non-litigation efforts such as demonstrations and public campaigns. This is a crucial step in addressing the need to ensure that environmental activism is not hindered by legal threats, such as SLAPP Lawsuits, which are often used to silence environmental activism. Thus, this ruling strengthens the constitutional right to a healthy environment, aligning with international human rights principles, as enshrined in the Rio Declaration and the Aarhus Convention, which emphasize the importance of public participation in environmental management.

However, while this expansion of legal protection is highly significant, its implementation still faces complex structural challenges. The dominance of corporate interests in environmental policy and the inconsistency of law enforcement by authorities which often contradicts the Constitutional Court's rulings pose major obstacles to effectively realizing these protections on the ground. Additionally, supporting regulations to operationalize the ruling, such as establishing protection schemes for environmental activists (e.g., witness protection programs), must be swiftly implemented to address the ongoing phenomenon of criminalization. These challenges highlight the importance of deeper reform efforts and systemic integration between legal policies, public interests, and environmental conservation efforts, so that protection for environmental activists can truly be implemented effectively and sustainably

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