

The Legal Construction of the Implementation of ANTI-SLAPP in Fulfilling Legal Protection for Environmental Activists in the Indonesian Legal System

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Abstract. Legal protection for environmental activists who are also legal Indonesian citizens is fundamentally regulated in the 1945 Constitution of the Republic of Indonesia in Article 28H paragraph (1). Furthermore, it is also regulated in Article 66 of the Law on Environmental Protection and Management containing the Anti-Strategic Lawsuit Against Public Participation (ANTI-SLAPP) protection, which can protect environmental activists because they cannot be prosecuted criminally or civilly. However, even though there is ANTI-SLAPP regulation, there are still many environmental activists who are criminalized due to the regulation of Article 162 of the revision of the mineral and coal law by mining companies since the companies have permits to do and run their business. This research used the Normative Juridical Method using the interpretation of legal rules contained in statutory regulations. The statements of the problem are what the legal construction of the application of ANTI-SLAPP towards the fulfillment of legal protection for environmental activists in Indonesian. The purpose of this research is to research, study, and analyze the legal construction of the application of ANTI-SLAPP in fulfilling the legal protection of the environmental activists in the Indonesian legal system and to find out the legal problems that hinder the implementation of ANTI-SLAPP in Indonesia.

Keywords: Environmental Activists, ANTI-SLAPP, Minerals and Coal

1 Introduction

As a country that recognizes human rights (HAM), Indonesia is obliged to fulfill, respect, and protect the basic rights of its citizens, including rights to obtain a good and healthy environment as stated in the 1945 Constitution of the Republic of Indonesia in Article 28H paragraph (1). Apart from being regulated in the Constitution, the basic rights of the people towards the environment are also regulated in Law Number 32 of 2009 concerning the Protection and Management of the Environment as amended by Law Number 11 concerning Job Creation, which regulates the rights

of the community towards the environment and environmental management, it is regulated on five community rights to the environment, which include:

- a. Everyone has the right to a good and healthy environment as part of human rights.
- b. Everyone has the right to environmental education, access to information, participation, and justice in fulfilling the right to a good and healthy environment.
- c. Everyone has the right to submit suggestions and objections to business plans and activities that are expected to cause adverse damage to the environment.
- d. Everyone has the right to play a role in protecting and managing the environment in accordance with applicable laws and regulations. Everyone has the right to file a complaint due to allegations of environmental pollution and damage.

However, in its implementation, under the pretext of ensuring development and economic growth, the government tends to damage forests and the environment and deprive its citizens of rights. The law must work with others because the law requires institutions or people to move it.[1] In modern society, the form of law enforcement is one of the powers of the state, namely the administration of justice.[2] Furthermore, often, citizens who are struggling to defend their rights to the environment become victims of intimidation and criminalization. In fact, if we review Article 66 of Law Number 32 of 2009 concerning Environmental Management and Protection, which has now been updated by Law Number 11 of 2020 concerning Job Creation, it states, "Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly. Thus, it can be concluded that this Article can be used as the legal protection for Environmental Activists who are carrying out their duties to protect and control environmental management. This provision is a form of participation that the community can carry out in the form of Environmental Control. The importance of community control is because of the large number of environmental cases that need to be matched with the capacity of good environmental managers. Consequently, making efforts to restore and preserve the environment becomes inefficient.[3]

Protection from all kinds of prosecution as described above, is called Anti-SLAPP (Anti-Strategic Lawsuit Against Public Participation). In short, SLAPP can be interpreted as a structured strategic action through the courts to eliminate public participation so that the wider community does not expose it. In accordance with the definition and objectives of SLAPP, as explained above, its existence is primarily to eliminate/silence participation from the wider community. If examined comprehensively, a Strategic Lawsuit Against Public Participation (SLAPP) can be interpreted as an effort to stop or criminalize citizens who use their legal and political rights with the aim of diverting and hiding public issues and making them private.

In reality, the provision of Article 66 could be more effective because, in practice, people who fight for the environment are very easily criminalized. These include what happened to Bambang Hero Saharjo, who was an expert witness assigned by the government to calculate and report the amount of losses suffered by the state due to forest and land fires in Riau and was sued by PT. JJP is to pay losses of IDR 550 billion because Bambang's statement is legally flawed and detrimental to PT JJP. Other criminalizations were also experienced by several activists from Sukoharjo who fought

against PT. Rayon Utama Makmur whose industrial practices polluted and damaged the environment around the factory resulting in water and air pollution. These damages also disrupted residents' activities and environmental sustainability around the factory. Mining activities are required to have a permit for every activity, but many companies cannot comply.[4]

Most recently, in the case that happened in Bangka Belitung Islands Province, six residents of Kenanga, Sungailiat District, Bangka Regency were criminalized for protesting the operation of a tapioca factory which resulted in a foul odor around the settlement.[5] Regulations containing the protection of the Anti-SLAPP Law are still weak and seem vague so the criminalization of Environmental Activists still occurs frequently. In addition, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Revision of the Law on Mineral and Coal Mining) contains an article that contradicts Article 66 of the Law on Environmental Protection and Management. Article 162 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining states that "Anyone who obstructs or interferes with Mining Business activities from holders of Mining Business Permit (IUP), Special Mining Business Permit (IUPK), Small-Scale Mining Permit (IPR), or Rock Mining Permit (SIPB) who have fulfilled requirements as referred to in Article 136 paragraph (2) shall be subject to imprisonment for a maximum of 1 (one) year or a fine of a maximum of IDR. 100,000,000.00 (one hundred million rupiahs)". The existence of conflicting Articles in these two Laws has led to a lot of Legal Problems as well as Pros and Cons related to the Legal Protection of Environmental activists because both the Community, Mineral, and Coal Mining Entrepreneurs, and Companies engaged in other fields have strong legal standing to defend their rights before the law. It is hoped that conflict resolution will be a way out for a peaceful settlement and maintain bilateral relations.[6]

2 Method

Research means "researching" the knowledge to answer problems and questions.[7] The research method is a very important step because it is a process that will be used to obtain an illustration that can inspire one to think logically about the theories, methods, and approaches that are developing in legal science.[8] The type of research used in this research is normative juridical research. Normative legal research is also legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material consistency, general explanation and Article by Article, formality and binding force of the law, and the legal language used.[9] In normative legal research, usually only secondary data sources are used. Secondary data is data that includes official documents, books, research results or previous reports, laws and regulations, court decisions, legal theories, and opinions of prominent legal scholars. The legal materials are collected and analyzed descriptively and qualitatively by describing them in the form of sentences arranged systematically to draw a conclusion.

3 Result and Discussion

3.1. The Legal Construction of Protection of Environmental Activists in Indonesian Law

Construction is the arrangement and relationship of words in sentences or groups of words. The meaning of a word is determined by its construction in a sentence or group of words. According to Sarwiji, what is meant by construction meaning is the meaning contained in linguistic construction.[10] Therefore, the construction meaning can be interpreted as a meaning related to sentences or groups of words consisting in a word in linguistic studies. Construction can also be defined as the arrangement (model, layout) of a building (bridges, houses, etc.).[11] In fact, the word construction is a concept that is quite difficult to understand and agree on. The word construction has various interpretations, and cannot be defined in a single meaning. Legal Construction, commonly known as Legal Discovery, is used when faced with a situation where there is a legal vacuum (*rechts vacuum*) based on the principle of *ius curia novit* (Judges may not refuse cases to be resolved by stating that the law does not exist or has not regulated). Therefore, this legal construction method is very important to ensure justice.

According to the Great Indonesian Dictionary (KBBI), the meaning of the word activist is a person who fights and is willing to sacrifice. Meanwhile, the living environment is a unitary space with all objects, power, conditions, and living things, including humans and their behavior that affect the life and welfare of humans and other living things. Thus, it can be concluded that environmental activists are people who are brave and willing to sacrifice to defend the environment and maintain the preservation of the natural environment. People cannot be held accountable and sentenced if they do not commit criminal acts.

3.2. ANTI-SLAPP Legal Construction in the Protection of Environmental Activists in Indonesian Law

SLAPP is a new terminology in Indonesia. As the terminology suggests, SLAPP basically aims to silence or neglect public participation. Penelope Canan and George W. Pring, as quoted by Dwight H. Merriam and Jeffrey A. Benson, stated that SLAPP is an act of using court mechanisms to eliminate public participation by silencing, harassing, and obstructing political opponents. The term strategic lawsuit against public participation, known by its acronym SLAPP, applies to many types of lawsuits, including those claiming defamation, slander, business interference, or collusion. There is no standard definition of what SLAPP is, but there are four criteria put forward by Professor George W. Pring and Penelope Canan from the University of Denver, regarding SLAPP, namely:

1. There are complaints, grievances, and demands from the public regarding the impact of the damage that has occurred;
2. It is carried out against society collectively, individually, and by non-governmental organizations;
3. There is a communication made to the government or authorized officials;
4. It is carried out on issues of public interest or public concern.

SLAPP (Strategic Litigation Against Public Participation) is either a criminal or civil lawsuit against a person or group of people who are trying to obstruct or stop the activities of a company or certain agency that can damage the environment and have an impact on the wider community. The aim of SLAPP is to create fear due to civil lawsuits and criminal charges. The consequences that arise later are in the form of fines for people who exercise their rights to participate in controlling and preserving the environment which ultimately aims to kill and eliminate community movements whose existence has been legally recognized since they have a legal basis. SLAPP can be defined more broadly than just a lawsuit. SLAPP can be defined simply as an inappropriate criminalization process or a planned/intentional criminalization process in order to stop a movement which we simply know as criminalization. However, the most important thing about the SLAPP phenomenon is the use of law and its mechanisms to hinder and inhibit people's freedom in fighting for environmental sustainability.

SLAPP is often done by business actors who feel disturbed by community participation. This is because business actors always think of getting the maximum profit with the smallest capital. The existence of environmental laws that regulate and protect every composition of the environment and surrounding communities by adding environmental requirements will result in additional costs besides labor costs and business capital. Most of the time, they will get around to avoiding the burden of those costs.

Anti-SLAPP is a legal effort or self-defense or guarantee of legal protection for people/citizens who use their rights to participate in environmental management decision-making. Anti-SLAPP legal sources include the right to the environment as a human right (Article 28H of the 1945 Constitution), the right to a good and healthy environment (Article 65 paragraph (1) Law No. 32 of 2009), the right to community participation in environmental management (Article 65 paragraph (3), (4), and (5) Law No. 32 of 2009), and Right to information (Article 65 paragraph (2) Law No. 32 of 2009 in conjunction to Article 4 paragraph (1) and (2) Law No. 14 of 2008, Article 66 of Law No. 32 of 1999).

In terms of legal protection for environmental activists, the term Counterclaim/Recovery or what is usually called ANTI-SLAPP is known which means someone who is fighting for environmental sustainability cannot be prosecuted either criminally or civilly. The codification of Indonesian law actually contains a brief article containing ANTI-SLAPP which can be used to protect environmental activists. In Article 66 of Law Number 32 of 2009 concerning Environmental Management and Protection, which has now been updated with Law Number 11 of 2020 concerning Job Creation, it is stated that "Everyone who fights for the right to a good and healthy living environment cannot be prosecuted criminally or sued civilly."

The regulation of Article 66 of the Law on Environmental Protection and Management regarding legal protection for every person who fights for the right to a good and healthy environment from the possibility of criminal or civil prosecution is very important. This is because previous cases emerged involving environmental activists. The complaints were related to allegations of environmental pollution and destruction. Those activities were sued criminally or civilly for defamation of a company that is alleged to have caused environmental pollution or damage.[12] So,

it is necessary to find a solution to the problem that is mutually beneficial and efficient.[13] Furthermore, it can guarantee the maintenance of harmonious, and balanced relations between state administrators and local communities.[14]

4 Conclusion

This research resulted in a conclusion that, until now, the regulations containing ANTI SLAPP still refer to Article 66 of the Law on Environmental Protection and Management which has been updated with Law Number 11 of 2020 concerning Job Creation. This article can protect Environmental Activists so that they are free from criminal and civil lawsuits. However, this regulation seems to only protect activists who have taken legal action so that the opportunity for other Environmental Activists to be criminalized is still wide open. This has also been explained in the Supreme Court Decision which has also provided further explanation of the Anti-SLAPP provisions in Law on Environmental Protection and Management by issuing a Decree from the Chief Justice of the Supreme Court Number: 36/KMA/SK/ II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases which strengthens the explanation from Article 66 UU PPLH. The legal problem of applying the ANTI SLAPP to Legal Protection for Environmental activists lies in the legal conflict contained in Article 66 of Law on Environmental Protection and Management and Article 162 of the Revised Mineral and Coal Mining Law where these two rules are antithetical to each other resulting in the emergence of legal uncertainty which can be detrimental to the parties when problems occur. Based on the explanation and conclusions presented above, the writer believes that in order to protect the Environmental Activists to be realized maximally and efficiently, it is necessary to reformulate Article 162 of the Revised Mineral and Coal Mining Law by providing limitations on which actions constitute acts of obstructing mining businesses. It is because Article 162 of the Mineral and Coal Mining Law has claimed many victims, especially those of the environmental activists who are fighting for their rights. Besides, to maximize legal protection for activists of the good and healthy environment by revising Article 66 of Law on Environmental Protection and Management so that it does not give rise to multiple interpretations and can be practical by explaining more concretely which forms of actions can be protected by ANTI SLAPP so that it minimizes criminalization loopholes and excessive actions that can lead to riots.

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