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The Urgency of Anti-SLAPP Regulatory Renewal in Indonesian Environmental Law

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Abstract

Indonesian Environmental Law has regulated Anti-Strategic Litigation Against Public Participation (Anti-SLAPP) which guarantees protection to everyone who fights for the right to a good and healthy environment, not to be criminally prosecuted or sued civilly, as stipulated in Article 66 of the UUPPLH. Hope is still far from reality, because data shows that many communities and/or environmental warriors are victims of SLAPPs as part of the backlash from those they report or oppose when they participate and defend people's right to a good and healthy environment. This article aims to discuss; (1) Problems of Anti-SLAPP Regulation and Application in Indonesia and (2) The Urgency of renewal Anti-SLAPP Regulations in Indonesian Environmental Law. The research method uses normative juridical methods. The results of the discussion showed that (1) the

problems of regulating and implementing Anti-SLAPP include three elements, namely legal substance problems, legal structure problems and problems in legal culture: and (2) There are at least 7 reasons that cause the urgency of renewal of Anti-SLAPP Regulations in Indonesian environmental law to be able to realize the protection of society participation in environmental protection and management.

KEYWORDS *Urgency, Renewal, Regulation, Anti-SLAPP*

I. Introduction

Everyone has the right to a good and healthy living environment. These rights are fundamental rights guaranteed by the constitution. Article 28 H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia clearly states that everyone has the right to live a prosperous life in birth and mind, to live, and to get a good and healthy living environment and the right to receive health services. More than that, the right to a good and healthy environment is part of human rights. The guarantee for the environment is increasingly emphasized in Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH).

Article 5 Paragraph (1) of the UUPLH clearly states that everyone has the same right to a good and healthy living environment". The mandate of Article 28H of the 1945 Constitution is also specifically regulated in the provisions of Article 65 paragraph (1) of the PPLH Law, that everyone has the right to a good and healthy living environment as part of human rights. Furthermore, paragraph (4) also emphasizes that everyone has the right to play a role in environmental protection and management in accordance with laws and regulations. Thus, the UUPPLH provides stronger recognition of the right to participate from the community compared to the previous environmental law. In Law No.

39 of 1999 concerning Human Rights, Article 9 paragraph (3) also affirms that "everyone has the right to a good and healthy living environment". Based on this, the consequence is the obligation and duty of the state with all its efforts to create a good and healthy living environment for every Indonesian citizen. Rights contain elements of interest and protection.[1]

In addition to having the right to a good and healthy environment, every citizen is also attached to the obligation to maintain the preservation of environmental functions and prevent and overcome environmental pollution and destruction as mandated by article 65 of the UUPPLH. This means that every citizen has an obligation to prevent and tackling environmental pollution and destruction and being obliged to maintain the sustainability of environmental functions. The combination of rights and obligations further strengthens the position of every citizen in its important role to realize a good and healthy living environment. This is what makes it an important and fundamental foundation for the state to provide appropriate protection to the community as public participation in carrying out obligations and at the same time realizing the rights of citizens. Everyone is the key to environmental sustainability. Everyone has a role to play in environmental destruction or environmental sustainability[2] So that the state is obliged to realize the interests of every individual for a good and healthy environment and is obliged to provide protection when they fight for their rights.

Public participation is one of the most important elements in the implementation of democratic government. In the environmental sector, everyone who participates in public in order to fight for the right to a good and healthy environment is protected from criminal and civil lawsuits, as

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[1] Nani Indrawati, "Legal Protection Against Community Participation (Anti SLAPP) in Environmental Law Enforcement in Indonesia," *Media Iuris* 5, no. 1 (February 18, 2022): 115, https://doi.org/10.20473/mi.v5i1.33052.

[2] Sebastian, Naufal, dan Ali Masyhar. "Implementasi Anti-Slapp (Strategic Lawsuit Action Against Public Participation) Dalam Pengelolaan Dan Perlindungan Lingkungan Hidup." Vol. 3, 2023).

stipulated in Article 66 of the UUPPLH. This concept of protection is known as Anti-Strategic *Litigation Against Public Participation* (Anti-SLAPP)[3]. This means that the UUPPLH has regulated immunity for everyone who fights for a good and healthy environment.[4]

Indrawati said that in fact, there are still many parties who are suspected of violating the community's right to a good and healthy environment and instead report to the police or sue the community who have defended or fought for their rights. The reporting or even lawsuit in question is known as SLAPP (*Strategic Law Suit Againts Public Participation*). [5] SLAPP usually aims to silence or scare the public from submitting complaints, resisting or criticizing perpetrators who are suspected of causing pollution or destruction of the environment. This can also happen when people report pollution or environmental destruction, reported back with postulates of defamation or other criminal reasons.

Anti-SLAPP is a concept that guarantees legal protection to the community from being criminally sued or sued civilly in fighting for the right to a good and healthy environment. Anti-SLAPP is a provision aimed at protecting public participation from counter-resistance efforts and even silencing through litigation. In the context of Indonesian environmental law, this provision is intended to protect everyone's right to a good and healthy environment and can be found in Article 66 of the UUPPL. Article

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[3] Lidya Nelisa, "Urgensi Penguatan Ketentuan Prosedural Anti-SLAPP di Indonesia untuk Melindungi Pembela HAM Lingkungan dari Serangan Litigasi," Jurnal Hukum Lingkungan Indonesia, Oktober 2021, https://jhli.icel.or.id/jhli/article/view/373/133.

[4] Sebastian dan Masyhar, "Implementasi Anti-Slapp (Strategic Lawsuit Action Against Public Participation) Dalam Pengelolaan Dan Perlindungan Lingkungan Hidup."

[5] Harahap, Irawan, dan Riantika Pratiwi. "Perkembangan Pengaturan Anti-Slapp Di Bidang Lingkungan Hidup Menurut Hukum Indonesia." *Jotika Research in Business Law*. Vol. 2, 2023.

66 of the Law expressly states that everyone who fights for the right to a good and healthy environment cannot be criminally sued or sued civilly.

Anti-SLAPP is present in Indonesia due to cases that are indicated to be SLAPP in the community. One of the first cases indicated by SLAPP in Indonesia occurred in 2004 before the existence of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), namely between PT. Newmont Minahasa Raya (PT. NMR) and Rignolda Jamaluddin [6] Although it has been clearly regulated in a provision of the Law, in reality there are still many people who are demanded when fighting for environmental rights. This can be caused by various problems ranging from the unclear context of protected participation, the difficulty of law enforcement related to Anti-SLAPP provisions and the unclear position of Anti-SLAPP provisions in Indonesian criminal law.

Typical SLAPPs are created to scare, intimidate or silence critics over the threat of punishment and are basically done with the aim of silencing/eliminating public participation. So SLAPP usually aims to silence or scare the public not to submit complaints, resist or criticize perpetrators who are suspected of causing pollution and/or environmental destruction.

The SLAPP phenomenon in the form of criminal reporting and civil lawsuits against human rights defenders over the environment is still considered to be an iceberg phenomenon, the reported and recorded cases are only the tip of the iceberg. Based on data documented by FORUM-ASIA and KontraS from January 2019 to December 2020, there were 205 attacks on environmental human rights defenders. The majority of these attacks are in the form of attacks by judicial *means (judicial harassment*), arbitrary arrest and detention, intimidation and threats, and murder. Meanwhile, ELSAM noted that there were 178 environmental human rights defenders in Indonesia who experienced violence throughout 2020,

[6] Harahap & Pratiwi, 2023.

of which 120 were victims of criminalization and 2 of them died due to murder[7].

Since 2014, WALHI has obtained data that as many as 173 people who fought for human rights over the environment were arrested (criminalized), of which seven were harassed and two died. Meanwhile, the Agrarian Reform Consortium (KPA) obtained data throughout 2014-2018, namely that there were as many as 940 farmers and agrarian fighters who were criminalized. Furthermore, ELSAM obtained data throughout 2019, namely a total of 28 individuals and 50 groups of environmental human rights fighters who became victims of violence. Then the latest information, namely from January to April 2020 there were more victims of violence. ELSAM found as many as 69 individuals and 4 indigenous community groups to be victims.

Furthermore, KontraS also obtained data that as many as 28 incidents of violence against human rights defenders in the natural resources sector in the period December 2019 to November 2020. Of all the incidents spread across these 11 areas, 14 people were injured, 2 people were killed and 35 people were arrested with a pattern that continues to recur, namely crimes against residents affected by land conflicts/natural resources and detention of people who carry out mass actions to protest disputes [8]. LBH Semarang also noted that in Central Java, there have been at least 4 (four) cases showing *that strategic lawsuit action against public participation* used by corporations to weaken the movement to deny environmental pollution has occurred in the last 10 years. The four corporations include: CV. Jar Mas Nusantara in Jepara Regency; PT.

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[7] Nelisa, "Urgensi Penguatan Ketentuan Prosedural Anti-SLAPP di Indonesia untuk Melindungi Pembela HAM Lingkungan dari Serangan Litigasi."

[8] Nyoman Gede Aditya Jay Medhika, Anak Agung Sagung Laksmi Dewi, dan Luh Putu Suryani, "Konsep Anti Eco-Slapp dalam Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup," *Jurnal Interpretasi Hukum* 3, no. 1 (2 Maret 2022): 220–24, https://doi.org/10.22225/juinhum.3.1.4752.220-224.

Semen Indonesia in Rembang Regency; PT. Rayon Utama Makmur in Sukoharjo Regency; and PT Panggung Jaya Indah Textile in Pekalongan City.[9]

The data mentioned above shows that there are still serious problems in the regulation and implementation of Anti-SLAPP in Indonesia to provide certainty of protection guarantees to community participation, especially environmental fighters or defenders in an effort to carry out the obligations ordered by the UUPPLH and also to accept and fight for their constitutional rights to a good and healthy environment so that there are still many SLAPP cases against them.

This condition occurs due to many factors, including that the concepts of SLAPP and Anti-SLAPP in Indonesia are still relatively new and tend to be sectoral, so that the operationalization of Anti-SLAPP regulated in article 66 of the UUPPLH is still experiencing obstacles. The obstacles to the implementation of Anti-SLAPP in Indonesia are caused by the lack of procedural law regarding Anti-SLAPP and the disparity in understanding of Anti-SLAPP among law enforcement officials. This results in the lack of many best *practices* that can be used as a reference in handling SLAPP cases. In addition, if we look at and learn from Anti-SLAPP in some (such as the United States, Canada, and the Philippines), the Anti-SLAPP settings in Indonesia still do not reflect the Anti-SLAPP settings that are seen as effective. Effective Anti-SLAPP arrangements should be in the form of or in the form of an abortion mechanism for SLAPP cases from the beginning or as early as possible so that the effect of silencing SLAPP does not continue and also regulate the mechanism for providing remidy for SLAPP victims so that the losses suffered by SLAPP victims can be immediately recovered.

[9] Sebastian dan Masyhar, "Implementasi Anti-Slapp (Strategic Lawsuit Action Against Public Participation) Dalam Pengelolaan Dan Perlindungan Lingkungan Hidup."

Nyoman Gede Aditya Jay Medhika [10] also said that the number of SLAPP cases that are carried out by the private sector on the involvement of the general public and the high risk to environmental activists is an example that is the background for the inclusion of regulations that are anti-strategic *lawsuit against public* participations (Anti-SLAPP) in the UUPPLH, especially in article 66. This statement also proves that there is a problem with the environmental law regime in protecting every individual who fights for the right to the environment and their living space from development projects. The low understanding and knowledge of law enforcement in Indonesia regarding SLAPP is the reason why SLAPP can growing as a trend of legal strategies in fighting public participation by the private sector. However, the basis of this SLAPP problem is not only the weak knowledge and understanding of law enforcement. Some of these realities further show that there are problems or problems in the regulation and implementation of Anti-SLAPP in Indonesia.

Based on these existing problems, this paper aims to discuss (1) the problems of regulation and implementation of Anti-SLAPP in Indonesia and (2) the urgency of Anti-SLAPP regulatory renewal in Indonesian Environmental Law in realizing the protection of public participation in environmental protection and management.

The research method used in compiling this article is by using the normative juridical method. The juridical-normative method is used because the main problems raised can be answered by literature study studies through theoretical and regulatory analysis. The legal materials used are primary legal materials and secondary and tertiary legal materials. Primary legal materials consist of: laws and regulations and court decisions. Meanwhile, secondary legal materials consist of books, scientific journals, research reports, minutes on legal discussions and other law-related

[10] Harahap Dan Pratiwi, "Perkembangan Pengaturan Anti-Slapp Di Bidang Lingkungan Hidup Menurut Hukum Indonesia."

information. These legal materials are analyzed qualitatively in describing the discussion of the main issues raised in this paper.

II. Problems of Anti-SLAPP Regulation and Application in Indonesia

To start this discussion, it is necessary to first describe the background of the presence of Anti-SLAPP. Anti-SLAPP was born from the anxiety of 2 (two) researchers with different backgrounds, namely Prof. George W. Pring who has a legal background and Dr. Penelope Canan who has a sociology background. Pring and Canan came up with the idea of Anti-SLAPP in response to the phenomenon that occurred in the United States at that time, where many citizens used their right to participate which then received backlash. The forms of participation used include: writing objections to a plan or program through a newspaper, submitting an objection or petitioning against a policy. In fact, according to Pring and Canan, this form of participation is protected by the United States constitution. The right to petition, for example, has been guaranteed by the First Amendment to the Constitution The reality is very surprising and very interesting to observe further.

The phenomenon discovered by Pring and Canan is seen as an anomaly for a country that claims to be the most democratic, namely the United States. Pring and Canan even wrote *No country on this earth protects the rights of citizens as does ours. Every American almost instinctively says, 'I have my rights', 'I know my rights', 'I insist of my rights'.*The purpose of this statement is to show how knowledge and awareness of human rights have become an integral part of every American citizen. This is also supported by regulations that ensure the protection and fulfillment of their rights, regardless of their background. SLAPP for Pring and Canan is a threat that could undermine the main foundation of human rights that has been fought for and built in the United States for a long time. Because after all,

SLAPP that curbs the freedom of existence and social freedom of the community is a form of threat to human rights.

In this regard, in their study, Pring and Canan found examples where SLAPP was conducted against those who wrote objections to the President over a political promise, objected to real *estate* development that violated zoning, reported violations of environmental laws to the government, civil rights or equality for workers; demonstrated a government action/policy; testified in front of the President congress or state legislator; conveying violations of the law to health authorities; suing the government on the grounds of public interest; and other things. The phrase SLAPP was first introduced in 1996 by George W. Pring and Prince Canan in their book SLAPPs: Getting Sued For Speaking. [11]

Looking at the various examples above, SLAPP occurs against parties who participate in various forms (petitions, lawsuits, complaints, etc.). Sorting from Pring and Canan, in simple terms, there are 2 (two) key points in understanding what SLAPP is, namely: participation/expression and public interest. This means that SLAPP occurs in every person or group of people who participate or express themselves through various forms that concern the public interest (environment).

SLAPP is also an action that will always look "gray", because although filing a lawsuit is the right of the plaintiff, the lawsuit as an instrument of law enforcement is only a "tool" to achieve its goals. The goal is to inhibit or even eliminate public participation, by bringing as if the lawsuit is a purely private matter. More specifically, the goal is not only to hinder public participation, but also to intimidate and create fear. This is a problem because the true purpose of the lawsuit is certainly not always easy to see and must be explored. This rationale led Pring and Canan to

[11] Stanislaus Juridistia Waraney Toar Harryandi, Stanislaus Demokrasi Sandyawan, dan Yonathan Wiryajaya Wilion, "Penguatan Hak Tersangka Dalam Mengajukan Permohonan Penghentian Penyidikan dan Penuntutan Dalam RKUHP Sebagai Optimalisasi Perlindungan Anti Slapp di Indonesia," *Jurnal Mimbar Forum Kajian dan Penelitian Hukum FH Universitas Brawijaya*, 2019, 1–26.

find a name for the action, namely the Strategic Lawsuit. The phrase SLAPP was first introduced in 1996 by George W. Pring and Prince Canan in their book SLAPPs: Getting Sued For Speaking.

Anti-SLAPP has historically been known in Indonesia in the form of opinions from environmental organizations during the Public Hearing Meeting to discuss the Environmental Protection and Management Bill (RUUPPLH). The background that causes the need for Anti-SLAPP rules includes: first, because of the silencing of people who fight for the interests of the environment by the state, corporations and other authorized actors. Second, it is because there are many counter-reports with postulates of defamation to individuals or the people and even the community who provide reports of cases of environmental destruction and pollution.

The proposal for provisions regarding Anti-SLAPP was approved by the drafters of the UUPPLH. The drafters argue that this provision is important as a means of protection for community participation to realize a good and healthy living environment. However, it needs to be emphasized that in originality, the idea of Anti-SLAPP is presented for the government and members of the People's Puppet Council (DPR) as well. Protection for the government was motivated by the reporting of the Ministry of Environment staff by one of the companies when conveying the development of the case related to the company to the media. Meanwhile, the protection for the DPR is motivated by a legal process against one of the members of the DPR who fights for environmental problems experienced by the community.[12]

Since it was first regulated in the UUPPLH, Anti-SLAPP is still experiencing obstacles in its operation. This obstacle generally stems from the absence of specific regulations regarding Anti-SLAPP and the lack of good practices in handling cases for the prevention of SLAPP. The rules

[12] Sembiring, "Merumuskan Peraturan Anti Strategic Lawsuit Against Public Participation Di Indonesia * Formulate Anti Strategic Lawsuit Against Public Participation In Indonesia."

regarding Anti-SLAPP are still limited which are regulated in a limited event in the UUPPLH. This rule is still very common. Another legal source that regulates Anti-SLAPP is the Decree of the Chief Justice of the Supreme Court No. 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases (SK KMA 36/2013).

Furthermore, Sembiring (2019) stated that after the UUPPLH was promulgated, the discourse on the concept of Anti-SLAPP "disappeared". This is coupled with the lack of domestic literature that discusses the concept of Anti-SLAPP in Article 66 of the UUPPLH. In the short period after the UUPPLH was promulgated, the public narrative (especially by environmental activists) that emerged was violence, intimidation and criminalization of the community and environmental activists. Regarding the concept of Anti-SLAPP, the Supreme Court (MA) even took a role by including it in the Decree of the Chief Justice of the Supreme Court Number: 36/KMA/SK/II/2013 concerning the Enforcement of Guidelines for Handling Environmental Cases.

In Decree KMA 36/2013 regarding the Implementation of Guidelines for Handling Environmental Cases related to Article 66 of the UUPPLH, it is stated that "*Anti-SLAPP is a legal protection for environmental fighters...*". The Supreme Court implicitly interprets that SLAPP can occur even if the community does not or has not taken legal measures. Still in the same provision, it is determined that the plaintiff's lawsuit in a civil case is SLAPP can be filed for provision, exclusion, or in a reconciliation lawsuit. On the other hand, the reporting of criminal acts from the applicant is an SLAPP that can be filed by a defense. These two legal remedies must be decided first in the interim decision. In civil cases, the Supreme Court provides options for the defendant to file three legal remedies. However, there are limitations in handling SLAPP in criminal cases that can only protect SLAPP suspects/defendants after the case has been examined in court. Thus, the regulation of the Anti-SLAPP concept

in laws and regulations is still very weak, limited and minimal in providing legal certainty for all parties.

The concept of Anti-SLAPP has begun to be discussed again as a public narrative since the case of H. Rudy vs Willy Suhartanto. In the case, H. Rudy's lawyer first postulated the Anti-SLAPP defense, although it was not elaborated in depth. Furthermore, Anti-SLAPP began to receive the attention of the Ministry of Environment and Forestry (KLHK) after the cases of Heru Budiawan vs the State of the Republic of Indonesia and Basuki Wasis vs Nur Alam. Anti-SLAPP is important because it is the only legal protection mechanism for community participation in expressing their opinions, objections or expressions to environmental problems or policies. However, the rate of violence, criminalization, lawsuits and intimidation is getting higher, and the implementation of the Anti-SLAPP mechanism has not yet been implemented. In 2018, the Ministry of Environment and Forestry has only paid special attention to the preparation of the Draft Regulation of the Minister of Environment and Forestry (MenLHK) regarding Anti-SLAPP.

Anti-SLAPP practices are also recorded to be minimal, there have not been many termination of investigations or termination of prosecutions using the Anti-SLAPP Concept according to Article 66 of the UUPPLH. For court decisions, only three decisions were recorded, two civil cases and one criminal case using Anti-SLAPP.

More than 14 years since it was regulated in the UUPPLH, the implementation of Anti-SLAPP is still a major challenge. In fact, referring to data from human rights institutions, the SLAPP phenomenon still continues to occur with quite a large number. In 2014, WALHI recorded 173 environmental rights defenders arrested (criminalized), of which seven were harassed and two died. Meanwhile, ELSAM recorded 128 individuals and 50 groups of environmental human rights defenders as victims of violence in 2019.

Latest data, ELSAM identified 69 individuals and 4 indigenous community groups as victims of violence in January-April 2020. The data also shows that attacks on human rights defenders do not only occur against individuals but also on community groups and indigenous communities. In addition, attacks on environmental rights defenders also occur in journalists who cover environmental issues, experts or academics who publish or support the struggle for environmental rights, and even public officials who handle cases of pollution or environmental damage.

Anti-SLAPP is a concept that is still relatively new in Indonesia. Although it has been regulated in the law since more than 14 years ago, information about Anti-SLAPP has not been widely understood by the public. The violation of the right to participate and attacks on human rights defenders over the environment were initially carried out in the formal realm, namely through civil lawsuits or criminal reports to human rights defenders over the environment as retaliatory actions from the defendant/reported party that had the effect of silencing the community. This phenomenon then developed not only attacks through the legal realm, but also physical, psychological, and digital attacks. Thus, the term SLAPP has developed into Strategic Litigation against Public Participation or Strategic Legal Action against Public Participation.

Although it is relatively new, SLAPP is not something new because the form of violation of the right to participate and attacks on human rights defenders against the environment have occurred for a long time and also vary, in the form of: violence, criminalization, threats of violence/intimidation, and civil lawsuits, with criminalization as the most frequent form of rights violation/attack. For example, Komnas HAM recorded 11 complaints related to criminalization from individuals, civil society organizations, legal aid institutions, and so on, throughout 2020.

Meanwhile, Komnas Perempuan recorded 36 cases of violence against Women Human Rights Defenders in its 2020 annual report. Meanwhile, the Coalition of Civil Society Organizations for Human

Rights Defenders recorded a higher number, namely 116 cases during the January-October 2020 period. Given the large number and breadth of impacts resulting from SLAPP, effective anti-SLAPP operationalization must be pursued as quickly as possible. This operationalization requires strong regulations as the main requirement. Without ignoring the importance of the role of court decisions, strong regulations certainly play a role in preventing SLAPP as early as possible, especially SLAPP that is in the criminal realm.

In the midst of the anti-SLAPP legal vacuum in Indonesia, several state institutions are trying to close this loophole by creating internal regulations. One of them is the Ministry of Environment and Forestry which has been trying to draft the Regulation of the Minister of Environment and Forestry on Legal Protection of Environmental Defenders (Rapermen Anti-SLAPP) since 2018. There are new things that will be regulated in it, namely those related to the definition of environmental human rights fighters or activists, the definition and forms of SLAPP, the definition and mechanism of Anti-SLAPP, the form or activity of the struggle for the right to a good and healthy environment, the stages of Anti-SLAPP as a brief examination, and several other new things that will be able to provide guidance to all parties to understand and implement Anti-SLAPP in Indonesia. However, this Rapermen has also not been completed.

The problems of the Regulation and Application of Anti-SLAPP mentioned above when viewed from the theory of the legal system show as stated by Lawrence Meir Friedman and his book "*The Legal System A Social Science Perspective*" which states that the legal system is a legal unit composed of three elements, namely: legal structure, legal substance and legal culture[13]. So the problem includes three factors or elements in the legal system, namely:

[13] Juhaya S Praja, *Teori Hukum dan Apikasinya*, ed. oleh Beni Ahmad Saebani (Bandung: CV Pustaka Setia, 2014).

1) Problems in legal substance are related to the lack of clarity in the regulations in article 66 of the UUPPLH and its implementing regulations, causing differences in interpretation and doubts about its application
2) Legal structure problems, namely related to which institution will provide assessments related to Anti-SLAPP and the institution authorized to implement Anti-SLAPP including doubts of law enforcement in implementing Anti-SLAPP
3) Legal culture problems are related to values and attitudes that affect the work of the law which functions as a bridge that connects legal regulations with the legal behavior of all citizens, including behavior or culture in law enforcement agencies related to SLAPP and Anti-SLAPP.

III. The urgency of updating anti-SLAPP regulations in Indonesian environmental law

Environmental issues are closely related to development. The environmental preservation regime is almost always at odds with the development regime. Development always has a negative impact on the environment. Development is actually a conscious effort made by humans to achieve a better life, but it is undeniable that development will always be in contact with the environment[14]. In the experience of human history of building until now, the main issue is its impact on environmental sustainability, which is also related to the right of the community or everyone to get a good and healthy living environment. So that development actors, especially in the economic sector, will always deal with all stakeholders in the realization of environmental sustainability.

[14] Supriadi, *Hukum Lingkungan di Indonesia Sebuah Pengantar*, ed. oleh Supriadi (Jakarta: Penerbit Sinar Grafika, 2008).

Although in its development, a big step was found to bring together the interests of development and environmental preservation known as Sustainable Development.

Sustainable development basically emphasizes solving problems in an integrated and comprehensive manner based on three pillars, namely, economic, social and environmental. Especially in the social pillar, the community has the right to participate and play an active role in realizing a healthy and good environment as a concretization of good governance. Although the principle of sustainable development has been adopted in Indonesian environmental law, in fact, there are still many environmental problems that occur. The Central Statistics Agency based on the results of its study from 2014 to 2018 recorded as many as 16,487 villages affected by water pollution and as many as 8,882 villages affected by air pollution. In addition, data reported by Greenpeace Indonesia based on the results of its study in 2020, found that 3,403,000 hectares of land were burned between 2015 and 2018. [15]

The increasingly massive development activities to date, especially after the Indonesian government shifted its economic development paradigm to provide a red carpet for the entry and growth of massive investment, especially after the enactment of the Job Creation Law (UUCK) which has a big impact on many aspects of the nation's life, including in terms of the environment and has received a lot of strong reactions from the community, especially environmental fighters or activists. Therefore, the potential for clashes or positions facing each other between the state, corporations and parties that have authority in development with the community and environmental activists or fighters will be even greater.

[15] Marchethy Riwani Diaz, Jennifer Kurnia Putri, dan Jovita Bunga Jegiantho, "Penguatan Kebijakan Anti-SLAPP Dalam Mewujudkan Keadilan Lingkungan di Indonesia," |, vol. 63, 2021.

In the last three years (2020-2023), there have been quite a number of cases of clashes that have occurred between the state and the community as well as environmental activists which are also colored by acts of criminalization, silencing, and even criminal charges and civil lawsuits aimed at the community and environmental defenders for various reasons or charges, for example what happened in the Rempang Eco City Case which also left legal problems for the community and environmental activists.

Reynaldo Sembiring in his research entitled "Questioning the Regulation of Anti-Eco-SLAPP in Law Number 32 of 2009" resulted in a difference in the explanation of the interpretation in Article 66 of the UUPPLH with the concept of Anti-Eco-SLAPP which can hinder the implementation of Anti-SLAPP in Indonesia. Likewise, another research conducted by Agung Wardana with the title, "The risk of protecting the environment: Strategic Litigation against Public Participation (SLAPP) in post-authoritarian Indonesia", produced that the SLAPP phenomenon in Indonesia refers to political economy, that meetings between legal defenders in post-authoritarian Indonesia aim to protect the interests of oligarchs.[16]

Therefore, based on the problems of regulation and implementation of Anti-SLAPP and increasingly massive national development with the nature of the regime that provides the red carpet to capital owners with incentives for various facilities that are very threatening to the environment, it is very necessary to update the Anti-SLAPP Regulation in Indonesia's environmental law, namely:

1. Although Article 66 of the UUPPLH is very important because it is the only mechanism in legal protection for people who express their opinions, objections or expressions to problems or policies environment and provide protection (immunity) from being sued criminally and civilly, but these provisions still lack a comprehensive

[16] Diaz, Putri, dan Jegiantho.

understanding of the Anti-SLAPP concept. The incomplete Anti-SLAPP regulation is indicated in the explanation of Article a quo which states that, "This provision is intended to protect victims and/or whistleblowers who take legal steps due to pollution and/or environmental destruction; This protection is intended to prevent retaliatory actions from the reported party through criminal and/or civil lawsuits while still paying attention to judicial independence." The explanation of Article a quo only applies if the victim and/or the complainant has taken legal steps, even though SLAPP's actions can occur at any time, either before or after the victim and/or the complainant has taken legal steps. For example, if a person makes an effort to convey his aspirations and is sued by a business actor in the environmental field, then the a quo article cannot be enforced. In other words, there is no legal protection for those who make efforts to save the environment through non-legal actions, such as conveying aspirations in general.

2. Although the Supreme Court has issued SKMA Number 36/KMA/SK/II/2013 where the Supreme Court implicitly interprets that SLAPP can occur even though the community does not or has not taken legal measures. Still in the same provision, it is determined that the plaintiff's lawsuit in a civil case is SLAPP can be filed for provision, exclusion, or in a reconciliation lawsuit. On the other hand, the reporting of criminal acts from the applicant is an SLAPP that can be filed by a defense. But these two legal remedies must be decided first in the interim decision. In civil cases, the Supreme Court provides options for the defendant to file three legal remedies. However, there are limitations in the handling of SLAPP in criminal cases that can only protect SLAPP suspects/defendants after the case is examined in court. Thus, the regulation of the Anti-SLAPP concept in laws and regulations is still very weak, limited and minimal in providing legal certainty for all parties.

3. The limitations of Anti-SLAPP regulations are directly proportional to the rampant criminalization of society that has an impact on environmental injustice. The factors underlying the occurrence of these criminalization acts can be classified into two parts, namely internal factors and external factors. The internal factor of the cause of criminalization refers to the lack of public knowledge regarding the Anti-SLAPP concept adapted by the Indonesian government. Meanwhile, the external factors of the cause of criminalization emphasize the normative rules and law enforcement. In this case, the strong reason that causes the rampant criminalization is that the regulation on Anti-SLAPP has not been regulated optimally.
4. Although the Ministry of Environment and Forestry has drafted a Draft Ministerial Regulation on Legal Protection for Environmental Fighters (Rapermen Anti-SLAPP), the Regulation has not yet been stipulated and is considered not to be able to provide a strong legal basis in implementing Anti-SLAPP in law enforcement in Indonesia.
5. Development activities will continue to run and will continue to develop, especially in the economic sector (investment, industry), infrastructure development, and in the mining sector with all the problems it causes, including in the environmental sector, will have the potential to bring together the community with the state and other stakeholders in development activities which will always put the community and environmental defenders in a weak position legally so that It is possible that SLAPP's actions will be very easy for them, if there is no update of the Anti-SLAPP settings.
6. It is necessary to realize that the benchmark for the success of a sustainable development in Indonesia is not only economic factors. However, there are still other factors that need to be considered in sustainable development, namely socio-cultural and ecological, strengthened by environmental institutional factors and law enforcement, so that absolute active community participation is a very

important factor in realizing it, therefore the renewal of Anti-SLAPP regulations is an urgent need to provide legal protection guarantees for the realization of maximum community participation.

7. SLAPP's actions based on data are still rampant to this day to the community and environmental fighters and/or activists when they carry out their role to actively participate in the maximum and environmental protection and management due to the lack of regulation and interpretation between law enforcers and the community, so that the renewal of Anti-SLAPP regulations is absolutely necessary to provide protection to the community.

This means that there are at least 7 (seven) reasons that the author puts forward that cause the urgency of updating the Anti-SLAPP regulations in Indonesian environmental law ranging from sociological, ideological, pragmatic, strategic, and futuristic reasons in providing legal certainty and legal protection to the community and environmental defenders and or everyone to actively participate in realizing environmental protection and management and at the same time realizing the implementation of sustainable development and achieving its goals (*suistanable development goals*) in Indonesia for the present and future generations to be able to enjoy a good and healthy living environment.

IV. Conclusion

Based on the results and discussion, it can be concluded that; (1) there are still problems in the regulation and implementation of Anti-SLAPP in Indonesia which is caused by the limited elaboration of the implementation of Article 66 of the UUPPLH in the legal products under it, thus causing differences in interpretation between law enforcers in an effort to implement it, and it causes minimal implementation of Anti-SLAPP and vice versa causes the prevalence of SLAPP in Indonesia; (2) There are at least 7 reasons that cause the urgency of the Renewal of Anti-

SLAPP Regulations in Indonesian environmental law ranging from sociological, idealistic, pargamatic, strategic, and futuristic reasons in providing certainty and legal protection to the community and environmental warriors and or everyone to participate in realizing environmental protection and management and at the same time realizing the implementation of sustainable development and achieving its goals (suistanable development goals) in Indonesian.

The suggestion that can be given is that regulations regarding the Anti-SLAPP mechanism need to be regulated at a higher level than Ministerial Regulations such as government regulations or changes to Anti-SLAPP rules in the UUPPLH. Because the Anti-SLAPP mechanism requires integration with procedural law and coordination of law enforcement officials to stop SLAPP as early as possible and provide remedies to SLAPP victims. For example, procedural law, both criminal and civil, needs to regulate short, simple events for victims with a reversal of the burden of proof, and an order to provide remedies to SLAPP victims as an Anti-SLAPP mechanism.

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