

# PHILIPPINES-THAILAND-INDONESIA EXPLORATION: Recontextualizing Anti-SLAPP in Protecting Access to Ecological Justice

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## Abstract

This study examines the strategic challenges faced by environmental rights defenders in Indonesia, the Philippines, and Thailand, including the abuse of the law through the practice of Strategic Lawsuits Against Public Participation (SLAPPs) used by corporations or authorities to silence public criticism of environmental damage. Although all three countries have legal instruments for protection, their implementation is still limited and does not comprehensively cover aspects of procedural law. This study uses a normative legal approach with a comparative legal method to analyze the form of anti-SLAPP legal protection and its potential integration into the criminal procedural system. The results show that Indonesia and the Philippines still limit legal



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protection to environmental issues, while Thailand has more advanced normative provisions but has not been effective in preventing SLAPPs at the early stages of the legal process. A legal mechanism is needed that allows for the termination of SLAPP cases at the investigation or prosecution stage through clear legal indicators and strengthening prosecutorial discretion based on the principle of public interest. The novelty of this study lies in the proposed integration of Anti-SLAPP principles into criminal procedural law as a preventive measure against the criminalization of environmental activists and as a recognition of ecological justice, where protection of public participation and freedom of expression is an integral part of social justice in the context of environmental protection.

**KEYWORDS** *Anti-SLAPP, Access to Justice, Comparative Law, Ecological Justice*

## I. Introduction

The fundamental idea of democracy is the understanding that power comes from the people. Therefore, the direction of state governance must be based on the will of the people.<sup>1</sup> Therefore, in a democratic state, public participation is crucial. It not only serves as a form of public oversight to prevent arbitrary policymaking, but also serves as a way to protect freedom, ensure justice and equality, and improve the quality of life for citizens.<sup>2</sup>

However, the reality is precisely the opposite of this goal. Public participation in the form of criticism or expressing opinions is often overshadowed by the threat of repression. This trend can be seen in the Freedom House report (2021), which highlights the

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<sup>1</sup> Jimly Asshiddiqie, *Constitutional Law and the Pillars of Democracy, Fragments of Thought on Law, Media, and Human Rights*, ed. Zainal AM Husein (Jakarta: Constitution Press, 2005), p. 241.

<sup>2</sup> Tina Nabatchi, and Matt Leighninger, M, *Public Participation for 21st Century Democracy* (Hoboken: John Wiley & Sons, Incorporated, 2015), accessed 13, 2021. ProQuest Ebook Central., p. 4.

development of the democracy index in Indonesia, which is currently still classified as a partially free democracy.<sup>3</sup> One of the indicators used in the report is the freedom of individuals to express personal views on politics or other sensitive topics without fear of surveillance or retaliation. In this sector, Indonesia appears to be regressing.<sup>4</sup>

Strategic Lawsuits Against Public Participation (SLAPPs) are legal strategies used by stakeholders, such as large corporations or influential individuals, to silence criticism from the public, journalists, activists, or academics<sup>5</sup>. SLAPPs are often not about seeking justice, but rather a form of legal intimidation to intimidate those who have a voice, burden them financially, and ultimately choose to remain silent<sup>6</sup>. These lawsuits often target those who speak out against environmental issues, policies that harm the public, or unethical business practices. For example, a farmer who opposes environmental damage caused by mining may be sued by a company for defamation, even if what he says is based on facts. The real goal is not to win in court, but to deter people from speaking out and create a deterrent effect on the wider community.

The impact of SLAPPs not only harms the individuals being sued but also undermines the principles of democracy, where freedom of speech and public participation must be upheld<sup>7</sup>. From a Legal Economic Analysis perspective, SLAPPs create injustice because parties with greater financial power can manipulate the law to weaken the voices of ordinary people<sup>8</sup>. SLAPPs also cause

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<sup>3</sup> See Freedom House report, <https://freedomhouse.org/country/indonesia/freedom-world/2020>., accessed on August 13, 2021.

<sup>4</sup> Ibid.

<sup>5</sup> George W. Pring & Penelope Canan, *SLAPPs: Sued for Speaking Out* (Philadelphia: Temple University Press, 1996), p. 8.

<sup>6</sup> Penelope Canan, "SLAPPs from a Sociological Perspective," *Pace Environmental Law Review* 7, no. 1 (1989): 23.

<sup>7</sup> World Justice Project, *SLAPPs and Their Impact on Free Speech* (2020), p. 5.

<sup>8</sup> Richard A. Posner, *Economic Analysis of Law*, 8th ed. (New York: Aspen Publishers, 2011), p. 145.

many people to be reluctant to fight for their rights for fear of being dragged into long and expensive legal processes. Therefore, many countries have implemented anti-SLAPP laws to protect freedom of speech and ensure that the law is not used as a tool to oppress weaker parties <sup>9</sup>. In Indonesia, there are still many SLAPP cases targeting environmental activists and investigative journalism. Without clear protection, not only individuals will be harmed, but also the public interest in the region who want to obtain transparent information and fight for justice.

Many activists environment living in Indonesia, such as Fatia Maulidiyanti and Haris Azhar who were criminalized Because criticize business mining in Papua <sup>10</sup>, Golfrid Siregar from WALHI North Sumatra who died after sue permission Batang Toru <sup>11</sup>hydroelectric power plant environment , as well as Effendi Buhing<sup>12</sup> from the Laman Kinipan Indigenous Community and Wadas residents who were arrested Because reject destruction forests and mining <sup>13</sup>, shows that practice *Strategic Lawsuit Against Public Participation* (SLAPP) still used For silence defender

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<sup>9</sup> United Nations Special Rapporteur on Freedom of Expression, *Report on SLAPPs and Their Impact on Human Rights* (2021), p. 14.

<sup>10</sup> Supreme Court / District Court Decision — the *Supreme Court Decision Directory* site stated that Haris Azhar was not proven guilty based on the East Jakarta District Court Decision number 202/Pid.Sus/2023.

<sup>11</sup> [Hans Nicholas Jong](https://news.mongabay.com/2020/02/indonesia-golfrid-siregar-nshe-medan-hydropower-batang-toru-walhi/?utm_source=chatgpt.com), Family seeks justice as probe into Indonesian activist's death stalls , Mongabay, accessed October 4, 2022. [https://news.mongabay.com/2020/02/indonesia-golfrid-siregar-nshe-medan-hydropower-batang-toru-walhi/?utm\\_source=chatgpt.com](https://news.mongabay.com/2020/02/indonesia-golfrid-siregar-nshe-medan-hydropower-batang-toru-walhi/?utm_source=chatgpt.com)

<sup>12</sup> Ivany Atina Arbi, Police arrest customary leader in Central Kalimantan over land dispute, The Jakarta Post, Accessed on October 1, 2025 at <https://www.thejakartapost.com/news/2020/08/27/police-arrest> customary-leader-in-central-kalimantan-over-land dispute.html?utm\_source=chatgpt.com

<sup>13</sup> [Lusia Arumingtyas and Nuswantoro](https://journal.unnes.ac.id/journals/pandecta/index), Wadas Village Case, Expert: Development Methods Prone to Harm the People, Mongabay, accessed on March 15, 2025 at <https://journal.unnes.ac.id/journals/pandecta/index>

environment and limits participation public in fight for justice ecological in Indonesia.

Large corporations or related parties often use the law as a weapon to silence criticism, while state officials act repressively, favoring investors and ignoring the interests of the people <sup>14</sup>. Imagine how unfair it is when those fighting for clean water, healthy air, and sustainable forests are imprisoned or sued for billions of rupiah. When the law, which should be a tool of justice, is instead used as a tool of oppression, structural injustice is increasingly apparent <sup>15</sup>. From a Legal Economic Analysis perspective, this creates significant inequality, where those with financial power can use the law at will to intimidate those fighting for their common interests <sup>16</sup>. Therefore, Indonesia needs strong and swift anti-SLAPP regulations so that the law truly protects the people, not just those in power. Because without clear legal protection, the struggle of those defending the environment will continue to face unfair threats and pressure <sup>17</sup>.

Actions against public participation occur in many contexts<sup>18</sup>. In the digital space, for example, the Civil Society Coalition noted that threats of action in the digital space often use the ITE Law, related to articles on defamation, immoral content, and hate speech. The majority of threats often target activists, journalists, and critical communities, <sup>19</sup>which are components of society

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<sup>14</sup> Penelope Canan & George W. Pring, *SLAPPs: Sued for Speaking Out* (Philadelphia: Temple University Press, 1996), p. 12.

<sup>15</sup> World Justice Project, *SLAPPs and Their Impact on Free Speech* (2020), p. 7.

<sup>16</sup> Richard A. Posner, *Economic Analysis of Law*, 8th ed. (New York: Aspen Publishers, 2011), p. 148.

<sup>17</sup> United Nations Special Rapporteur on Freedom of Expression, *Report on SLAPPs and Their Impact on Human Rights* (2021), p. 18.

<sup>18</sup> Ubaidillah Kamal, Ali Masyhar, Muhammad Adymas Hikal, Rayi Kharisma, dan Siti Hafsyah Idris, "The Urgency of Anti-SLAPP Regulatory Renewal in Indonesian Environmental Law," *Pandecta Research Law Journal* 19, no. 1 (2024): 265–288, <https://doi.org/10.15294/pandecta.vol19i1.7237>

<sup>19</sup> Fitra Moerat Ramadhan, "List of Activists and Journalists Involved in the ITE Law," *Tempo*, <https://grafis.tempo.co/read/2549/daftar-aktivis-jurnalis-yang-terseret-uu-ite>., accessed August 13, 2021.

actively involved in public participation. Furthermore, in addition to targeting the digital space through the elastic articles, there are also other articles, namely slander, fake news, obstructing mining activities, encroachment/destruction of property, entering grounds without permission, and spreading communist ideology. This is regulated in the Electronic Information and Transactions Law (ITE Law) Number 11 of 2008, which was later revised through Law Number 19 of 2016, which initially regulated electronic transactions while providing legal protection in cyberspace. However, in practice, several articles in it, especially those related to defamation (Article 27 paragraph (3)) and the spread of fake news (Article 28 paragraph (1)), are often used repressively against activists, journalists, and civil society who are critical of government and corporate policies. The use of these articles in the context of SLAPP (Strategic Lawsuit Against Public Participation) has a chilling effect, where people become afraid to voice their opinions for fear of being criminalized.

Meanwhile, the Mineral and Coal Mining Law (UU Minerba) Number 4 of 2009, which was revised through Law Number 3 of 2020, also has a significant impact on public freedoms, particularly on environmental issues. One of the most controversial articles is Article 162, which threatens anyone deemed to obstruct mining activities with criminal sanctions. This article is often used to criminalize indigenous communities, farmers, and environmental activists who fight for their land rights against large-scale mining expansion. Thus, this regulation favors mining corporations over protecting the public's right to a healthy environment. These two Constitutions demonstrate how the law can be used as a repressive tool to silence criticism and limit public participation in policies that affect their lives. Moreover, the issue of the spread of communist ideology remains a political tool to silence dissent. Articles 107a, 107b, and 107c of the Criminal Code and TAP MPRS No. XXV/MPRS/1966 is often used as a pretext by press activists or academics who criticize government policies, labeling them "anti-NKRI." This situation reflects how the law, which should be a tool

for protecting society, is in reality used as an instrument of repression by vested interests. Without further policy reforms that support human rights and civil liberties, the criminalization of environmental activists, journalists, and activists will continue, eroding the principles of justice and democracy in Indonesia.

One thing that is also very concerning is the repressive actions against environmental activists who fight for the right to a good and healthy environment, where they are shadowed by the threat of Strategic Lawsuits Against Public Participation (SLAPP)<sup>20</sup>. SLAPP itself is a form of using legal instruments to criminalize environmental activists. Precedents of criminalization against environmental activists include sentences of 5-6 months in prison for farmers in Indramayu who were accused of displaying the red and white flag upside down while celebrating the victory of residents after the revocation of the Indramayu PLTU permit. hammer and sickle banners during a demonstration against gold mining, so they were charged with spreading communist teachings.<sup>21</sup> This criminalization not only targets environmental activists who are vocal and organize movements against environmental destruction, but also targets experts who testify in trials involving the environment. There are also a number of academics who act as expert witnesses who are sued for the expert testimony they gave in court. These include a civil lawsuit against Bogor Agricultural Institute (IPB) Professor Bambang Hero Saharjo, and also a civil lawsuit against IPB lecturer Basuki Wasis.

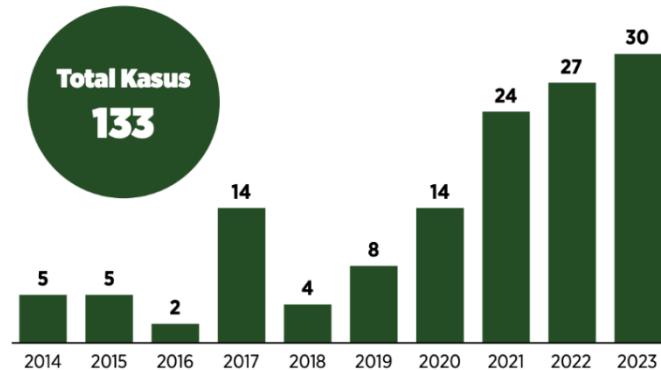
Between 2014 and 2023, at least 133 SLAPPs or threats against Environmental Defenders were recorded in Indonesia. This figure was recorded by Auriga Nusantara by compiling publicly available information and/or directly provided by victims and/or others aware of the threats.

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<sup>20</sup> Ubaidillah Kamal et all. *Loc.Cit.*: 265-288.

<sup>21</sup> Tirto.id, "The Abundance of 'Hammer and Sickle' Cases Against Budi Pego", <https://tirto.id/kejangan-kasus-palu-arit-terhadap-budi-pego-dbLM> .., accessed on August 13, 2021.

FIGURE 1. Number and accumulation of cases of threats to Defender Environment 2014-2023.



Source : [https://auriga.or.id/press\\_release/detail/50/status-pembela-lingkungan-di-indonesia-2014-2023-ancaman-kian-tinggi-saatnya-negara-hadir?lang=id](https://auriga.or.id/press_release/detail/50/status-pembela-lingkungan-di-indonesia-2014-2023-ancaman-kian-tinggi-saatnya-negara-hadir?lang=id)

The threat escalated significantly in 2017, a year after the government passed regulations on national strategic projects. A further significant increase occurred in 2021, when the government and the House of Representatives passed the Job Creation Law.

The increasing threats against environmental defenders in Indonesia appear to reflect a pernicious practice occurring in many countries worldwide. Global Witness recorded at least 1,910 murders of environmental defenders worldwide between 2012 and 2022. In fact, international pressure to protect environmental defenders has been widely voiced, including by the UN, UNEP, Global Witness, the Environmental Defender Law Center (EDLC), the Council of Europe, and Human Rights Watch.

In the Philippines, the use of Strategic Lawsuits Against Public Participation (SLAPPs) has become a tool to silence activists, journalists, and human rights advocates who criticize the government or corporations. One prominent case is the 2020 verdict against Maria Ressa, a prominent journalist and CEO of Rappler. Ressa was found guilty of defamation related to an article published by Rappler a few days earlier, which was deemed an attempt to intimidate the media and stifle press freedom in the

Philippines. The case sparked international concerns about the decline of democracy and freedom of expression in the country <sup>22</sup>.

In Thailand, SLAPPs are also used by corporations to protect human rights and journalists. For example, in March 2023, Thammakaset Company Ltd. filed defamation lawsuits against three human rights defenders—Angkhana Neelapaijit, Puttanee Kangkun, and Thanaporn Saleephol—for expressing solidarity with other activists facing similar lawsuits from the company. Thammakaset has filed at least 37 civil and criminal cases against human rights defenders, journalists, and workers since 2016, demonstrating a pattern of using SLAPPs to intimidate and silence critics of corporate practices <sup>23</sup>.

The primary legal issue in SLAPP cases in both countries is the abuse of the Constitution and the defamation of freedom of the press, expression, and public participation. While laws are in place to protect individuals from baseless lawsuits, weak implementation and enforcement make SLAPPs a persistent threat to activists and journalists. In the Philippines, although the Supreme Court issued the Rules of Procedure for Environmental Cases in 2010, which included anti-SLAPP provisions, their effectiveness remains questionable. Similarly, in Thailand, despite efforts to prevent criminal abuse cases through amendments to the Criminal Procedure Code (KUHAP) in 2018, the use of SLAPPs by companies like Thammakaset demonstrates the continued inadequacy of legal protections for human rights defenders.

This demonstrates that public participation remains under threat. Meanwhile, protecting the right to participate and express

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<sup>22</sup> Human Rights Watch. (2023, April 6). Thailand: Drops Charges Against Human Rights Defenders . . . Retrieved from <https://www.hrw.org/id/news/2023/04/06/thailand-drop-charges-against-rights-defenders>

<sup>23</sup> Kompas. (June 16, 2020). *Maria Ressa's Verdict: A Threat to Press Freedom in the Philippines* . . . Retrieved from <https://www.kompas.id/baca/internasional/2020/06/16/vonis-bagi-maria-rezza-ancaman-bagi-kebebasan-pers-di-filipina>

opinions is a constitutional right of citizens that should be guaranteed by the state. The absence of guaranteed protection of these rights is tantamount to blocking public participation in policymaking. Implementing anti-SLAPP regulations at the substantive and structural levels of the law is crucial.

The regulation regarding Anti-SLAPP itself is legally normatively contained in Law Number 32 of 2009 concerning Environmental Protection and Management, namely in Article 66. Technically further in the courtroom, Anti-SLAPP is further regulated in the Decree of the Chief Justice of the Republic of Indonesia Number 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases. However, in reality, threats and repression against environmental activists in the form of criminalization using legal instruments are still massive. As reported by CNN Indonesia, in WALHI's records from 2014 to 2018 there were at least 723 cases of criminalization involving people who were fighting for their lives <sup>24</sup>. Herlambang P Wiratman, as reported by Kompas, also expressed his criticism of the existing regulatory provisions regarding the protection of environmental activists. According to him, the existing provisions are still inadequate in protecting environmental activists, especially amidst the increasingly massive attacks, violence, and criminalization against them <sup>25</sup>. This is intended to intimidate, intimidate, or silence critics to prevent them from harming the interests of oligarchs. Therefore, it is crucial to develop a model for strengthening anti-SLAPP law in Indonesia, taking into account existing obstacles, to ensure a secure environment for advocates to

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<sup>24</sup> CNN Indonesia, "Jokowi's Walhi Demonstration Regarding the Criminalization of Environmental Activists", <https://www.cnnindonesia.com/nasional/20181211132215-20-352736/walhi-demo-jokowi-soal-kriminulasi-pejuang-lingkungan>, accessed on August 13, 2021.

<sup>25</sup> Kompas, "Unprotected Environmental Defenders", <https://www.kompas.id/baca/ilmu-pengetahuan-teknologi/2021/01/11/pembela-lingkungan-hidup-yang-tak-terlindungi.>, accessed on August 13, 2021

act as agents of control in law enforcement. The ultimate goal of anti-SLAPP law is to dismiss or resolve frivolous or baseless lawsuits before litigation costs escalate and before the target is severely impacted .

This study confirms the existence of legal gaps and ambiguities in the implementation of *Anti-SLAPP* in Indonesia because previous research is still limited to normative and advocacy aspects without operational procedural legal mechanisms. For example, research by Laode M. Syarif, Andri G. Wibisana, and Maskun only highlights the environmental legal aspects and the right to a good and healthy environment without explaining the legal protection mechanisms for environmental defenders <sup>26</sup>. Meanwhile, the Indonesian Center for Environmental Law (ICEL) report emphasizes the phenomenon of criminalization of environmental activists without providing a draft legal instrument that can concretely prevent the practice of <sup>27</sup>*Strategic Lawsuit Against Public Participation (SLAPP)* . On the other hand, Pradipta Pandu's writing in *Kompas* only provides a descriptive-comparative approach to the practice of Anti-SLAPP in the Philippines and Thailand, without explaining its application in the context of Indonesian procedural law <sup>28</sup>. The classic study by Penelope Canan and George W. Pring which introduced the concept of SLAPP in the United States also has not touched on the dimensions of procedural law and the system of evidence in developing countries <sup>29</sup>. Similarly, the World Justice Project report

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<sup>26</sup> Laode M. Syarif, Andri G. Wibisana, & Maskun, *Environmental Law: Theory, Legislation, and Case Studies* (Jakarta: Rajawali Pers, 2012), pp. 65–66.

<sup>27</sup> Indonesian Center for Environmental Law (ICEL), *Law Enforcement to Prevent Criminalization of Environmental Activists* (Jakarta: ICEL, 2019), accessed August 13, 2021, <https://icel.or.id/berita/penegak-hukum-agar-mencegah-kriminalisasi-pejuang-lingkungan>

<sup>28</sup> Pradipta Pandu, "Indonesia Needs to Follow Other Countries' Anti-SLAPP Rules," *Kompas.id* (April 23, 2021), accessed August 13, 2021, <https://www.kompas.id/read/ilmu-knowledge-technology/2021/04/23/indonesia-perlu-mencontoh-aturan-anti-slapp-dari-negara-lain>

<sup>29</sup> Penelope Canan & George W. Pring, *SLAPPs: Getting Sued for Speaking Out* (Philadelphia: Temple University Press, 1996), p. 8–12.

still limits its analysis to the impact of SLAPPs on freedom of expression globally without examining national legal protection systems in Southeast Asia.<sup>30</sup> Therefore, the novelty of this study lies in proposing an integrative Anti-SLAPP model in Indonesian criminal procedure law, which emphasizes the importance of a case termination mechanism from the investigation or prosecution stage through clear legal indicators and strengthening prosecutorial discretion based on the principle of public interest. Thus, this study not only expands the comparative analysis between Indonesia, the Philippines, and Thailand but also addresses a legal gap that has not been addressed by previous research by offering a concrete legal construction to prevent legal abuse against environmental defenders and ensure ecological justice in Indonesia.

A fairer balance must be struck to enhance and protect the constitutionally protected rights of individuals to file grievances, express their opinions, and form associations in matters of public concern or public interest. At the same time, it is crucial to protect the rights of aggrieved parties to file a lawsuit in good faith to seek compensation based on actual losses.

Prevent and discourage the improper use of legal process, which is designed as a tactic to hinder proper public participation. The key principle is that cases without legal basis must be dismissed immediately. Promote access to justice for all, concerned with the costs and losses arising from litigation, specifically determining the inadequacy of the complainant's response when a case is dismissed on the grounds that it constitutes a SLAPP.

This research uses a type of normative legal research (doctrinal legal research) that focuses on a systematic study of legal norms, doctrines, and regulations governing Strategic Lawsuit Against Public Participation (SLAPP) within the framework of environmental law in Indonesia, the Philippines, and Thailand. This research applies three main approaches, namely: (1) a conceptual

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<sup>30</sup> *World Justice Project , SLAPP and Its Impact on Freedom of Speech* (Washington DC: WJP, 2020), p. 5-7. efair

approach, which is used to examine the theoretical basis, principles, and legal doctrines underlying Anti-SLAPP protection and access to ecological justice; (2) a statutory approach, which is used to examine various legal instruments such as Law Number 32 of 2009 concerning Environmental Protection and Management, Decree of the Chief Justice of the Republic of Indonesia Number 36/KMA/SK/II/2013 concerning Guidelines for Handling Environmental Cases, Rules of Procedure for Environmental Cases (2010) in the Philippines, and Section 161/1 of the Thai Criminal Procedure Code in Thailand as a comparison; and (3) a comparative legal approach, which aims to analyze the similarities, differences, and potential harmonization of Anti-SLAPP mechanisms between the three jurisdictions.

The primary legal materials in this study include laws and regulations, jurisprudence, and official documents of judicial institutions, while secondary legal materials consist of academic literature, scientific articles, reports from non-governmental organizations (such as WALHI and Human Rights Watch), and policy documents relevant to environmental justice issues. The data obtained were analyzed qualitatively through interpretive and comparative legal reasoning methods, with the aim of identifying legal gaps and ambiguities in the application of Anti-SLAPP and formulating a prescriptive model for the integration of Anti-SLAPP principles into the Indonesian criminal procedural law system. This study is limited to normative and comparative legal studies, thus not including empirical testing of law enforcement practices in the field.

## **II. Recontextualizing Anti-SLAPP in Protecting Access to Ecological Justice**

In Thailand, several organizations have attempted to define SLAPPs. For example, according to the HRLA, a SLAPP is a lawsuit that threatens the exercise of a constitutional right in the public

interest, or threatens other legal action or proceedings to support the exercise of that constitutional right.<sup>31</sup> The International Commission of Jurists (ICJ) classifies a SLAPP as "a lawsuit brought primarily for the purpose of restricting or obstructing public criticism or opposition to the specific activities of the entity initiating the legal action <sup>32</sup>."

Strategic Lawsuit Against Public Participation (SLAPP) is a legal effort undertaken by related parties, such as large corporations or influential individuals, to silence criticism voiced by the public, activists, journalists, or academics. SLAPP is not a pure form of justice, but rather a legal strategy to intimidate and make the speaking party feel afraid or overwhelmed by facing <sup>33</sup>a long and expensive legal process. SLAPP is often used in environmental issues, where activists advocate for the protection of nature and natural resources. SLAPP is often the target of lawsuits by companies that feel harmed by the criticism they raise. This action has a chilling effect, so that the public is reluctant to participate in public discussions or criticize policies that have a negative impact on the environment and society <sup>34</sup>.

SLAPPs are the actualization of the right to protect expression and thought in fighting for the environment, which should be guaranteed in a democratic legal system. Awareness of the dangers of SLAPPs in inhibiting freedom of speech began to be recognized

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<sup>31</sup> Human Rights Lawyers Association. Report on Recommendations on the Protection of Users' Rights and Freedoms to Participate in Public Issues from Litigation. Page 10. <https://naksit.net/wp-content/uploads/2019/06/20190811-pdf.pdf> [accessed February 10, 2022].

<sup>32</sup> International Commission of Jurists. Letter to the Minister of Justice and the Director General of the RLPD entitled "Concerns about the existing legal framework designed to prevent strategic lawsuits against public participation (SLAPP suits)" dated March 20, 2020. <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf> [accessed May 9, 2023].

<sup>33</sup> Penelope Canan & George W. Pring, *SLAPPs: Sued for Speaking Out* (Philadelphia: Temple University Press, 1996), p. 12.

<sup>34</sup> World Justice Project, *SLAPPs and Their Impact on Free Speech* (2020), p. 7.

internationally, especially after being discussed in the 1998 Aarhus Convention, which emphasizes the public's right to obtain information, participate in decision-making, and have access to justice in environmental issues <sup>35</sup>. This convention became the basis for many countries in formulating anti-SLAPP regulations to protect activists from arbitrary legal action. Without <sup>36</sup>clear regulations, SLAPPs will continue to be a tool for interested parties to voice critical opinions, hinder transparency, and undermine the principle of legal justice that should protect the public interest, not just certain groups with greater economic and political power <sup>37</sup>.

The right to a good and healthy environment is not just a bill, but a fundamental need for every human being to live with dignity. Imagine if the air we breathe is full of pollution, the water we drink is contaminated, or the land we walk on is no longer fertile — our lives will certainly be directly impacted. That's all. Why haven't countries come up with a big enough answer to ensure the environment is maintained for current and future generations <sup>38</sup>? The Indonesian Constitution in Article 28H paragraph (1) of the 1945 Constitution firmly states that everyone has the right to a good and healthy environment, while the Stockholm Declaration of 1972 affirms that environmental protection is part of human rights <sup>39</sup>. However, in reality, many policies still prioritize economic interests without considering their impact on the environment. In fact, the state should present sustainable policies, enforce laws against environmental destruction, and ensure that the community can be involved in decision-making that impacts their living space

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<sup>35</sup> United Nations Economic Commission for Europe (UNECE), *Aarhus Convention: Implementation Guide* (2014), p. 35.

<sup>36</sup> Council of Europe, *Freedom of Expression and SLAPPs* (2021), p. 14.

<sup>37</sup> United Nations Special Rapporteur on Freedom of Expression, *Report on SLAPPs and Their Impact on Human Rights* (2021), p. 18.

<sup>38</sup> United Nations Human Rights Council, *Resolution on Human Rights and the Environment*, A/HRC/RES/48/13, 2021.

<sup>39</sup> United Nations, Stockholm Declaration on the *Human Environment*, 1972, Principle 1.

<sup>40</sup> If the state is negligent, the environmental crisis will worsen, causing environmentally unfriendly disasters. These disasters not only damage nature, but also directly threaten human life <sup>41</sup>. Therefore, protecting the environment is not only an individual responsibility, but also a state commitment to create ecological justice for all humanity <sup>42</sup>.

Three Southeast Asian countries with anti-SLAPP laws or mechanisms are Indonesia, the Philippines, and Thailand. In Indonesia and the Philippines, anti-SLAPP laws apply only to environmental cases. <sup>43</sup> In contrast, Thailand only uses anti-SLAPP measures in criminal cases where the plaintiff is an individual. It's worth noting that only the Philippines has a precise definition of SLAPP <sup>44</sup>.

SLAPPs result in three key transformations <sup>45</sup>: 1) The transformation of the dispute from a political dispute to a legal dispute by transforming the exercise of constitutional rights into a

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<sup>40</sup> Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

<sup>41</sup> Philippe Sands, *Principles of International Environmental Law*, 4th edition (Cambridge: Cambridge University Press, 2018), p. 199.

<sup>42</sup> David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, 2012), p. 87.

<sup>43</sup> Article 66 of the 2009 Law on Environmental Protection and Management states: "Anyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly."

<sup>44</sup> A SLAPP is defined by Philippine law, the Philippine Rules of Procedure for Environmental Cases (AM No. 09-68-SC) as "a civil suit, countersuit, counterclaim... or criminal or administrative action against any person, group of persons or union, village group or other similar group for the exercise of the right to freedom of speech, expression or freedom of the press or the filing of a complaint with the government to voice a concern of public interest and with the intent to intimidate, harass or silence any of the above-described individuals. This will create unreasonable pressure or ultimately deplete resources." See the Anti-Strategic Lawsuit Against Public Participation Act of 2011 or the Anti-SLAPP Act of 2011. <https://legacy.senate.gov.ph/lisdata/1254310602!.pdf> [accessed February 1, 2022].

<sup>45</sup> George W. Pring and Penelope Canan, SLAPP. Sued for speaking out, pages 10-11

violation of the law. For example, expressing an opinion is transformed into defamation, and a political demonstration into an offense or disturbance of peace and order. 2) The transformation of the forum from a public one, where problems can be resolved through political decisions, to a judicial one, where legal techniques are used in court to resolve the dispute. 3) The transformation of the issue from a public injury to a private injury to the plaintiff.

### III. Country Comparison With Thailand

In Thailand, the Criminal Procedure Code was amended in 2019 to include a section on protecting the defender's right to freedom of expression against SLAPPs. The new Section 161/1 allows the Court of Justice to dismiss any criminal case at the filing stage (i.e., before proceeding to a full trial) if the court determines that the cause of action stems from "a bad intention (1) to harass (2) to take advantage of a person (3) to obtain an unlawful benefit or (4) to achieve a corrupt underlying purpose." <sup>22</sup> That same year, the Thai government, in its response to a joint communication of the UN Human Rights Council Special Procedures, clarified that "in all criminal proceedings, the law requires all criminal cases initiated by private litigants to prove a *prima facie* case at a preliminary hearing before the case goes to trial. This condition will help filter out frivolous or bad faith lawsuits <sup>46</sup>."

In Thailand, Strategic Lawsuits Against Public Participation (SLAPPs) have become a repressive tool used to silence those who dare to speak out. One of the most prominent cases is that of activists and workers who exposed labor exploitation at Thammakaset Company Ltd. Since 2016, the company has filed at least 37 lawsuits against journalists, migrant workers, and human rights activists who reported on the human rights violations of chicken farm workers. Angkhana Neelapaijit, Puttanee Kangkun, and Thanaporn Saleephon, three prominent human rights

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<sup>46</sup> Thailand's response to the joint communication of the UN Human Rights Council Special Procedures, Part III, paragraph 4 (page 5).

defenders, face 28 counts of defamation simply for showing solidarity with the victims. They are not criminals; they simply want justice. However, the legal system is being exploited by the ruling parties to silence their voices, instill fear, and undermine the fight against injustice <sup>47</sup>.

Ironically, although Thailand adopted a National Action Plan on Business and Human Rights in 2019, protections for rights defenders remain weak. Changes to the Criminal Procedure Code (KUHAP) in 2018, intended to prevent SLAPPs, are rarely effectively implemented. Many SLAPP victims face lengthy, tedious, and expensive legal proceedings—not because they are guilty, but because they dare to speak out. Human Rights Watch highlights that without serious reform, Thailand will continue to be a place where the law is used not to uphold justice, but to suppress dissent. SLAPPs are not just about court cases; they are an attack on free speech and basic human rights, which should be the foundation of <sup>48</sup>a just society

#### IV. Comparison Of Philippines Countries

In the Philippines, the Supreme Court's Rules of Procedure for Environmental Cases, which took effect in April 2010, explicitly includes anti-SLAPP protections. These provisions allow courts to dismiss SLAPPs on summary judgment before proceeding to a full trial, which is often lengthy and expensive. These provisions allow individuals involved in enforcing environmental rights to raise the defense that the case against them is a SLAPP <sup>49</sup>.

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<sup>47</sup> Human Rights Watch, *Thailand: Drop Charges Against Human Rights Defenders*, April 6, 2023. <https://www.hrw.org>

<sup>48</sup> Human Rights Watch, *Thailand: Human Rights Defenders Targeted by Defamation Law*, March 2022 <https://www.hrw.org>

<sup>49</sup> See Rules of Procedure for Environmental Cases, Rule 6, Sections 3 and 4. Section 3 on Short Trial states, "The hearing of a SLAPP pleading shall be short. The parties shall submit all available evidence in support of their

This defense triggers a time-limited process in which the plaintiff must demonstrate that the case is not a SLAPP within a non-extendible five-day period, and an immediate summary trial that must be completed within 30 days. The party seeking dismissal must demonstrate by substantial evidence that their action to enforce environmental law constitutes a legitimate action for the protection, preservation, and rehabilitation of the environment. The party filing a lawsuit as a SLAPP must demonstrate by greater evidence that the action is not a SLAPP and constitutes a legitimate action. The anti-SLAPP provisions in these environmental rules are part of the courts' recognition that enforcement of the constitutional right to a balanced and healthy ecology <sup>50</sup>must consider real obstacles to its enforcement. <sup>51</sup>The provisions are a distillation of existing law, international treaties, best practices, and innovations; they link the right to a balanced and healthy ecology to the constitutional rights to freedom of speech and assembly, and the right to petition the government for redress of grievances. <sup>52</sup>The lack of jurisprudence regarding these anti-SLAPP provisions has made it difficult for lawyers to successfully apply the rules.

The Philippine Rules of Procedure for Environmental Matters (AM No. 09-6-8-SC)<sup>41</sup> came into effect in April 2010 as an anti-SLAPP law relating to environmental protection and the defense of environmental rights. This law applies to civil, criminal, and administrative matters, and its mechanisms and procedures are similar to those in the US. The burden of proof rests on both parties. One option available to the target is to file a petition for expedited

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respective positions. Evidence that the lawsuit is not a SLAPP and is a valid claim." Section 4 on Resolution of SLAPP pleadings states, "Affirmative defenses of the SLAPP shall be resolved within thirty (30) days after the short trial. If the court dismisses the lawsuit, the court may award damages, attorneys' fees, and costs of the suit based on counterclaims if any have been filed. The lawsuit shall proceed in accordance with the Rules of Court."

<sup>50</sup> Section 16, State Policy, Constitution of the Philippines.

<sup>51</sup> See Rationale for Rules of Procedure for Environmental Cases.

<sup>52</sup> See Annotation on Rules of Procedure for Environmental Cases.

resolution of the case. Within five days, the plaintiff must prove that the lawsuit is not a SLAPP. The burden of proof then rests on the target to prove that the action taken was a legitimate action to preserve or restore the environment. An expeditious investigation must be completed within 30 days, and the plaintiff is required to pay the target any damages, attorneys' fees, and litigation costs if the case is rejected by the court. However, this law only applies to environmental proceedings. The Philippine Constitution guarantees the "right of the people to a balanced and healthy ecology," which includes the right to freedom of expression and assembly, as well as the right to seek redress for violations of the health of the ecosystem. Despite the fact that the anti-litigation law only applies to environmental cases, the Philippine anti-SLAPP law is considered highly developed as it covers SLAPPs for civil, criminal, and administrative proceedings against individuals, organizations, and government agencies, including officers enforcing environmental laws<sup>53</sup>.

This law contains explicit protections against SLAPPs, allowing courts to dismiss SLAPPs in summary judgment before proceeding to a full trial, which is often lengthy and expensive. These provisions allow individuals involved in asserting environmental rights to file a defense that the case is a SLAPP. This defense triggers a time-bound process in which the plaintiff must demonstrate that the case is not a SLAPP within a non-extendable five-day period, and an immediate summary trial that must be completed within 30 days. The party seeking dismissal must demonstrate by substantial evidence that its actions in enforcing environmental law are legitimate for the protection, preservation, and rehabilitation of the environment. The party filing a SLAPP lawsuit must demonstrate by a preponderance of the evidence that the lawsuit is not a SLAPP and is a legitimate lawsuit. The anti-SLAPP provisions under this environmental law are part of the Supreme Court's recognition that the enforcement of constitutional rights to a balanced and healthy ecology must take into account real

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<sup>53</sup> Ibid.

obstacles to law enforcement. These provisions are an enhancement of existing law, international treaties, best practices, and innovations; and links the right to a balanced and healthy ecology with the constitutional rights to freedom of speech and assembly, and the right to petition the government for redress of grievances. The lack of jurisprudence on these anti-SLAPP provisions makes it difficult for lawyers to successfully apply them.

In the Philippines, where anti-SLAPP provisions were introduced into court-mandated environmental regulations, the lawyers we interviewed found that the training of judges and the existence of a legal framework were as important as the rules' application. In one Philippine case involving a long and protracted legal battle to protect a protected watershed from the impacts of mining activities<sup>54</sup>, a mining company filed a series of civil, criminal, and administrative lawsuits against the mayor and against leaders of local organizations working to protect the watershed.<sup>55</sup> According to lawyers for several local organizations, they struggled to get judges to recognize the new anti-SLAPP provisions due to a lack of precedent on how they should be applied, leading some judges to consider dismissing the case. A first-instance court judge asserted that the provisions only apply to environmental courts, not regular courts (there is no such restriction in the provisions). The SLAPP defense was not recognized by the lower court, allowing the case to proceed. The case then went to the Court of Appeals, and environmental advocates finally obtained the dismissal they sought, but only six years after the SLAPP case was filed. As a result, a number of plaintiffs and environmental witnesses eventually withdrew from the case, some fearing further attacks from the company.

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<sup>54</sup> Mancini, L., & Sala, S. (2018). Social impact assessment in the mining sector: Review and comparison of indicators frameworks. *Resources Policy*, 57, 98-11

<sup>55</sup> Hotchkiss, et al. vs. Honorable Ridgway Tanjili, CA-GR SP NO. 05386-MIN; related interview is on file.

In the Philippines, the use of Strategic Lawsuits Against Public Participation (SLAPPs) remains a repressive tool used to silence environmental activists and civil society organizations. One recent case is the lawsuit filed by Resorts World Sentosa (RWS) against Earth Island Institute Philippines and its executive director, Trixie Concepcion, in 2012. Earth Island Institute campaigned to halt RWS's export of 25 dolphins from the Philippines to Singapore, citing concerns about animal welfare. However, RWS responded by suing Earth Island and Concepcion, seeking approximately \$90,000 USD in damages for their efforts to silence criticism and public participation in environmental protection<sup>56</sup>.

After years of legal proceedings, in August 2019, a Philippine court found Earth Island and the other defendants guilty of moral and moral damages, and fined them \$15,385 USD. This ruling highlights how environmental activists remain vulnerable to SLAPPs, despite the Philippines' existing laws to protect freedom of expression in advocacy settings. Earth Island and Concepcion plan to appeal, asserting they did nothing wrong under<sup>57</sup> Philippine law.

In response to the rise in SLAPP cases, the Supreme Court of the Philippines issued its Rules of Procedure for Environmental Cases in 2010, which included anti-SLAPP provisions in Article 6 for civil cases and Article 19 for criminal cases. These provisions were supposed to give courts the authority to dismiss lawsuits found to be intended to hinder public participation in environmental advocacy. However, the effectiveness of these provisions remains questionable, given that cases like the one experienced by Pulau Bumi continue to occur, demonstrating that

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<sup>56</sup> Earth Island Institute Philippines, *"Earth Island Philippines Fights SLAPP Lawsuit Over Anti-Captivity Campaign,"* savedolphins.eii.org

<sup>57</sup> Ibid.

the law has not been fully implemented in protecting environmental advocates from repressive actions<sup>58</sup>.

## V. Indonesia Comparison

Article 66 of Law No. 32/2009 concerning Environmental Protection and Management addresses the Environmental Protection and Management Law (UU PPLH) in relation to environmental issues, and states that “any person who fights for the right to a good and healthy environment cannot be prosecuted criminally or civilly.” In addition, Article 78 (1) of the Law on the Prevention and Eradication of Forest Destruction protects individuals from legal prosecution, stating that “reporters and informants cannot be prosecuted, either under criminal or civil law, for reports and testimony that they will, have, or have provided.” In 2021, Law No. 32/2009 concerning Environmental Protection and Management, which is considered a provision for anti-UU PPLH measures, was cited in a number of environmental disputes. For example, the Indonesian High Court acquitted six villagers on Bangka Island who were accused of impersonating officials to organize a meeting on protecting residents' rights to clean air and a healthy environment, following pollution caused by a cassava factory operated by PT Bangka Asindo Agri. The court ruled that the villagers' right to fight for a clean environment is protected under the 2009 Environmental Protection Law. The court also stated that the villagers' actions were only to enable the community to participate in activities to protect the public interest, given the detrimental impacts of the pollution.<sup>59</sup> SLAPPs against journalists

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<sup>58</sup> Sharif , Laode M., Wibisana , Andri G., & Maskun . (2012). *Environmental Law: Theory, Legislation, and Case Studies* . Jakarta: Rajawali Pers. Pages 65-66.

<sup>59</sup> Hans Nicholas Jong. The acquittal of Indonesian villagers protesting pollution marks a rare victory against a SLAPP. August 2, 2021. <https://news.mongabay.com/2021/08/acquittal-of-indonesian-villagers-protesting-pollution-marks-rare-win-against-slapp-bangka-asindo-agri/> [accessed December 18, 2022].

continue in Indonesia, particularly those reporting on environmental issues. Although a Memorandum of Understanding (MOU) exists between the Indonesian National Police and the Press Council to ensure journalists' protection from criminal prosecution, the MOU has not helped reduce the incidence of SLAPPs against journalists.

Once a case has entered the trial stage, as guaranteed by the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 36/KMA/SK/II/2013,<sup>60</sup> the defendant may use the SLAPP argument in the provision, exception, or counterclaim (in civil cases) and defense (in criminal cases) and the judge is obliged to decide in an interlocutory decision. This regulation needs to be strengthened at the Supreme Court Regulation (Perma) level to provide strong encouragement for judges to operate it.

SLAPPs represent an abuse of the law, not a legitimate use of it. Unscrupulous companies in Southeast Asia and beyond abuse existing legal frameworks and regulations, such as those governing defamation and other forms of libel, to pursue costly and demoralizing legal proceedings. Companies typically exploit their economic advantage and seek high monetary damages, file multiple SLAPPs, and appeal adverse court decisions, prolonging lengthy and expensive litigation. SLAPPs are often accompanied by other types of attacks on defenders, in some cases perpetrated by the state, such as intimidation, threats, and various forms of legal harassment, including civil and criminal action. Furthermore, it is important to recognize the role that responsible businesses can and do play in creating a safe environment for defenders to raise issues and even defend them when they are harassed. There have also been some encouraging legal developments in the region, such as in Thailand, the Philippines, and Indonesia. However, to date, lawyers have made limited use of these laws and procedures,

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<sup>60</sup> Quoted from Aktivisual, "Strengthening Environmental Protection Rules", [https://aktivisual.org/infographics/penguatan-aturan-anti-slapp/# ftn2\\_](https://aktivisual.org/infographics/penguatan-aturan-anti-slapp/# ftn2_), accessed on August 13, 2021.

reverting to traditional legal strategies built around constitutional rights.

This success is not without merit; the research also shows that weak or non-existent legal frameworks perpetuate corporate legal abuse with impunity. The lack of anti-SLAPP frameworks worldwide, and the limited enforcement of these laws, where they exist, leaves lawyers with limited tools to fight SLAPPs in court. This weakens their ability to overturn SLAPPs, highlighting their frivolous nature and exposing corporate legal abuse. Meanwhile, courts have limited access to overturn SLAPPs before proceeding to full trials, which are often lengthy and expensive. This gap in legal protections allows companies to manipulate the judicial system by exploiting the high costs and time required to file cases, thereby draining the human and financial resources of defense attorneys without fear of any financial or legal consequences. In countries where business and the state are closely intertwined, companies can also abuse this relationship to pressure the state to file criminal charges against their attorneys. To effectively combat SLAPPs—both in Southeast Asia and globally—we need a robust legal and policy framework that deters companies from filing SLAPPs in the first place and allows courts to identify, prosecute, and dismiss them promptly after they are filed. To make this happen, governments, businesses and investors, along with advocates and civil society (and the lawyers who defend them), need to act decisively to protect civil liberties and human rights defenders.

Referring to Lawrence M. Friedman's thinking, there are three main components as prerequisites for the effective functioning of law. First, the Legal Structure, which refers to the institutions and a set of law enforcers; Second, the Legal Substance, which refers to the rules and norms created by members of parliament; and third, the Legal Culture, which refers to the beliefs, aspirations, and

expectations of society towards the law.<sup>61</sup> These three elements are interrelated. Metaphorically, the legal structure can be likened to a machine, the legal substance is the product produced by the machine, and the legal culture is the people who will use the product produced by the machine. Therefore, the harmonization of these three elements of the legal system is a prerequisite for effective law enforcement.<sup>62</sup>

Several issues with existing Anti-SLAPP regulations lie in their legal structure and substance. First, regarding the legal structure, it is necessary to develop the capacity of law enforcement officials, from the police, the prosecutor's office, to judges, regarding the enforcement of Anti-SLAPP laws.<sup>63</sup> This capacity development is carried out in parallel with the issuance of internal institutional regulations by law enforcement officials for the operationalization of Anti-SLAPP. For example, the Attorney General's Office issued an instrument prohibiting legal proceedings if a lawsuit is related to an attempt to block environmental advocacy.<sup>64</sup> Second, regarding the legal substance, it is necessary to encourage the structuring of Anti-SLAPP regulations. Ideally, Anti-SLAPP regulations should be included in the Civil Procedure Code and Criminal Procedure Code. Integrating Anti-SLAPP into criminal procedure law, for example, aims to provide a legal basis for law enforcement officials at every level of the case to be able to identify and terminate a case if it falls into the SLAPP category, so that the case does not progress to the next stage. Concretely, the idea of integrating Anti-SLAPP into procedural law should allow for the termination of SLAPP cases, even at the investigation stage. This means that there needs to be a

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<sup>61</sup> Lawrence Friedman, *American Law: An Introduction* (New York, London: WW Norton & Company, 1984), pp. 5-7.

<sup>62</sup> Ibid., p. 7.

<sup>63</sup> Pradipta Pandu, "Indonesia Needs to Emulate Other Countries' Anti-SLAPP Rules," *Kompas*, <https://www.kompas.id/read/ilmu-knowledge-technology/2021/04/23/indonesia-perlu-mencontoh-aturan-anti-slapp-dari-negara-lain>, accessed August 13, 2021.

<sup>64</sup> ICEL, "Law Enforcement to Prevent Criminalization of Environmental Activists", <https://icel.or.id/berita/penegak-hukum-agar-mencegah-kriminalialisasi-pejuang-lingkungan/>, accessed on August 13, 2021.

concrete legal basis for the police and prosecutors to be able to stop a case if a case is identified as a SLAPP case.

TABLE 1. Comparison of SLAPPs in Indonesia, the Philippines, and Thailand

Aspect	Indonesia	Philippines	Thailand
Anti-SLAPP Regulations	Article 66 of Law No. 32/2009 concerning Protection and Management Environment	Rule Supreme Court for Environmental Protection and Cases (2010)	Criminal Procedure Code (KUHAP) Article 161/1 (2019 )
Coverage Protection	Limited to the issue environment and not Can sued criminal / civil Because fight for right environment	Protect activist environment from demands law related advocacy environment	Protection more wide covers activists, journalists and human rights defenders
Case Resolution Process	It depends on the judge; a SLAPP defense can submitted in provisions, exceptions, or lawsuit come	Fast process : SLAPP lawsuits must tested in 5 days , and the trial must completed in 30 days	Court can reject SLAPP lawsuit before trial full If proven There is intention bad back
Effectiveness Implementation	Weak ; still Lots SLAPP cases targeting activists and journalists	Hampered by the lack of jurisprudence and judges' understanding of anti-SLAPP rules	Still many used by companies For silence human rights defenders and workers

Sources: Processed by the researcher himself

Conservative countries will incorporate Anti-SLAPP rules into a legal umbrella or special regulations governing Anti-SLAPP below all its derivatives from upstream to downstream to ensure the fulfillment of environmental rights and environmental justice seekers. However, semi-conservative countries will incorporate Anti-SLAPP into partial regulations. As in Indonesia, anti-SLAPP regulations are not specifically regulated. Anti-SLAPP regulations can be found in the Supreme Court Circular Letter and Article 66 of the Environmental Regulation. Meanwhile, in the Philippines SLAPP regulations can only be found in the Supreme Court Regulation. Although Philippine senators have proposed ordering the legislature to create special regulations against anti-SLAPP, they have not been able to find regulations for the legislative product. This is progress because they have an understanding of the importance of Anti-SLAPP regulations and will realize them in the form of laws. Although Indonesia has Anti-SLAPP content in the SEMA and in the Environmental Law, Indonesian legislators have not yet been aware of the importance of protecting the environment and the rights of environmental justice seekers against the threat of criminalization. Although both countries have Anti-SLAPP regulations, the evidence is not sufficient to be implemented properly. This is due to the lack of clear rules regarding how Anti-SLAPP should be applied. In both regulations, the Supreme Courts of both countries even suspended the Anti-SLAPP exception if it is possible to prove that the Company acted in good faith or bad faith. This is highly dependent on the judge's conviction, given that the definition of good faith is highly biased. Furthermore, there are no specific criteria that categorize a Company as acting in good faith. This is very unfortunate because it can delegitimize environmental issues, even though in principle we recognize the principles of caution and prevention in exploiting the environment. Even in terms of proof, the burden of proof can be challenged based on the principle of absolute liability.

The integration of Anti-SLAPP into Criminal Procedure Law, for example, aims to provide a legal basis for law enforcement at

every level of a case to identify and close a case if it falls into the SLAPP category so that such cases do not recur. Concretely, the idea of integrating Anti-SLAPP into procedural law should enable SLAPP cases to be dismissed, both at the investigation and prosecution stages. This means that a concrete legal basis is needed for the police and prosecutors to dismiss a case if it is found to be a SLAPP case. This is necessary to protect the rights of environmental activists to freedom of opinion and freedom of expression so they can fight for a decent environmental right. Although the state is actually an obligation to fulfill, in practice we will obtain justice if we fight for it. Therefore, legal access to environmental justice is crucial because environmental justice is a social movement to address environmental injustice that occurs due to social inequality and discrimination.

Environmental justice is a social movement to address environmental injustice resulting from social inequality and discrimination (differences in treatment). Therefore, this movement is usually advocated by the proletariat and marginalized groups, as they are the most vulnerable to exposure and become victims of environmental injustice resulting from government policies. To achieve environmental justice, particularly in terms of community participation, protection is essential. This aims to reduce or even eliminate arbitrary actions by the state/company against community interests, delegitimizing the environment for their own interests.

SLAPPs differ substantially from ordinary lawsuits due to their political nature. The plaintiffs in such cases do not seek justice or hope to win; their goal is to intimidate, silence, or intimidate their opponents by sapping their resources, forcing them to pay to fight baseless lawsuits, reducing their work efficiency, activity levels, time, and morale, and exerting emotional pressure on their opponents to weaken them so that they will ultimately cease their activities. SLAPPs not only disrupt ongoing public participation activities but also create a chilling effect on future public

participation activities 65and spread an intimidating message to the general public as a whole.<sup>66</sup>The protection of SLAPPs laws aims to integrate and coordinate various interests within society towards the environment. Because in a conflict of interests, protection of certain interests can only be achieved by methods of limiting various interests on the other side.

As noted, Thailand, Indonesia, and the Philippines all have anti-SLAPP laws. However, because Indonesia and the Philippines only offer legal protection for environmental matters, public participation in other matters of public interest remains unprotected by law. Thailand only establishes measures to address SLAPPs filed as criminal complaints by private entities, except in cases where the prosecutor acts as the plaintiff. However, the prosecutor's discretion in deciding whether to order prosecution—based on whether it would be in the public interest—can significantly impact SLAPP settlements.

## VI. Conclusion

The legal vacuum regarding *Strategic Lawsuits Against Public Participation* (SLAPP) in Indonesia, the Philippines, and Thailand demonstrates the weak legal protection for environmental rights defenders, who are often victims of criminalization and legal intimidation. In Indonesia, the Anti-SLAPP provisions are only declaratory through Article 66 of Law Number 32 of 2009 and the Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013, without a procedural legal mechanism that can stop cases at the investigation stage. As a result, law enforcement officials do not have a strong legal basis to protect environmental defenders from legal abuse by corporations. In the Philippines, the *Rules of Procedure for Environmental Cases (2010)*

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<sup>65</sup> George W. Pring, SLAPPs: Strategic Lawsuits Against Public Participation, 7 Pace Envtl. L. Rev. 3 (1989) Available at: <http://digitalcommons.pace.edu/pelr/vol7/iss1/11>, page 8

<sup>66</sup> Report of the Special Rapporteur on the situation of human rights defenders, UN Document A/HRC/25/55, 23 December 2013, paragraph 59.

have been a breakthrough because they explicitly regulate *the Anti-SLAPP provision* that allows for the termination of cases through a *summary hearing mechanism* within 30 days, but its implementation remains limited due to a lack of understanding among judicial officials. Meanwhile, Thailand is considered to have the best practice through the amendment of Section 161/1 of the Criminal Procedure Code (2018) which gives the court the authority to reject cases with malicious motives (*bad faith litigation*) from the outset, although it has not been implemented consistently at all levels of the courts. Based on this comparison, it is necessary to recontextualize the Anti-SLAPP law in Indonesia by integrating Anti-SLAPP principles into the Criminal Procedure Code and civil procedure law, establishing clear legal indicators, and strengthening the capacity of police, prosecutors, and judges through special training. By adopting Thailand's best practices and the Philippines' procedural mechanisms, Indonesia can build an effective, preventative, and ecologically just Anti-SLAPP system.

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