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Legal Analysis of Anti-SLAPP (Strategic Lawsuit against Public Participation) Environmental Cases in Indonesia: A Long and Winding Road to Implementation?

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Legal Analysis of Anti-SLAPP (Strategic Lawsuit against Public Participation) Environmental Cases in Indonesia: A Long and Winding Road to Implementation?¹

Abstract

This paper explores the legal landscape of Anti-SLAPP (Strategic Lawsuits Against Public Participation) protections in Indonesia, focusing on their role in safeguarding environmental defenders. While Indonesia has introduced statutory provisions—most notably Article 66 of the Environmental Protection Law—gaps remain in definition, scope, and enforcement. A comparative analysis with countries such as the Philippines, Thailand, and Malaysia reveals diverse approaches, ranging from procedural protections to reliance on constitutional principles. Case studies from Indonesia demonstrate inconsistent judicial interpretations and highlight challenges such as limited access to justice, rigid procedural frameworks, and corporate and political influence. In many instances, Anti-SLAPP claims are only recognized at the appellate level or not at all. The paper recommends comprehensive legal reforms, enhanced judicial training, and regional cooperation to strengthen protections. Ultimately, robust Anti-SLAPP mechanisms are essential to uphold public participation, protect environmental advocacy, and promote democratic accountability in Indonesia, and across Southeast Asia.

Key words: Anti-SLAPP, Indonesia, Environmental Cases, Legal Analysis

1. Background

Anti-SLAPP laws serve as a countermeasure to SLAPPs (Strategic Lawsuits Against Public Participation). A SLAPP is a lawsuit filed with the intent to intimidate or harass human rights defenders engaged in public participation, such as those voicing criticism of business activities or government policies.² The primary goal of a SLAPP is not necessarily to win the case or criminalize the targeted human rights defender. Instead, it is intended to create a chilling effect, discouraging the target and others from addressing or discussing issues of public concern, thereby obstructing efforts to serve the public interest.³ By doing so, a SLAPP effectively intimidates, silences, and deters human rights defenders and other members of the public who are striving to raise awareness about critical public issues.

SLAPP have severe consequences for their targets—community leaders, activists, NGO members, journalists, and media professionals⁴—draining their time, energy, and financial resources.

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² Maysa Zorob, “Defending Defenders: Shallenging Malicious Lawsuits in Southeast Asia” (Business & Human Rights Resource Centre, March 2020), 5, https://media.business-humanrights.org/media/documents/files/documents/2020_CLA_Annual_Briefing_SLAPPs_SEA_FINAL.pdf.

³ American Civil Liberties Union Ohio, “What Is SLAPP Suit?,” 2, accessed November 12, 2024, <https://www.acluohio.org/sites/default/files/WhatIsSLAPP.pdf>.

⁴ Thalia Anthony, “Quantum of Strategic Litigation — Quashing Public Participation,” *Australian Journal of Human Rights* 14, no. 2 (April 2009): 3–4, doi:10.1080/1323238X.2009.11910853.

Since SLAPP initiators carefully select their targets, the chances of escaping the lawsuit's impact are minimal.⁵ As a result, these individuals are often forced to divert their attention away from their advocacy efforts, abandoning their fight for the public interest.⁶ Beyond individual consequences, SLAPPs undermine public trust in the judicial system, ultimately eroding the role of civil society in democracy.

Anti-SLAPP is an effort to ensure legal protection for individuals who play a role in advocating for public interests and human rights, safeguarding them from being criminally prosecuted or civilly sued for their activities.⁷ Given the dangers posed by SLAPP as described earlier, it is crucial for Anti-SLAPP to be accommodated and regulated within the laws of a democratic country.⁸ This kind of regulation is essential to stop the exploitation of legal systems by individuals or entities with significant political or financial influence. Considering that SLAPP frequently targets individuals who advocate for public interests including environmental conservation, human rights, labour rights, and related issues⁹, the presence of Anti-SLAPP regulations ensure that channels for public expression stay accessible and protected. In essence, the regulation of Anti-SLAPP is proof that the state is present and fulfilling its duty to its citizens.¹⁰

According to George W. Pring and Penelope Canan, regulations on Anti-SLAPP should be designed to include at least three key elements: the regulations must be able to avoid, reject, and prevent the recurrence of SLAPP.¹¹ To avoid the recurrence of SLAPP, regulations must require that potential targets are fully informed and understand the associated risks, legal implications, and human rights principles involved, including the possibility of encountering a SLAPP, before any such lawsuit is filed.¹² Regulations should ensure that when a SLAPP is filed, it is rejected and stopped as soon as possible. They should also impose accountability on those who file SLAPPs, requiring them to

⁵ Ibid., 7–8.

⁶ Justin Borg-Barthet and Francesca Farrington, "The EU's Anti-SLAPP Directive: A Partial Victory for Rule of Law Advocacy in Europe," *German Law Journal* 25, no. 6 (August 2024): 841, doi:10.1017/glj.2024.51.

⁷ Francesca Farrington and Magdalena Zabrocka, "Punishment by Process: The Development of Anti-SLAPP Legislation in the European Union," *ERA Forum* 24, no. 4 (December 2023): 523, doi:10.1007/s12027-023-00774-5.

⁸ Ibid.

⁹ Saovanee Kaewjullakarn and Bandit Homket, "Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights" (United Nations Development Programme Thailand, June 27, 2023), 23, https://www.undp.org/sites/g/files/zskgke326/files/2023-06/eng_slapp_text_26_june_final.pdf.

¹⁰ Samantha Brown and Mark Goldowitz, "The Public Participation Act: A Comprehensive Model Approach to End Strategic Lawsuits Against Public Participation in the USA," *Review of European Community & International Environmental Law* 19, no. 1 (April 2010): 3–6, doi:10.1111/j.1467-9388.2010.00660.x.

¹¹ George William Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Temple University Press, 1996), 145.

¹² Ibid., 147.

compensate the targets for incurred costs and damages, including punitive damages, as a deterrent against future abuses of the legal system.¹³

This paper explores Anti-SLAPP protections in Indonesia by examining the legal status and frameworks in Indonesia and comparing them with those of neighbouring countries. It also includes a discussion of relevant case studies from both Indonesia and broader Southeast Asia. In the later sections, the paper analyses how Anti-SLAPP instruments either support or fail to support environmental activism across the region. The conclusion offers key observations on the strengths and weaknesses of existing Anti-SLAPP protections and provides recommendations for strengthening them.

1.1. SLAPP Cases in the Environment Sector in Indonesia

Indonesia has seen a significant number of environmental cases recorded on the Indonesian *Supreme Court's Decision Directory Website*. As of November 22, 2024, court decisions specifically registered and classified as environmental crimes under Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases ranked seventh out of 53 specialized criminal offense categories.¹⁴ As for civil environmental cases examined both in general or administrative courts, such cases were assigned specific registration codes but have not yet been grouped separately. A search for civil cases examined in general courts using the keyword "Pdt.G-LH" yielded 357 case records.¹⁵ Meanwhile, a search for civil cases examined in administrative courts using the keyword "G/LH" resulted in 328 case records.¹⁶

Data compiled between 2015 and 2019 by the Business and Human Rights Centre indicates that 127 SLAPP cases were examined in Southeast Asian courts. In 2020, there were 209 cases of retaliation against human rights and environmental defenders, with 44% of these retaliatory actions being filed in courts.¹⁷

In Indonesia, retaliation outside the judicial system can manifest as violence—including physical, psychological, or a combination of both—and in extreme instances, it can escalate to murder.¹⁸ Violence against communities collectively fighting for their environmental rights continues to this day.¹⁹ Cases that have received media coverage, such as those in Kendeng, Wadas, and Rempang, are

¹³ Ibid., 143–67.

¹⁴ Supreme Court of The Republic of Indonesia, "Decisions Directory," accessed November 22, 2024, <https://putusan3.mahkamahagung.go.id/search.html?q=%22Pdt.G-LH%22>.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Zorob, "Defending Defenders: Shallenging Malicious Lawsuits in Southeast Asia," 7.

¹⁸ Ahmad Arif, "Anti-SLAPP for Environmental Defenders," *Kompas*, accessed April 28, 2025, <https://www.kompas.id/baca/humaniora/2024/09/17/anti-slapp-untuk-pejuang-lingkungan>.

¹⁹ Hans Nicholas Jong, "Indigenous Communities In Indonesia Demand Halt to Land-Grabbing Government Projects," *Mongabay*, March 26, 2025, <https://news.mongabay.com/2025/03/indigenous-communities-in-indonesia-demand-halt-to-land-grabbing-government-projects/>.

examples of communities resisting corporations (which in many cases are supported by the government) that are engaged in activities deemed harmful to the environment.²⁰ Meanwhile, from 2014 to 2023, the Auriga NGO documented 13 murder cases of environmental activists: Maradam Sianipar, Martua Siregar, Golfrid Siregar, Erni Pinem, Jurkani, Sabriansyah, Indra Pelani, Yopi Perangiangan, Salim Kancil, Gijik, Erfaldi Erwin Lahadado, Arman Damopolii, and Marius Batera.²¹ These victims were from various regions and professions, spanning from Sumatra to Papua, and included farmers, environmental activists, lawyers, and journalists. The perpetrators of these cases were also diverse, ranging from individuals with political and business interests, corporations, and even security forces.²²

The decline in advocacy efforts outside the courtroom is often accompanied by legal challenges within the judicial system. Of the two types of cases brought to court, criminal cases are the most numerous. According to data collected from 2014 to 2023 by Auriga NGO, there were 133 cases.²³ Meanwhile, WALHI (the Indonesian Friends of the Environment) reported that between 2014 and 2024, there were 1,131 individuals criminalized for advocating for environmental rights.²⁴

2. Methods

This article employs a qualitative legal research methodology to examine the development and implementation of Anti-SLAPP regulations in Indonesia, with a particular focus on environmental defenders. The research primarily relies on doctrinal legal analysis, supported by comparative and socio-legal approaches.

First, the study conducts a comprehensive doctrinal analysis of Indonesia's statutory and regulatory frameworks. This includes the basic legal frameworks such as Law No. 32 of 2009 on Environmental Protection and Management, relevant criminal and civil procedural laws, and then delves deeper to more specific Anti-SLAPP regulations such as Supreme Court Chief Justice Decision No. 36/KMA/SK/II/2013 on Guidelines for Handling Environmental Cases, Ministerial Regulation of Environment and Forestry No. 10 of 2024 on the Protection of environmental rights defenders, and

²⁰ Ananda Bintang Purwaramdhona, "A Series of Causes of Agrarian Conflict on the Islands of Rempang, Wadas, Kinipan, Kendeng, and Dago Elos," *Tempo*, accessed April 20, 2025, <https://www.tempo.co/hukum/-deretan-penyebab-konflik-agraria-di-pulau-rempang-wadas-kinipan-kendeng-dan-dago-elos-142364>.

²¹ Auriga, "The Status of Indonesian Environmental Defenders, 2014-2023: Threats Increasing, Time For State Action," accessed November 23, 2024, https://auriga.or.id/press_release/detail/50/the-status-of-indonesian-environmental-defenders-2014-2023-threats-increasing-time-for-state-action.

²² Ady Thea DA, "These Two Parties Are Often Considered Perpetrators of SLAPP," *Hukum Online*, April 23, 2023, <https://www.hukumonline.com/berita/a/dua-pihak-ini-dinilai-kerap-melakukan-slapp-lt608280782acf5/>.

²³ Auriga, "The Status of Indonesian Environmental Defenders, 2014-2023: Threats Increasing, Time For State Action."

²⁴ Antara, "Anti-SLAPP Regulations Are The State's Effort To Protect Environmental Activist," *Antara News*, September 25, 2024, <https://www.antaranews.com/berita/4357599/klhk-aturan-anti-slapp-upaya-negara-hadir-lindungi-pejuang-lingkungan>.

Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases. This includes an examination of jurisprudence from Indonesian courts, with particular emphasis on recent environmental cases that have invoked or implicated Anti-SLAPP protections.

Second, the article adopts a comparative legal approach by briefly contrasting Indonesia's Anti-SLAPP mechanisms with frameworks in other jurisdictions in Southeast Asia, such as Thailand, Malaysia, and the Philippines. This comparative lens is used to highlight strengths, gaps, and potential trajectories for legal reform in the Indonesian context.

Third, the study is informed by a socio-legal perspective, incorporating a review of reports, policy papers, and empirical findings from civil society organizations, environmental NGOs, and legal practitioners involved in SLAPP-related litigation to analyze and discuss the protection of Anti-SLAPP in Indonesia, paint a regional overview of Anti-SLAPP Protection in Southeast Asia, and how these legal protection protects environmental activism in the region. Lastly, the discussion considers Indonesia's commitments under international human rights and environmental instruments, and the emerging regional discourse on environmental rights within ASEAN.

This research thus integrates doctrinal, comparative, and contextual sources to provide a grounded and nuanced assessment of the operationalization and limitations of Anti-SLAPP protections in Indonesia's legal and judicial landscape.

3. Results

3.1. Regulations on Anti-SLAPP

Indonesian national law has yet to provide a clear and formal definition of SLAPP. However, based on jurisprudence and past cases, three recurring patterns characterize the presence of SLAPP in Indonesia: (1) SLAPPs are directed at individuals who defend and/or advocate for human rights; (2) such advocacy is typically aimed at challenging state or corporate actors implicated in human rights violations; and (3) SLAPP tactics are sometimes employed against expert witnesses who provide testimony in related court proceedings.²⁵ In practice, the use of SLAPPs in Indonesia is rarely about pursuing justice. Rather, it functions as a tool to suppress dissent and intimidate individuals or groups engaged in legitimate advocacy or litigation. These actors are frequently portrayed as adversaries, despite their role in promoting accountability and public interest.²⁶

The concept of Anti-SLAPP has been incorporated at both the statutory level and through subordinate regulations. Indonesia's regulatory framework is based on Law Number 12 of 2011 jo. Law Number 15 of 2019 jo. Law Number 13 of 2022 on the Formulation of Laws and Regulations. When

²⁵ Eko Riyadi and Sahid Hadi, "Strategic Lawsuit against Public Participation (SLAPP): A Legal Based Threat to Freedom of Expression," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 8, no. 1 (2021): 149–51, doi:10.22304/pjih.v8n1.a7.

²⁶ *Ibid.*, 151–52.

arranged hierarchically from the highest to the lowest, it consists of the 1945 Constitution of the Republic of Indonesia, People's Consultative Assembly Decrees, Laws/ Government Regulation in Lieu of Law, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/Municipal Regulations.²⁷ Lower-level regulations must not contradict higher-level ones. Furthermore, there are regulations issued by various other institutions that are not explicitly listed in the hierarchy of legislation,²⁸ such as Supreme Court Regulations and Ministerial Regulations. These regulations are binding as long as they are mandated by higher laws or are issued based on legal authority.²⁹ Despite the lingering ambiguity regarding the position of such regulations outside the formal legislative hierarchy, these types of regulations remain valid and binding as long as they do not conflict with higher-level legislation.³⁰

Within this framework, Indonesia's approach to Anti-SLAPP is primarily situated within the context of environmental protection, which is intrinsically linked to the broader spectrum of human rights. Article 66 of Law No. 32 of 2009 on Environmental Protection and Management Law (hereinafter referred to as the Environmental Protection Law or EPL) affirms that individuals advocating for the right to a safe, clean, and healthy environment cannot be subject to civil or criminal lawsuits. Similarly, Article 78, paragraph (1) of Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction (hereinafter referred to as the Forest Protection Law) provides that whistleblowers and informants who report acts of forest destruction are granted immunity from both civil and criminal liability.

The presence of Anti-SLAPP is supported by Supreme Court Chief Justice Decision No. 36/KMA/SK/II/2013 on Guidelines for Handling Environmental Cases (hence referred to as KMA 36/2013). This decision confirms that Article 66 of the EPL is a form of Anti-SLAPP, with SLAPP defined as a counterclaim (reconventional claim), a regular lawsuit, or a criminal report made against environmental defenders. To enforce the Anti-SLAPP law, KMA 36/2013 specifies that SLAPPs can only be filed as part of a provisional measure, exception, or counterclaim in civil disputes, or as part of a criminal defense. Furthermore, such claims must be resolved first by an interlocutory decision.

²⁷ Republic of Indonesia, "Law Number 12 of 2011 on the Formulation of Laws and Regulations" (2011), art. 7 sub-article (1).

²⁸ Ibid., art. 8 sub-article (1).

²⁹ Ibid., art. 8 sub-article (2).

³⁰ Zaka Firma Aditya and Muhammad Reza Winata, "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): 98; Juwita Putri Pratama, Lita Tyesta Alw, and Sekar Anggun Gading Pinilih, "Eksistensi Kedudukan Peraturan Menteri Terhadap Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan The Existence of the Position of Ministerial Regulations Against Regional Regulations," *Jurnal Konstitusi* 19, no. 4 (2022): 867; Budianto Eldist Daud Tamin, "Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (Perma) Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia," *Lex Administratum* 6, no. 3 (2018): 117–19, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/22740>.

At the ministerial level, the Ministerial Regulation of Environment and Forestry No. 10 of 2024 (hereafter referred to as PermenLHK 10/2024) addresses the protection of environmental rights defenders, emphasizing safeguards for defenders in both litigation and non-litigation settings. In contrast, the procedural framework for dealing with anti-SLAPPs is outlined in Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases (hence referred to as Perma 1/2023). Perma 1/2023 is primarily designed to safeguard environmental rights defenders during judicial procedures by offering procedural measures to combat SLAPPs.

Supreme Court Regulation (Perma) No. 1 of 2023 establishes the framework for integrating Anti-SLAPP mechanisms into judicial proceedings. Under this regulation, any civil or criminal case filed with the intent to obstruct environmental rights advocacy constitutes a violation of Article 66 of the EPL.³¹ Accordingly, judges are empowered to determine whether a lawsuit or criminal charge is an attempt to undermine the efforts of environmental rights defenders.³² The SLAPP target, who becomes the Defendant (in civil cases) or the Accused (in criminal cases), is granted the opportunity—through their response or objection—to present evidence demonstrating their role as an environmental rights defender.³³ If they can successfully establish this status, the judge may dismiss the lawsuit or charges.³⁴

In determining whether the Defendant/Accused qualifies for legal protection as an environmental rights defender, the judge considers several criteria. *First*, whether the status of the Defendant/Accused is that of an environmental rights defender.³⁵ *Second*, whether the actions taken by the Defendant/Accused are part of the advocacy for environmental rights.³⁶ *Third*, the consistency of the environmental rights advocacy with applicable laws, except when there are no other alternatives and the actions are taken for the broader public interest.³⁷

Apart from Indonesia, several Southeast Asia countries have similar national legal frameworks for Anti-SLAPP.³⁸ They are the Philippines and Thailand³⁹, and Malaysia⁴⁰.

3.2. The Legal Framework and its Shortcomings

Anti-SLAPP is formally recognized within Indonesia's environmental law framework through Article 66 of the Environmental Protection and Management Law (EPL), which states:

³¹ Supreme Court of the Republic of Indonesia, "Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases" (2023), arts. 49 & 77.

³² Ibid., art. 50 sub-article (1) & 76 sub-article (1).

³³ Ibid.

³⁴ Ibid., art. 51 sub-article (1) & 77.

³⁵ Ibid., art. 51 sub-article (3) & 78 sub-article (2).

³⁶ Ibid., art. 48 sub-article (2) & 78 sub-article (1).

³⁷ Ibid., art. 48 sub-article (4) & 78 sub-article (3).

³⁸ Zorob, "Defending Defenders: Shallenging Malicious Lawsuits in Southeast Asia," 12.

³⁹ Ibid., 12–13.

⁴⁰ Lim Wei Jiet, "Use of The Law and Strategic Lawsuits Against Public Participation (SLAPP) in Malaysia to Silence Critics" (Centre for Independent Journalism, May 2023), 2, <https://cijmalaysia.net/wp-content/uploads/2023/06/SLAPP-Report.pdf>.

“Every person who advocates for the right to a safe, clean, and healthy environment cannot be criminally prosecuted or civilly sued.”

As discussed in the previous section, this provision positions Indonesia as one of the few Southeast Asian countries with explicit Anti-SLAPP regulations. Indonesia’s approach, like that of the Philippines, extends to both criminal and civil cases and is specifically tied to environmental advocacy. In contrast, Thailand’s Anti-SLAPP protection is limited to criminal proceedings and is not confined solely to environmental issues. Malaysia’s protection for Anti-SLAPP only covers defamation cases.⁴¹

From a regulatory perspective, Indonesia’s Anti-SLAPP framework suffers from significant substantive weaknesses, which hinder its effectiveness as a mechanism to combat SLAPPs. Key shortcomings include: (a) the lack of a clear definition of SLAPP; (b) the absence of provisions specifying who is entitled to protection; (c) no delineation of which actions are safeguarded; (d) the absence of criteria or guidelines to determine whether a legal claim qualifies as a SLAPP; (e) no procedural framework for granting protection; and (f) the lack of measures to impose deterrent sanctions on parties who initiate SLAPPs.

In addition to these substantive gaps, the regulation does not delegate authority for further elaboration through subordinate legislation, suggesting—perhaps incorrectly—that the current provisions are sufficiently clear and comprehensive to avoid legal uncertainty. The only available guidance is found in the Elucidation⁴² of Article 66 of the EPL, which states:

“This provision is intended to protect victims and/or whistleblowers who take legal action due to environmental pollution and/or destruction. This protection aims to prevent retaliatory actions from the reported parties through criminal prosecution and/or civil lawsuits, while still respecting judicial independence.”

The Elucidation of Article 66 of the EPL effectively narrows the scope of protection available to environmental defenders against retaliation. It stipulates that such protection applies only to individuals who pursue legal action as victims or whistleblowers. This interpretation raises critical concerns: what happens when environmental defenders are not direct victims, and their advocacy does not involve formal reporting but takes other legitimate forms—such as publishing critical commentary in the media, participating in public demonstrations, or voicing dissent in public forums? By excluding these forms of advocacy, the Elucidation fails to recognize the diverse and essential roles

⁴¹ Ibid., 7.

⁴² According to Appendix II Number 176 Law Number 12 of 2011 on the Formulation of Laws and Regulations, the Elucidation in Indonesian laws serves as the official interpretation provided by the legislature to clarify the meaning and intent of specific articles. Although the Elucidation is formally enacted alongside the main text of the law—published in the Supplement to the State Gazette—its binding legal force is not equal to that of the articles themselves. Instead, the Elucidation functions as a guideline to assist in the implementation and interpretation of the provisions within the law.

that environmental defenders play, thereby undermining the broader intent of safeguarding environmental advocacy.

The subsequent wording in the provision further limits protection solely to cases involving environmental pollution and/or damage. In practice, however, many environmental defenders oppose corporate activities or government policies during the planning stages due to their *anticipated* environmental impacts. Under the current provision, such preventive actions fall outside the scope of protection. This narrow interpretation, as presented in the Elucidation, overlooks the socio-cultural dimensions of public participation and instead reduces it to a strictly legalistic endeavour.⁴³ Ideally, public participation in environmental protection should be recognized not only in the context of law enforcement but also during the early stages of environmental planning and decision-making. In this regard, the Elucidation of Article 66 of the EPL appears counterproductive to the very intent of the article. This contradiction becomes even more apparent when viewed through the lens of SLAPP typologies described by James A. Wells, as cited by Reynaldo Sembiring, which demonstrate that SLAPPs can arise even before the public initiates or engages in formal legal processes.⁴⁴

Substantively, Indonesia's Anti-SLAPP regulations remain significantly underdeveloped compared to those of the Philippines. The Philippines pioneered the formal recognition of SLAPPs as early as 1999 through Section 43 of the Philippine Clean Air Act, followed by Section 53 of the Ecological Solid Waste Management Act of 2000. Both provisions address the same concern: SLAPPs are defined as legal actions brought against individuals implementing or enforcing the provisions of these laws, including any person, institution, or government agency engaged in such enforcement. These laws mandate that the court or public prosecutor issue a determination within thirty (30) days. Prosecutors and judges are required to assess whether the legal action was initiated to harass, intimidate, apply undue pressure, or exhaust the resources of the complainant or law enforcer. If the court finds, based on sufficient evidence, that the case constitutes a SLAPP, it must be dismissed and the target of the SLAPP is entitled to recover legal costs and double damages.⁴⁵

The Supreme Court of the Philippines issued the *Rules of Procedure for Environmental Cases* in 2010, which provide a more detailed and technical regulation to handle SLAPP. This regulation provides a slightly different definition of SLAPP, as follows:

"Strategic lawsuit against public participation (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local

⁴³ Marsya Mutmainah Handayani, Julio Castor Achmadi, and Prilia Kartika Apsari, "Berbagai Wajah Fenomena SLAPP Di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 8, no. 1 (April 20, 2022): 157, doi:10.38011/jhli.v8i1.369.

⁴⁴ Raynaldo Sembiring, "Menyoal Pengaturan Anti Eco-SLAPP Dalam Undang-Undang Nomor 32 Tahun 2009," *Jurnal Hukum Lingkungan Indonesia* 3, no. 2 (December 17, 2017): 13, doi:10.38011/jhli.v3i2.40.

⁴⁵ Republic of The Philippines, "Philippine Clean Air Act of 1999" (1999), sec. 43; Republic of The Philippines, "Ecological Solid Waste Act Management Act of 2000" (2000), sec. 53.

government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights”.

The regulation outlines two procedural mechanisms for addressing SLAPP cases: civil cases (Rule 6) and criminal cases (Rule 19).

In civil cases identified as SLAPPs, the Defendant may submit a response asserting that the lawsuit constitutes a SLAPP, supported by relevant documents, written statements, correspondence, or other forms of evidence. This response also functions as a counterclaim, allowing the Defendant to seek compensation for damages, legal fees, and litigation costs. The Plaintiff is then required to respond within five (5) days, refuting the SLAPP allegation and providing supporting evidence to substantiate their claim that the lawsuit is legitimate. A defense hearing must be held within thirty (30) days of the Defendant’s response. At the hearing, both parties bear the burden of proof: the Defendant must establish that their actions were lawful and undertaken in the interest of environmental protection, while the Plaintiff must demonstrate that their legal action does not constitute a SLAPP.⁴⁶

In criminal proceedings, once the case file has been submitted but prior to the reading of the charges, the Accused may file a motion to dismiss the case on the grounds that it constitutes a SLAPP. The burden of proof mirrors that in civil cases, requiring the Accused to substantiate their claim during a summary hearing. The court must grant the motion if it is established that the criminal proceedings were initiated with the intent to harass, intimidate, apply undue pressure, or obstruct any lawful actions—whether undertaken or intended—by an individual, institution, or government body aimed at enforcing environmental laws, protecting the environment, or safeguarding environmental rights.⁴⁷

In comparison, the regulations in Thailand are similar than those in Indonesia. Anti-SLAPP was introduced through amendments to the Criminal Procedure Code of Thailand, specifically in Sections 161 and 165, which address SLAPP cases. Section 161/1 states:

“In a case filed by a private complainant, if it appears to the court—or through examination of evidence called at trial—that the complainant has filed the lawsuit in bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled, the court shall order dismissal of the case, and forbid the complainant to refile such case again. The filing of a lawsuit in bad faith as stated in paragraph one includes incidents where the complainant intentionally violated a final court’s orders or judgments in another criminal case without providing any appropriate reason”.

⁴⁶ Supreme Court of the Republic of The Philippines, “Rules of Procedure for Environmental Cases” (2010), r. 6.

⁴⁷ Ibid., r. 19.

Meanwhile, Section 165/2 governs the procedures for examining cases that suspected of being SLAPP, which states:

“During the preliminary hearing, the defendant may submit to the court a significant fact or law which may bring the court to the conclusion that the case before it lacks merit, and may include in the submission as persons, documents or materials to substantiate the defendant’s claims provided in the submission. In such case, the court may call such persons, documents or materials to provide evidence in its deliberation of the case as necessary and appropriate, and the complainant and the defendant may examine this evidence with the consent of the court”.

These provisions grant judges the authority to dismiss charges, but they do not specify when and how they can be applied. Furthermore, these provisions only apply to criminal cases filed by private parties. It is important to note that under the amendments to *the Criminal Procedure Code*, criminal prosecutions in Thailand recognized both private prosecution and public prosecution. In most cases, the victim or aggrieved party initiates private prosecution, with the exception of offenses against national security or the monarchy.⁴⁸ As regulated in Section 162, a preliminary hearing is required in private prosecutions under the Thai legal system. However, cases handled by the public prosecutor do not require a preliminary hearing.⁴⁹ Thus, SLAPP cases in Thailand lack a clear mechanism and are not applicable to all types of criminal cases.

3.3. Current Developments in Anti-SLAPP Regulations in Indonesia

Article 66 of the EPL does not delegate additional regulation to subordinate legislation. To remedy this legal void, institutions with the capacity to apply this provision have created regulations or guidelines for its execution. The Supreme Court was the first institution to execute Article 66 of the EPL, issuing *Keputusan Mahkamah Agung* (KMA) or Supreme Court Decision 36/2013. According to this Supreme Court ruling, cases suspected of being SLAPP can be addressed through temporary measures, exceptions, or counterclaims (in civil proceedings) and/or defences (in criminal cases), but must be decided first in an interlocutory decision. This means that SLAPP matters are resolved in accordance with current procedural laws, rather than receiving special consideration. While Supreme Court Decision 36/2013 addresses the resolution of SLAPP under Article 66 of the EPL, it is insufficient to meet the requirements of Anti-SLAPP, which should seek to avoid, reject, and prohibit the recurrence of SLAPP.

EPL has been updated by Law No. 11 of 2020 and Law No. 6 of 2023 (hence referred to as the Omnibus Law). However, neither of these laws include provisions that define Anti-SLAPP under Article

⁴⁸ Somjai Kesornsiricharoen, “The Role and Function of Public Prosecutors in Thailand,” *Annual Report For 1997 And Resource Material Series No. 53*, 1997, 284–85.

⁴⁹ Kaewjullakarn and Homket, “Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights,” 17.

66 of the EPL. Several regulations and guidelines attempting to interpret Anti-SLAPP evolved at levels lower than statutory law around the same time the Omnibus Law was passed. These regulations and guidelines include: Chapter VI of the Attorney General's Guideline No. 8 of 2022 on Handling Criminal Cases in the Field of Environmental Protection and Management (hereinafter referred to as Guideline JA 8/2022); Chapter IV, Section Six and Chapter V, Section Four of the Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases (hereinafter Perma 1/2023); and Minister of Environment and Forestry Regulation No. 10 of 2024 on Legal Protection for Persons Advocating for the Right to a Safe, Clean, and Healthy Environment (Permenlhk 10/2024).

These three regulations have similar but not identical content. The following table summarizes the important overlapping substantive points of the three regulations:

Table of Anti-SLAPP Regulations/Guidelines

Key Overlapping Points	Guideline JA 8/2022	Perma 1/2023	Permenlhk 10/2024
Scope of Regulations on SLAPP	Criminal Proceedings	a. Civil lawsuit; b. Criminal proceedings	a. weakening of advocacy and public participation; b. cease and desist letter; c. criminal proceedings; and/or d. civil lawsuit
Definition of Environmental Defender	-	The struggle for the Right to a Safe, Clean, and Healthy Environment includes actions such as verbal and written expressions of opinion in public or private spaces, as well as litigation efforts carried out by individuals, Environmental Organizations, or community organizations in a manner consistent with the law, as guaranteed under Article 66 of UU PPLH.	An Environmental Advocate is a person who fights for the right to a safe, clean, and healthy environment as a victim and/or whistleblower, pursuing legal means due to environmental pollution and/or damage.
Scope and Forms of Advocacy for	a. submission of proposals for the purpose of good	a. Submission of proposals or	a. actively participating in

the Right to a Safe, Clean, and Healthy Environment	<p>environmental protection and management;</p> <p>b. submission of objections, complains, or reports related to environmental pollution and/or damage;</p> <p>c. reporting alleged criminal acts, filing administrative or civil lawsuits, or pursuing other legal actions related to environmental protection and management;</p> <p>d. expressing opinions in public;</p> <p>e. providing testimony or statements in court proceedings; and/or</p> <p>f. communicating with ministries/agencies regarding the right to a good and healthy environment, either verbally or in writing, directly or through electronic means.</p>	<p>objections regarding environmental protection and management, either verbally or in writing;</p> <p>b. filing complaints, reporting suspected crimes, initiating lawsuits, or engaging in other legal measures to protect the environment;</p> <p>c. sharing opinions, providing testimony, or giving statements in court proceedings;</p> <p>d. sharing views through public platforms such as media, social media, protests, speeches, or other forums;</p> <p>e. engaging with state or government institutions through formal or informal communication, whether verbal or written, to address environmental concerns.</p>	<p>environmental education, protection, and management efforts;</p> <p>b. promoting and safeguarding local traditions and knowledge that contribute to environmental conservation and sustainability;</p> <p>c. gathering and sharing information about potential environmental pollution and/or damage;</p> <p>d. actively engaging with government authorities by providing input, raising concerns, or objecting to projects or activities that potentially harm the environment;</p> <p>e. formally reporting suspected cases of environmental harm to relevant authorities;</p> <p>f. publicly sharing opinions to oppose proposed business plans and/or activities and/or existing operations that may harm the environment;</p> <p>g. raising awareness and educating the public about potential or ongoing environmental harm caused by specific projects and/or activities; and/or</p>
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			h. engaging in other activities to promote and achieve the right to a safe, clean, and healthy environment.
Requirements on Anti-SLAPP Implementation	<p>Advocacy is conducted lawfully and in good faith to fulfill access to information, participation, and justice in realizing the right to a safe, clean, and healthy environment, or</p> <p>Advocacy is conducted unlawfully, and such actions may be justified if:</p> <ul style="list-style-type: none"> a. there is no alternative or other course of action available (principle of subsidiarity); and b. it is carried out to protect a greater legal interest or fulfill a more important legal obligation (principle of proportionality). 	<p>In criminal cases, advocacy is carried out in accordance with applicable laws, except:</p> <ul style="list-style-type: none"> a. there is no other alternative or course of action available; and b. the action is taken to protect a greater legal interest or the broader public interest. 	-

Based on the important overlapping substantive issues listed in the table above, the extent of SLAPP rules is customized to each institution's authority, with Permenlhk 10/2024 having the largest scope, addressing SLAPP as acts of retaliation in both litigation and non-litigation. The regulation covers a broader range of SLAPPs, including: a. written threats; b. verbal threats; c. criminalization; and/or; d. physical or psychological violence that endangers the individual, their life, property, or their family. Terminology-wise, Guideline JA 8/2022 does not include any, but Perma 1/2023 has a greater scope than the Elucidation of Article 66 of the EPL, which is confined to victims or whistleblowers reporting pollution. On the other hand, Permenlhk 10/2024 just repeats the definition from the Elucidation of Article 66 of the EPL. In terms of the breadth and types of advocacy for the right to a safe, clean, and healthy environment, the regulations address comparable issues but use different language. In terms of Anti-SLAPP rules, both Guideline JA 8/2022 and Perma 1/2023 follow the same principle: they apply solely to criminal situations in which the perpetrator's acts must be legal (or illegal). However, these requirements are not absolute; there are exceptions. Permenlhk 10/2024 does not state any requirements, but by definition, the activities must be lawful. Aside from these important common

areas, each Guideline/Regulation specifies alternative implementations for Anti-SLAPP situations depending on the amount and type of authority held by the institution.

According to Guideline JA 8/2022, the Public Prosecutor exercises their authority independently, without actively engaging the SLAPP target. This authority is used in both the investigation and the prosecution phases. If the Public Prosecutor determines during the Investigation Stage that the suspect's efforts to promote a safe, clean, and healthy environment were legitimate and made in good faith, they will not face criminal charges. The Public Prosecutor then orders the investigator to complete the probe according to legal mandate. Furthermore, based on the findings of a thorough investigation, the Public Prosecutor has the legal ability to end the prosecution and conclude the case if the acts made to promote the right to a safe, clean, and healthy environment were lawful and carried out in good faith, or had justifiable grounds.

According to Perma 1/2023, Anti-SLAPP is applicable in civil as well as criminal cases. In civil matters, Anti-SLAPP initiates with the submission of responses, where the Defendant presents an exception along with preliminary evidence or provides a response if a counterclaim is recognized as SLAPP. The procedure is managed via a fast-track system, necessitating that the Plaintiff (SLAPP filer) replies within a maximum of seven (7) days after the exception, and the case needs to be resolved through an interlocutory ruling within thirty (30) days following that.

This trial procedure is regarded as unique since, typically, only jurisdictional or adjudicative authority exceptions are addressed through interlocutory rulings. If the Defendant can establish their case via preliminary evidence showing a breach of Article 66 of EPL, the lawsuit will be deemed inadmissible. They will retain another chance to demonstrate that a violation exists if the exception submitted by the SLAPP target is dismissed. If a SLAPP lawsuit is thrown out, the Defendant might receive compensation for both tangible and intangible damages if they submit a counterclaim (reconventional lawsuit).

The procedure outlined in Perma 1/2023 for the SLAPP mechanism in criminal cases differs from that of civil cases. After the indictment is read, the court encourages the defendant or their legal counsel to file an objection—supported by preliminary evidence—asserting that the defendant is protected under Article 66 of the EPL. If, during the preliminary objection phase, it is shown that the defendant qualifies as an environmental defender under Article 66 EPL, the judge will reject the indictment outright, leaving only the option of a cassation appeal. If, during the main trial, it is found that the indictment violates Article 66 EPL, it will be declared inadmissible. Furthermore, if the indictment is proven but the defendant is also proven to be an environmental defender, the judge will issue a full acquittal of all charges.

The most recent Anti-SLAPP regulation, Permenlhk 10/2024, offers the broadest scope in addressing SLAPP cases but provides the least substantive protection. To seek protection, the SLAPP target—or their legal counsel, family members, representatives, leaders of environmental

organizations, or relevant academics/experts—must submit a formal Request Letter to the Minister. Once the request is deemed complete, it is reviewed by an Assessment Team, which has up to sixty (60) days to conduct its evaluation. Based on the team's recommendation, the Minister may then issue a Ministerial Decision granting protection.

However, the protection granted is limited primarily to the provision of legal aid services in response to retaliatory actions such as cease-and-desist letters or civil lawsuits. The regulation does not extend to other forms of retaliation, leaving significant gaps in protective measures.

4. Discussion

This section analyzes the preceding discussions, including the introduction to several SLAPP cases in Indonesia and Southeast Asia. It also examines why Anti-SLAPP regulations have been effective in some instances but have failed in others.

4.1. The Anti-SLAPP protection in Indonesia and other Southeast Asian countries

In discussing the Anti-SLAPP protection in the region, there are several practical discussion points, as follows.

First, accessibility to justice. Access to Anti-SLAPP mechanisms is a significant challenge for environmental rights defenders seeking justice.⁵⁰ Indonesia already have Anti-SLAPP regulations which supposed to protect us from SLAPP. However, these regulations impose certain limitations on the Defendants/Accused in SLAPP cases. The restrictions relate to who can participate in Anti-SLAPP defences and require that the actions subject to SLAPP be legally grounded.

For instance, Robandi et al. (Case No. 475/Pid.B/2020/PN Sgl Jo Decision No. 21/PID/2021/PT BBL), serving as neighborhood unit (Rukun Tetangga - RT) leaders, had rejected food aid from PT. Bangka Asindo Agri (PT. BAA) due to the company's operations causing air pollution in the form of foul odours. This rejection contradicted local village government policy and led to their resignation. While their resignation status had not been formally confirmed by the village administration, Robandi et al. attended an invitation for a socialisation meeting regarding the Plan for Approval of Legal Standing Authorisation against PT. BAA, where they signed the attendance register in their capacity as RT leaders. The attendance record was subsequently used as evidence to charge Robandi et al. with criminal offences of "abuse of position" and "document falsification." Although Robandi et al. raised an Anti-SLAPP defence, the first-instance judicial panel at the Sungai Liat District Court rejected this argument, ruling that their actions were unrelated to environmental rights advocacy. The court convicted Robandi et al. of positional abuse. However, on appeal at the Bangka Belitung High Court, the Anti-SLAPP defence was accepted. The appellate judicial panel determined that Robandi et al.'s actions constituted legitimate public participation in advocating for a clean and healthy environment,

⁵⁰ Ibid., 10.

which cannot be subject to legal claims or police reports under Article 66 of Law No. 32 of 2009 on Environmental Protection and Management. While acknowledging that the acts in question had occurred, the appellate court ruled that they did not constitute criminal offences and consequently acquitted Robandi et al. of all charges.

As a contrast, we saw how Anti-SLAPP mechanism failure in the Fansu Hendri Case. Fansu Hendri (Case No. 51/Pid.Sus/2020/PN Snb Jo Decision No. 150/PID/2021 /PT BNA) posted critical remarks on his Facebook account regarding demonstrators who had left litter at the Simeulue Regency town square, which he characterised as demonstrating environmental negligence. These statements formed the basis for criminal prosecution under Indonesia's Electronic Information and Transactions Law (EITL) for alleged defamation/character denigration. The first-instance verdict from the Sinabang District Court remains unavailable in electronic format (E-Doc) within the Supreme Court's decision directory, precluding analysis of any potential Anti-SLAPP defences or judicial considerations at this stage. At the appellate level, while an Anti-SLAPP argument was formally raised, the High Court declined to consider this legal basis and upheld Fansu Hendri's conviction in alignment with the lower court's ruling.

Similar situation took place in the Daniel Frits Maurits Tangkilisan Case. Daniel Frits Maurits Tangkilisan (Case No. 14/Pid.Sus/2024/PN Jpa) responded via his personal Facebook account to comments on his post criticising shrimp farming operations at Cemara Beach. His reply stated: *"The shrimp-brained community enjoys free shrimp meals while being exploited by the farmers. Essentially, these shrimp-brained people are like farmed shrimp themselves - well-fed, plentiful, and systematically raised for consumption"*. This commentary resulted in charges under the defamation/insult provisions of EITL. During first-instance proceedings at the Jepara District Court, the defendant's Anti-SLAPP defence was rejected. While the judicial panel acknowledged Tangkilisan's status as an environmental advocate, it ruled his actions unlawful as the criticism targeted the general population rather than the shrimp farm operators specifically. The court convicted Tangkilisan for disseminating information intended to foster hatred against specific community groups based on ethnicity, religion, race, or intergroup relations (SARA). At the appellate level, the Semarang High Court accepted the Anti-SLAPP defence, considering that the defendant's established role as an environmental activist; verified environmental degradation at the criticised location; and the fact the addressed community had endorsed the shrimp farming operations. The High Court's dispositive ruling held that while the criminal acts were substantiated, the defendant's status as an environmental defender warranted legal immunity. This decision was subsequently affirmed by the Supreme Court during cassation.

As seen in these cases, access to justice in Anti-SLAPP matters varies significantly. Although Anti-SLAPP laws and regulations are clearly in place, access to justice in such cases still largely depends on judicial discretion. In some countries, such as Thailand and Vietnam, procedural frameworks for Anti-SLAPP are either underdeveloped or non-existent. In Thailand, national law remains very limited to certain criminal offences, and lacks a comprehensive defence mechanism against SLAPP. Meanwhile,

in Vietnam, the state itself is often implicated in facilitating SLAPP cases against environmental defenders. This raises critical questions about when and how Anti-SLAPP arguments can be used in the regions where such protections are not yet formally established or recognized. This brings us to the second key point of discussion in this section.

Second, judicial interpretation. Judicial institutions play a strategic role in implementing Anti-SLAPP measures. Judges, in this context, hold the authority to revoke or modify legal rights, including the status and freedom of individuals.⁵¹ Judges cannot simply act as the “mouthpiece of the law” but must be able to interpret national laws in light of current events and societal realities.⁵² For example, in Indonesia, prior the enactment of the *Environmental Protection and Management Law* (EPL), judges ruled on thirteen SLAPP cases using the limited legal instruments available at that time.⁵³ This highlights the critical role of judges in legal discovery, especially in the absence of a clear national legal framework. As SLAPP cases grow in complexity and variety, It is likely that existing law will not fully address every scenario. In such instances, judges must strike a balance between moral justice and legal justice to ensure fair outcomes.⁵⁴

A concrete example of the judiciary’s strategic role in shaping the outcomes of SLAPP cases can be observed in Indonesia and the Philippines. Despite having relatively rigid national laws, each case - even if similar- can have different outcomes. This variation is undoubtedly influenced by judicial interpretation, as judges handle SLAPP cases on a case-by-case basis. This demonstrates the significant impact of judicial interpretation on the implementation and effectiveness of Anti-SLAPP measures. More details on the cases in the Philippines are available in section 4.2. on regional overview of Anti-SLAPP Protection below.

In Indonesia, based on several cases described above, judges’ interpretations in civil cases have been very progressive in considering anti-SLAPP principles. In 4 out of 6 cases, judges *ex officio* identified a case as a SLAPP even though the SLAPP defendant did not argue it. This independent identification was used by the judges to dismiss the case and rule in favor of the SLAPP defendant. Meanwhile, in criminal cases, judges’ interpretations still tend to be rigid, adhering to the explanation of Article 65 of the Environmental Protection and Management Law (UUPPLH) in assessing SLAPP. The anti-SLAPP defense argued by the defendant in most of the cases was rejected because it did not meet the criteria in the explanation of Article 65 of the UUPPLH. In the cases of Robandi et al., Muhammad Ilyas, and Frits, the court only accepted the anti-SLAPP defense by considering the defendants’ activities as environmental defenders as a basis of consideration, even though the charges were not

⁵¹ Rachmawaty Rachmawaty et al., “Judges’ Philosophical Orientation in Resolving Anti-SLAPP Disputes,” *Journal of Human Rights, Culture and Legal System* 4, no. 1 (February 16, 2024): 149–50, doi:10.53955/jhcls.v4i1.215.

⁵² Ibid., 150.

⁵³ Ibid., 151.

⁵⁴ Ibid., 150.

directly related to environmental activities. The acceptance of the anti-SLAPP defense also occurred only at the appellate court level, not at the first instance.

Reflecting on the above, it is important for judges to be equipped with the knowledge and ability to identify a case as a SLAPP. This ability should be applied both in civil and criminal cases, including when the anti-SLAPP argument is not raised in the Defendant's Answer/Defense. The urgency of applying this capability in criminal cases lies in the fact that judges are required to actively seek material truth, and in addition, SLAPP cases in Indonesia are often used to criminalize environmental defenders. To enhance judges' capacity, one of the main infrastructures is environmental law training, and the implementation provisions of such training must be revised—namely, the current requirement of ten years of service as a judge should be changed so that the training is given from the early education stage of prospective judges. This is due to the fact that environmental cases are often examined by judges from the very beginning of their assignments.

For example, Heri Budiawan, also known as Budi Pego (Case No. No. 59/Pid.B/2017/PN.Byw Jo Decision No. 174/PID/2018/PT.SBY Jo Decision No. 1567K/Pid.Sus/2018)—a coordinator of joint community action against mining operations by PT. BSI (Bumi Sukses Indonesia) in the Mount Salak area of Banyuwangi—was charged under national security offences related to the dissemination of communist ideology. During the protest, demonstrators displayed banners featuring the hammer and sickle symbol, which became the evidentiary basis for his prosecution, despite no proof that Budi Pego personally produced or authorized the banners. Although the court recognized Budi Pego as an environmental defender, his Anti-SLAPP defence under Article 66 of the EPL was rejected. The panel of judges ruled that his advocacy methods "deviated from lawful procedures". The guilty verdict against Heri Budiawan alias Budi Pego remained consistent across all judicial levels—from the Banyuwangi District Court (first instance) to the Supreme Court (cassation). Notably, during cassation, his sentence was increased beyond the penalties imposed by lower courts. Even with all the Anti-SLAPP regulations available, meaning that the accesiblity to justice is available, but the judiciary interpretation declined to accept Budi Pego's SLAPP claim in all levels.

Similar situation also found in the Nanto Et al. Case and the Khaleb Yamarua Et al. Case. Nanto et al. celebrated their victory in an administrative lawsuit against a coal mining operation (Case No. 90/G/LH/2017/PTUN.BDG) by displaying banners and the Indonesian national flag (Red and White Flag). While Nanto et al. claimed the flag had been properly positioned during installation, documentary evidence presented in court demonstrated the flag had been displayed upside down. This documentation served as evidentiary material for the prosecution and subsequent conviction under charges of "denigrating the honour of the national flag". Regarding the defence argument presented by Nanto et al.'s legal counsel asserting that the case essentially constituted a SLAPP, the judicial panel ruled that no evidence had been presented during trial proceedings demonstrating that Nanto et al.'s activities were connected to environmental advocacy for the right to a healthy living

environment. Notably, a defence witness called by Nanto et al. - who was also a member of the Jatayu organization - testified under oath that they had no knowledge connecting Nanto et al.'s flag display to any particular cause. The Indramayu District Court ultimately found Nanto et al. guilty and imposed criminal penalties.

Khaleb Yamarua et al. (Case No. 34/Pid.B/2021/PN Dth), together with community members, damaged the windows of one (1) Komatsu-brand loader vehicle and two (2) Nissan-brand logging trucks belonging to witness/victim Imanuel Quedarusman (alias Yongki) of CV Sumber Berkat Makmur. These vehicles were engaged in logging activities outside the operational area mutually agreed upon with the local community. Khaleb Yamarua et al. were subsequently charged with criminal property damage. The defendants raised an Anti-SLAPP defense, arguing that their actions followed: three (3) unheeded formal warnings to Yongki regarding unauthorized logging; the imposition of customary sanctions (*sanksi adat*) that were disregarded; and unaddressed community reports to regional police (Polda) concerning illegal tree felling. The Dataran Hunimoa District Court rejected this defence, ruling that (i) Khaleb Yamarua et al.'s defence as not constituting a strategic legal action (litigation) aimed at suppressing public participation, but rather as an independent criminal offence. The panel determined that the defendants' acts represented a form of vigilante justice. Consequently, the court convicted Khaleb Yamarua et al. and imposed criminal sanctions.

On the other hand, the civil cases of Forum Peduli Lingkungan Pali vs Pertamina EP Case and WALHI (NGO) vs PT Kusuma Raya Utama Case yield differently. *Forum Peduli Lingkungan Pali* (Pali Environmental Care Forum), a non-governmental organization (NGO), and PT Pertamina EP Asset 2 Pendopo Adera Field (Case No. 23/Pdt.G/LH/2022/PN Mre). The NGO filed a suit against the company, alleging environmental pollution due to the direct discharge of waste into a river. In response, the company filed a countersuit, accusing the NGO of acting in bad faith (*itikad buruk*) on the grounds that the NGO sought compensation on behalf of the community without being a legally registered entity; it had entered company property without authorisation, and its claims constituted defamation against the company. The Muara Enim District Court ruled that the NGO's claims were unsubstantiated, resulting in the dismissal of its lawsuit. Subsequently, the company's countersuit was inadmissible, as the judicial panel deemed it indicative of a SLAPP; the NGO qualified for protection under Anti-SLAPP provisions, even though these were not formally pleaded but were instead considered *ex officio* by the court.

WALHI and PT Kusuma Raya Utama (Case No. 44/Pdt.G/2018/PN Bgl). WALHI filed a suit against the company alleging that its coal mining operations had caused forest degradation and pollution of a river basin area. In response, the company filed a countersuit (reconvention) for defamation/character denigration, arguing that no criminal conviction had yet established the company's liability for either forest destruction or environmental pollution. The Bengkulu District Court rendered a decision

rejecting both the principal claim (convention) and the countersuit (reconvention). The court dismissed the countersuit after determining it constituted a SLAPP, despite the absence of any formal Anti-SLAPP defence being raised in the pleadings. The judgment did not contain any substantive discussion of Anti-SLAPP considerations in its reasoning.

Another case exemplifies the how the judicial interpretation can be beneficial for Anti-SLAPP: Yayasan Firmar Abadi and Gusti Terkelin Surbakti (Case No. 21/Pdt.G-LH/2021/PN Plw). The lawsuit was filed by the plaintiff (Yayasan Firmar Abadi) against the defendant for establishing an oil palm plantation, constructing plantation access roads, and developing residential structures within forest conservation areas. The defendant subsequently filed a countersuit (reconvention), asserting that the original claim constituted defamation and character denigration. The Pelalawan District Court ruled that the principal claim (convention) was rejected and the countersuit (reconvention) was declared inadmissible. Significantly, in its deliberation of the countersuit, the judicial panel evaluated the legal standing of the environmental organisation to file suit and concluded that such environmental advocacy qualified for Anti-SLAPP protection.

Similarly, we found this in the Giovanni Ardizon and the newspaper *Suara NTB Daily* (Case No. 12/Pdt.G/2014/PN. Mtr). The plaintiff filed a suit against the media outlet for alleged defamation/character denigration stemming from its reporting that identified the plaintiff as owner of *UD (village company)* Ikan Lombok, which was accused of illegal coral reef trading. In its defence, the media outlet raised preliminary objections (*eksepsi*), including an Anti-SLAPP defence. The Mataram District Court declined to accept the Anti-SLAPP argument, holding that whether the defendant's actions constituted legitimate environmental advocacy required evidentiary substantiation and merited fuller examination during trial proceedings. The panel ruled that such determination fell outside the proper scope of preliminary objections. Further, the Court sustained the defendant's secondary objection regarding failure to exhaust administrative remedies. The panel found the plaintiff's lawsuit procedurally defective for prematurity. The stages of Giovanni Ardizon vs *Suara NTB Daily* case are depicted in the following chart.

Third, the influence of political and corporate roles. It is undeniable that political attitudes and corporate interests significantly impact efforts to regulate and implement Anti-SLAPP measures. Political stances, in particular, shape how SLAPP is addressed in legislation and applied in practice.⁵⁵ A clear example of this is seen in Vietnam, where the state itself uses SLAPP tactics and obstructs the implementation of Anti-SLAPP protections for environmental activists. In contrast, Thailand and Malaysia interpret Anti-SLAPP through constitutional principles, while Indonesia and

⁵⁵ Byron Sheldrick, "Book Review: Blocking Public Participation: The Use of Strategic Litigation to Silence Political Expression by Byron Sheldrick," *LSE*, accessed December 8, 2024, <https://blogs.lse.ac.uk/lsereviewofbooks/2016/01/06/book-review-blocking-public-participation-the-use-of-strategic-litigation-to-silence-political-expression-by-byron-sheldrick/>.

the Philippines have integrated procedural mechanisms for Anti-SLAPP into their national laws. These differences highlight how political and corporate influences shape the legal landscape and the effectiveness of Anti-SLAPP efforts across countries.

Meanwhile, corporations, as frequent initiators of SLAPP lawsuits, play a critical role in the implementation of Anti-SLAPP measures. Corporations filing SLAPP cases do not necessarily need to win to inflict harm on their targets; simply bringing the case to court can achieve their goals.⁵⁶ In contrast, SLAPP targets must gather evidence and mount a defence with far more limited resources.⁵⁷ This imbalance ultimately reduces public participation to a manipulative level, offering minimal legal protection, particularly in the long-term.⁵⁸ The use of SLAPP transforms what should be a public issue into a private matter, resolved through litigation procedures rather than public discourse or policy reform.⁵⁹

For example, Willy Suhartanto and H. Rudy (Case No. 177/Pdt.G/2013/PN.Mlg Jo 70/PDT/2014/PT.SBY Jo Decision No. 2263 K/Pdt/2015). In this matter, H. Rudy, serving as coordinator of the Water Source Care Community Forum (Forum Masyarakat Peduli Mata Air/FMPMA), submitted formal petitions to various government institutions urging the immediate cessation of the Hotel The Rayja development project by PT Panggon Sarkarya Sukses Mandiri. These petitions highlighted the project's failure to conduct proper environmental assessments or prepare basic environmental management documents (*Upaya Pengelolaan Lingkungan-Upaya Pemantauan Lingkungan/UKL-UPL*), emphasizing the need to protect the Gemulo water source. Additionally, H. Rudy organised and participated in public demonstrations against the development company. The plaintiff alleged that these formal petitions constituted defamation and that the organised demonstrations resulted in damage to his property assets. In its judicial consideration of these claims, the Malang District Court recognised and validated H. Rudy's defense, determining his actions constituted legitimate environmental advocacy as protected under Article 65 of EPL. The Court ruled in favour of H. Rudy, dismissing the plaintiff's claims in their entirety; and partially granted H. Rudy's counterclaims, including awards for damages. The Surabaya High Court, in its appellate review, affirmed the District Court's ruling in full. At the cassation level, the Supreme Court rendered a decision accepting H. Rudy's preliminary objections (*eksepsi*), consequently rendering consideration of the Anti-SLAPP defence moot. The Supreme Court's final determination declared the original lawsuit inadmissible.

⁵⁶ Anthony, "Quantum of Strategic Litigation — Quashing Public Participation," 16.

⁵⁷ Brown and Goldowitz, "The Public Participation Act," 3.

⁵⁸ Dwidja Priyatno, Anita Kamilah, and Aji Mulyana, "Corporate Crime in Expropriating Land Rights Through Intimidation and Criminalization," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 7–8, doi:10.1080/23311886.2023.2187739.

⁵⁹ Sheldrick, "Book Review: Blocking Public Participation: The Use of Strategic Litigation to Silence Political Expression by Byron Sheldrick."

Similarly, PT Bumi Konawe Abadi (PT BKA) vs Daeng Kadir et al. Daeng Kadir and other defendants (Case Nomor 16/Pdt.G/2013/PN.Unh Jo Decision No. 104/PDT/2014/PT.KDI. Jo Decision No. 1934 K/Pdt/2015). In this case, the defendants organised demonstrations blocking access roads to PT BKA's mining operations, protesting environmental contamination from the company's activities that had caused harvest failures in local aquaculture farms. At the first instance level, the Unaaha District Court ruled against Daeng Kadir et al., finding them liable for unlawful acts. However, on appeal, the Kendari High Court reversed this decision, recognizing the defendants' actions as a legitimate form of public expression under Indonesian law and consequently dismissing the plaintiff's claims. The High Court's ruling was affirmed at the cassation level by the Supreme Court, which supplemented its legal considerations by determining that the actions of Daeng Kadir et al. satisfied the requirements for Anti-SLAPP protection under Indonesian law. Notably, while the defendants did not expressly plead Anti-SLAPP provisions in their defence, the Court independently (*ex officio*) incorporated this legal framework into its judicial reasoning and final determination.

In a different case, Muhammad Ilyas posted a letter addressed to the Medan City Regional Representative Council (DPRD) on his personal Facebook account, which contained the phrase "Oppressed community of PT. Musim Mas" (Case No. 2791/Pid.Sus/2019/PN Mdn Jo Decision No. 1495/Pid.Sus/2020/PT MDN). This statement referenced community opposition to PT. Musim Mas' use of Platina 3 Street in Neighborhood 14, Titipapan Village, Medan City, as a logistics truck route that caused disruptive noise pollution. For this social media post, Muhammad Ilyas was prosecuted pursuant to criminal provisions regarding defamation/character denigration, as regulated under the Republic of Indonesia Law No. 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the UU ITE). During first-instance proceedings at the Medan District Court, the Indonesian National Human Rights Commission (Komnas HAM RI) submitted an *amicus curiae* brief, which included the opinion that this case constituted a SLAPP and therefore Anti-SLAPP provisions should apply. The first-instance judicial panel disregarded this opinion and convicted Muhammad Ilyas. However, during appellate review at the Medan High Court, the *amicus curiae* opinion was upheld. The appellate court ruled that Muhammad Ilyas qualified for protection under Anti-SLAPP provisions and ultimately acquitted him, finding the alleged acts unproven.

Fourth, institutional and procedural weaknesses. While rigid institutional and procedural structures in the practical application of Anti-SLAPP may aim to ensure consistency, they do not always lead to positive outcomes. On the one hand, strict procedural regulations can provide clarity and predictability, making it easier for law enforcement to handle cases.⁶⁰ On the other hand, overly rigid

⁶⁰ Ronen Avraham and William HJ Hubbard, "The Spectrum of Procedural Flexibility," *U. Chi. L. Rev.* 87 (2020): 895.

mechanisms can result in inflexibility and an excessive focus on formalities, making them ill-suited to the unique circumstances of individual cases.⁶¹ These limitations can ultimately prevent courts from adjudicating SLAPP cases in a way that prioritizes justice, as the emphasis shifts to adhering to procedural requirements rather than addressing the substantive issues at hand.

It is clear that several cases have failed due to the rigid definitions and regulations relating to SLAPP, leading to stagnation in case examination. In the *Hinatuan Case* in the Philippines, a deadlock occurred while proving and fulfilling the elements of SLAPP, due to overly strict regulations. In contrast, Thailand, where procedural mechanisms for SLAPP in national law are less rigid and more limited, the judicial system has been more successful in protecting environmental defenders by interpreting cases within a framework of rights guaranteed by the Thai Constitution. This highlights the need for legal practitioners, including lawmakers, judges, prosecutors, and lawyers, to strike a balance between normative and practical contexts when implementing Anti-SLAPP mechanisms. More details on the cases in section 4.2.

For example, Ariyono transmitted a video to Andi Tenri Siangka that was subsequently posted on Siangka's Facebook account (Case No. 32/Pid.Sus/2021/PN Sdr). The video criticised mining operations in the Bila River – activities that had been officially suspended by the Regional Leadership Coordination Forum (Forkompimda) but reportedly continued. The video's inclusion of profane language served as the basis for prosecuting both individuals under the defamation/insult provisions of Indonesia's Electronic Information and Transactions Law (EITL). The defendants' Anti-SLAPP defence was rejected by the Sidrap District Court on two principal grounds. First, the court interpreted the elucidation of Article 66 EPL as providing protection exclusively to victims and/or whistleblowers who pursue legal remedies against environmental pollution and/or destruction. The judicial panel determined that the defendants did not qualify under either category. Second, the court held that the charges pertained specifically to electronic information transmission rather than environmental pollution or destruction per se. The panel maintained that these constituted distinct legal matters governed by separate regulatory frameworks. Accordingly, the court convicted both Ariyono and Andi Tenri Siangka and imposed corresponding criminal penalties. Similar situations we've seen in the Budi Pego Case⁶² and Nanto Et al. Case⁶³.

⁶¹ Hans-Bernd Schäfer, "Rules versus Standards in Developing Countries: The Case for Clear and Precise Legal Norms on Eminent Domain Power," *Law and Development Review* 12, no. 2 (May 27, 2019): 452, doi:10.1515/ldr-2019-0018.

⁶² Banyuwangi District Court, Budi Pego Case, No. 59/Pid.B/2017/PN.Byw (Banyuwangi District Court January 23, 2018); Surabaya High Court, Budi Pego Case, No. 174/PID/2018/PT.SBY (Surabaya High Court March 16, 2018); Supreme Court of The Republic of Indonesia, Budi Pego Case, No. 1567 K/Pid.Sus/2018 (Supreme Court of The Republic of Indonesia October 16, 2018).

⁶³ Bandung Administrative Court, Nanto Et. al Case, No. 90/G/LH/2017/PTUN.BDG (Bandung Administrative Court December 6, 2017).

4.2. Regional Overview of Anti-SLAPP Protections

Regionally, Southeast Asia has witnessed a surge in environmental movements addressing issues like deforestation and biodiversity loss. However, the region continues to face significant environmental challenges, including deforestation and biodiversity loss, necessitating further action. Collectively, these developments highlight a growing environmental consciousness across Southeast Asia, with activists employing diverse strategies to advocate for ecological sustainability and justice. Below are several SLAPP example cases from the region:

In Thailand, there are three environmental cases that fall under the SLAPP category: Peerapol Mining Co. Ltd v Khao Khuha Community Rights Network (Peerapol Case), Tungcum Ltd. v Surapun Rujichaiyavat & others (Tungcum Case), and Watson Co. v Mae Sai Environmental Protection (Watson.co Case).

In the Peerapol Case (Black Civil Case No. 664/2554),⁶⁴ the mining company, Peerapol Mining Co. Ltd, sued the Non-Governmental Organization (NGO) Khao Khuha Community Rights Network (KKCRN) for defamation after KKCRN informed the Prime Minister that Peerapol Mining Co. Ltd. was causing environmental damage in the mining area. Peerapol Mining Co. eventually backed out of the lawsuit and KKCRN was able to successfully pursue its environmental rights claim against the company and obtaining compensation for the damage caused. KKCRN's actions were deemed lawful and within the community's rights by the Supreme Court of Thailand.

In the Tungcum Case (Civil Case No. 574/2558),⁶⁵ the lawsuit, despite the defamation argument, was civil in nature. Tungcum Ltd. argued that the protests led by Surapun and others against the environmental damage caused by the company's gold mining operations had resulted in significant financial losses, including a drop in stock prices and damages amounting to 1.6 million US dollars. Nonetheless, the court ruled that the actions of Surapun and others were within the scope of their constitutionally guaranteed right to free speech. Despite Tungcum Ltd.'s appeal, the provincial court affirmed the ruling, emphasising that the protesters' actions were protected under constitutional rights to freedom of expression and did not breach any existing laws.

In the Watson Co. Case,⁶⁶ the company also filed a lawsuit after initially being protested by the local environmental community, Mae Sai Environmental Protection. Local residents had raised concerns about potential pollution and water contamination from the construction of a water treatment facility, which they feared would affect their daily lives and agricultural activities. Watson Co. accused the residents for obstructing the construction and sought 1.9 million US dollars in

⁶⁴ Business & Human Rights Resource Centre, "Strategic Lawsuits Against Public Participation: Southeast Asia Cases & Recommendations for Governments, Businesses, & Civil Society," March 2020, 11.

⁶⁵ Ibid.

⁶⁶ Ibid., 12.

compensation. However, the court ruled that the protests were a legitimate exercise of the freedom of expression protected under the Thai Constitution.

From these three cases, it is evident that Thai courts often rely on defences based on rights protection and/or constitutional principles, which are more abstract in nature. This includes the right to protection of human dignity, freedom, and equality, particularly in SLAPP cases. Such defences are based on Section 4 of the Thai Constitution, which states:

“Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.”

A similar approach to Anti-SLAPP is also evident in Malaysia. In the case of *Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee* (Raub Case),⁶⁷ Raub Australian Gold Mining Sdn Bhd (RAGM), faced criticism and protests from Hue Shieh Lee. Lee was a resident of Bukit Koman, representing other local residents in their complaints against Raub. The residents complaints’ centred on how the company neglected public health and environmental protection through its mining activities,. RAGM subsequently filed a defamation lawsuit against Lee, demanded compensation for the alleged defamation.

The Malaysian court ruled that Lee's actions could be justified as freedom of expression and an effort to protect the public interest, leading to the dismissal of RAGM's lawsuit. Even the two appeals filed by RAGM were rejected by the court on the same grounds. In this case, Lee's legal counsel presented arguments specifically focused on freedom of speech and expression, which are fundamental rights protected under the Malaysian Constitution.⁶⁸

In the case of *SAVE Rivers v. Samling Group* (Samling Case),⁶⁹ Samling, a timber processing company, filed a defamation lawsuit in June 2021 against SAVE Rivers and its directors. Samling alleged that the organisation had spread false statements regarding the company’s logging practices and its efforts to obtain sustainable forestry certification. Samling sought 1.1 million US dollars in compensation and requested a court injunction to prohibit SAVE Rivers from making similar statements in the future. This lawsuit sparked widespread criticism from local communities and international organizations, who perceived it as a SLAPP aimed at stifling criticism of the company. On September 18, 2023, Samling withdrew its lawsuit just before the trial was set to begin, following

⁶⁷ Environmental Law Alliance, “Raub Australian Gold Mining Sdn. BHD v. Hue Shieh Lee,” accessed December 8, 2024, <https://elaw.org/resource/raub-australian-gold-mining-sdn-bhd-v-hue-shieh-lee>.

⁶⁸ Federation of Malay, “Federal Constitution of Malaysia” (1963), pt. II article 10.

⁶⁹ Business & Human Rights Resource Centre, “Malaysia: Timber Giant Samling Withdraws Lawsuit against SAVE Rivers,” *Business & Human Rights Resource Centre*, accessed December 8, 2024, <https://www.business-humanrights.org/en/latest-news/malaysia-timber-giant-samling-withdraws-lawsuit-against-save-rivers/>.

intense international pressure related to the protection of indigenous people's rights and environmental advocacy.

In the Philippines, despite the enactment of *the Supreme Court Rules of Procedure for Environmental Cases*, SLAPP cases have yet to be resolved. Insufficient evidence and limited judicial interpretation have been the main factors hindering progress in addressing these cases. For example, *Hinatuan Mining Corporation v. Philippine Misereor Partnership Inc.* (the Hinatuan Case)⁷⁰ has remained unresolved since 2016. This case began from a report published by the Philippine Misereor Partnership Inc. (PMPI) in June 2015, which stated that a vessel operated by Hinatuan Mining Corporation (HMC) had destroyed a fishing boat near Manicani Island. This report was part of an assessment of the environmental impacts of HMC's mining activities. HMC subsequently filed a defamation lawsuit against PMPI, arguing that there was no substantial evidence to support PMPI's claims. Throughout the court proceedings, PMPI's allegations were refuted by recordings and testimonies that contradicted their statements. HMC argued that the lawsuit was not a SLAPP, as the alleged defamation centred on the ship collision incident and not environmental advocacy.⁷¹ HMC further argued that the definition of SLAPP under the *Supreme Court Rules of Procedure for Environmental Cases* did not apply to this case, as the mechanism outlined in the regulation was only designed to control actions related to the enforcement of environmental rights, which was not the focus of the lawsuit.

Another notable case is *Resorts World Sentosa v. Earth Island Institute* (RWS Case)⁷² in 2019, which was decided in favor of Resorts World Sentosa (RWS) as the Plaintiff. This case began when the Earth Island Institute (EII) and local residents protested against the captivity of dolphins at RWS, arguing that such practices were unethical and detrimental to marine life. Their activism included legal actions aimed at preventing the importation of dolphins, which they claimed was unsustainable and damaging to local dolphin populations.⁷³ In 2012, EII filed a petition with the Philippine government *under the Conservation and Protection of Wildlife Act* to halt RWS's activities. However, in 2019, the court ruled against EII, stating that the 2012 petition was unfounded and had damaged RWS's reputation. EII was also ordered to pay a fine of 15,385 US dollars.

⁷⁰ Business & Human Rights Resource Centre, "Hinatuan Mining Sues Philippine Misereor Partnership for Libel over Reports on Environmental Issues around Its Operations," *Business & Human Rights Resource Centre*, accessed December 8, 2024, <https://www.business-humanrights.org/en/latest-news/hinatuan-mining-sues-philippine-misereor-partnership-for-libel-over-reports-on-environmental-issues-around-its-operations/>.

⁷¹ Hinatuan Mining, "Hinatuan Mining Official Response," June 1, 2021, https://media.business-humanrights.org/media/documents/1June2021_HMC-Manicani_Response_to_BHRRRC.pdf.

⁷² Nikhil Dutta, "Protecting Activists From Abusive Litigation Slapps in The Global South and How to Respond" (International Center for Not-for-Profit Law (ICNL)), 11, accessed December 28, 2024, <https://www.icnl.org/wp-content/uploads/SLAPPs-in-the-Global-South-vf.pdf>.

⁷³ International Marine Project Mammal Project, "Earth Island Philippines Fights SLAPP Suit Over Anti-Captivity," *International Marine Mammal Project*, October 16, 2019, <https://savedolphins.eii.org/news/earth-island-philippines-fights-slapp-suit-over-anti-captivity>.

Despite delays in resolving the above cases, *FCF Minerals Corporation v. Joseph Lunag & Others* (FCF Case)⁷⁴ showed that the courts still recognise Anti-SLAPP principles. This case involved FCF Minerals Corporation (FCF), a mineral mining company in Nueva Vizcaya. In 2012, Joseph Lunag and several members of the Indigenous Cultural Community filed a lawsuit against FCF, alleging that the company's open-pit mining operations would destroy their ancestral lands and violate environmental laws. They also argued that the permits granted for the mining activities were obtained fraudulently, as FCF failed to fully disclose the environmental impacts of its activities. While the appellate court rejected the lawsuit, FCF sought damages for the costs incurred due to the legal action. However, the Supreme Court of the Philippines ruled against FCF's claim for damages and legal expenses. The court emphasised that granting compensation to the company would undermine Anti-SLAPP principles, which are intended to protect public participation in environmental advocacy.

Unlike other countries, SLAPP cases in Vietnam often involve government intervention or originate from state actions. For example, in *Hoang Thi Minh Hong* case, a prominent Vietnamese environmental activist, was charged with tax evasion.⁷⁵ While this remains speculative, many view the charges as a tactic to suppress environmental activism. This perception is supported by a pattern of similar cases targeting environmental activists.⁷⁶ The sanctions imposed also extended beyond the legal case itself, such as the government blocking the website of CHANGE VN, an environmental defender organisation founded by Hoang Thi Minh Hong in 2013.⁷⁷ However, the lack of a robust national legal framework and limited discourse on SLAPP in Vietnam narrow the scope of discussions on the implementation of Anti-SLAPP in the country.

There are several gaps in the Anti-SLAPP framework in the different countries within the region. Even in Indonesia, where Anti-SLAPP is constitutional, problems still exist. They are, among others, the lack of a clear definition and scope of Anti-SLAPP. As discussed in previous sections, SLAPP's definition, protection, action protected, detailed guidelines, procedural mechanism for providing protection from SLAPP is unclear. There are also no regulations on how to impose deterrent effects on parties who file SLAPP.

In the Southeast Asian region, there is a general weakness in the legal protection provided by Anti-SLAPP. We have seen judicial inconsistency in the case study section (Hinatuan Case of the

⁷⁴ Supreme Court of The Philippines, *FCF Minerals Corporation v. Joseph Lunag & Others*, No. 209440 (Supreme Court of The Philippines February 15, 2021).

⁷⁵ Front Line Defenders, "The International Foundation for the Protection of Human Rights Defenders The 88 Project" (Front Line Defenders), 6, accessed December 8, 2024, https://www.frontlinedefenders.org/sites/default/files/vietnam_upr_submission_-_fld_the_88_project.pdf.

⁷⁶ Office of the United Nations High Commissioner for Human Rights, "Viet Nam – Detention of Environmental Human Rights Defender Hoang Thi Minh Hong," *Office of the United Nations High Commissioner for Human Rights*, accessed December 8, 2024, <https://www.ohchr.org/en/press-briefing-notes/2023/06/viet-nam-detention-environmental-human-rights-defender-hoang-thi-minh>.

⁷⁷ Human Rights Watch, "Vietnam: Drop Charges Against Climate Activist," September 27, 2023, <https://www.hrw.org/news/2023/09/27/vietnam-drop-charges-against-climate-activist>.

Philippines, and Raub Case in Malaysia), where outcomes depend largely on judicial interpretation rather than legal certainty. In Thailand, the framework is limited to criminal cases, lacking application in civil litigation. And, most Southeast Asian countries do not have a dedicated Anti-SLAPP law, which leads to legal uncertainty for environmental defenders and activists facing law suits.

In the countries where Anti-SLAPP regulations exist, we see similarities in Anti-SLAPP regulations, such as similarities in procedural mechanisms in recognising pre-trial dismissal of SLAPP cases in Indonesia, Thailand, and the Philippines, with differences of scopes and applications. There are also similarities in judicial discretion in determining SLAPP cases in the Philippines and Thailand, where courts can assess whether a case has been filed in bad faith. Indonesian judges also have similar powers under Perma 1/2023, but practical implementation is inconsistent.

Moreover, most countries in Southeast Asia primarily use environmental legislation as the basis for Anti-SLAPP protections, rather than broader public participation laws. And the case trend in SLAPP in the region also varies. Corporate SLAPP cases dominate in Malaysia, Indonesia, and the Philippines, with industries such as mining, palm oil, and logging frequently using lawsuits to silence critics. Government-backed SLAPP cases are found in Vietnam, where state agencies play a direct role in suppressing environmental activism (e.g., Hoang Thi Minh Hong case).

5. Conclusions

Based on the deliberation above, we have seen that Indonesia's Anti-SLAPP framework, while existing, is weak due to vague legal definitions, inconsistent enforcement, and judicial reluctance to recognise SLAPP cases. The Philippines provides a strong procedural model, whereas Thailand's constitutional protections highlight an alternative approach. There is a need for future reforms which focus on expanding definitions, enforcing stricter penalties, and improving judicial training to ensure better protections for environmental defenders and public interest advocates in the region. Other countries in Southeast Asia do not have any specific instruments for Anti-SLAPP and, making it hard for these countries to protect their citizens against SLAPP.

This study provides several recommendations as follows: First, a comprehensive legal reform for Anti-SLAPP in the Indonesia and the countries of Southeast Asia. Governments should enact and enforce robust Anti-SLAPP legislation that encompasses all forms of public participation and provides clear mechanisms for the early dismissal of frivolous lawsuits. Second, organizing judicial training and awareness on SLAPP and Anti-SLAPP. Enhancing the capacity of the judiciary to identify and address SLAPP cases is crucial. Training programs can help judges and legal practitioners understand the detrimental impact of SLAPPs on public interest advocacy.⁷⁸ Indonesia, Thailand, the Philippines,

⁷⁸ International Commission of Jurist, "Indonesia, Malaysia, Thailand, the Philippines: Experts Call for Legal Reforms to Address Abusive Lawsuits Targeting Human Rights and Public Interest Advocates (SLAPPs)."

Malaysia, Singapore and several other Southeast Asian countries have listed judges' trainings as part of their annual judiciary programme,⁷⁹ but the efficacy of such trainings is yet to be known.

Third, establish regional coalition and support systems for environmental defenders to provide legal assistance, raise awareness, and advocate for policy changes to protect activists from SLAPPs. At the global level, the United Nations Environment Programme (UNEP) has established a UNEP's Defenders Policy which promotes greater protection for individuals and groups who are defending their environmental rights, and identifies solutions to mitigate the abuse of environmental rights which affects a growing number of people in many parts of the world.⁸⁰ At the Asia-Pacific level, there is an Asia Pacific Network of Environmental Defenders (APNED) which is campaign network of individuals, civil society groups, and people's organization in the Asia-Pacific region⁸¹.

In ASEAN, the ASEAN member states (AMS) are among the signatories of the United Nations Charter and the 2015 Paris Agreement, where states are obligated to respect, protect, and fulfil environmental rights as human rights.⁸² The "respective obligations" referred to in the Paris Agreement potentially include those relating to the rights to life, health, development, an adequate standard of living (including food, water and sanitation, and housing) and self-determination.⁸³ However, efforts to include environmental defender protection as one of the rights under the in-progress ASEAN declaration on the rights of safe, clean, healthy, and sustainable environment are still unknown.

It is crucial to establish an Anti-SLAPP protection mechanism for those advocating for a safe, clean, healthy, and sustainable environment. Their efforts serve the public interest, and it is essential for the state to integrate their aspirations into policy-making. Retaliatory actions against environmental defenders are still likely to persist as a means to halt their activities. Thus, robust and enforceable regulations are necessary to anticipate such actions and to affirm the state's commitment to protect both its citizens, the region, and the environment.

⁷⁹ Linda Yanti Sulistiawati and Sroyon Mukherjee, *Environmental Courts and Tribunals in Asia-Pacific: Best Practices, Challenges and the Way Forward* (Brill | Nijhoff, 2025), 290, doi:10.1163/9789004695863.

⁸⁰ United Nations Environment Programme, "Promoting Greater Protection for Environmental Defenders Policy" (United Nations Environment Programme), accessed May 14, 2025, https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y.

⁸¹ Asia Pacific Network of Environmental Defenders – APNED, "Asia Pacific Network of Environmental Defenders – APNED," accessed May 14, 2025, <https://apned.net/about/>.

⁸² Linda Yanti Sulistiawati, "Environmental Rights as Human Rights in ASEAN: Why Not?," *Fulcrum*, March 10, 2023, <https://fulcrum.sg/environmental-rights-as-human-rights-in-asean-why-not/>.

⁸³ Ibid.