



Application of Anti-SLAPP (Strategic Lawsuit Against Public Participation) Principles in Environmental Case Solutions in Indonesia

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Abstract:

The Anti-SLAPP (Strategic Lawsuit Against Public Participation) principle is an important principles in legal protection against environmental activism in Indonesia. This article discussed the application of the Anti-SLAPP principle in the settlement of criminal cases against environmental activists, with a case study of Decision Number 475/Pid.B/2020/PN Sgl jo. 21/PID/2021/PT BBL. This study used a normative legal approach with descriptive analysis. The results showed that although the Anti-SLAPP principle has been recognized in the Indonesian legal system, its implementation still faces challenges, both in terms of regulations and law enforcement officials. This study recommends the need to strengthen regulations and increase the capacity of law enforcement officials in understanding Anti-SLAPP as part of the principles of environmental advocacy protection.

Keywords: Anti-SLAPP; Environmental Law; Human Rights Defenders; Public Participation; Legal Protection.

INTRODUCTION

The human rights of citizens are guaranteed in the Constitution of the Indonesian state of law (Harun, 2010). The right to a healthy environment is one of the guaranteed rights, as explicitly explained in Article 28H of the 1945 Constitution and Article 9 (3) of Law No. 39 of 1999 on Human Rights (Yanto, 2016).

Environmental law is essential to maintain the balance of ecosystems and protect people's right to a healthy environment. In Indonesia, many laws regulate ecological protection, one of which is Law Number 32 of 2009 concerning Environmental Protection and Management (Suparni, 1994). This law not only gives people the right to a healthy and good environment but also provides legal protection to those who fight for that right. According to Article 66 of Law No. 32 of 2009, known as strategic legal measures against public participation, "anyone who fights for the right to a good and healthy environment cannot be criminally prosecuted or civilly prosecuted (Rahmadi, 2011)." Anti-SLAPP provisions protect communities from performing their roles in environmental management and protection (Dhiksawan et al., 2018).

However, in real life, people's efforts to support the right to a good and healthy environment often face various problems, such as criminalization and the threat of SLAPP from stakeholders. By itself, a SLAPP is a type of legal instrument used to criminalize environmental fighters. The case of Robandi

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et al. in Bangka Belitung is an example of the phenomenon of criminalization of environmental activism. The people in Kenanga Village are opposed to the company's actions, which they say pollute the environment and threaten the surrounding ecosystem. They protested as a form of resistance, leading to accusations of abuse of office. As a result, Robandi and several other residents were legally charged by the Sungailiat District Court in Decision No.475/Pid.B/2020/PN Sgl. This decision was controversial because it did not consider residents' rights to a healthy environment (Austin et al., 2019).

In the appeal process, the Bangka Belitung High Court decision No. 21/PID/2021/PT BBL canceled the previous decision and acquitted Robandi et al. of all the charges. The Court used the principle of Anti-SLAPP (Strategic Lawsuit Against Public Participation) contained in Article 66 of the UUPPLH, which states that any individual who fights for the right to a good and healthy environment cannot be prosecuted, either criminally or civilly. This is considered a step forward in protecting environmental activists and community groups from exploitation and pollution by the industry.

METHOD

This study used normative juridical research methods. Normative juridical research is a type of research conducted to analyze and understand applicable legal rules and norms. This approach focuses on analyzing legal sources such as laws and regulations, court decisions, and other legal documents (Soekanto, 2019). This study aims to understand, interpret, and apply legal regulations in certain contexts (Christiani, 2016). In addition, normative research methods are also understood to examine law from an internal perspective with legal norms, both emptiness, ambiguity, and norm conflict as objects of research (Dianti, 2020).

This study used legal and conceptual approaches. The legislative approach is used to study and analyze various laws and regulations related to environmental law, especially laws and regulations on the settlement of environmental law in Indonesia (Lindlof, 2002). The conceptual approach is used to examine the viewpoints or beliefs of experts related to the research subject (Patton, 1990). This allows for the discovery of relevant legal understandings, concepts, and principles (Abdul Kadir, 2015). This study uses primary and secondary legal materials. Primary legal material covers all relevant laws and regulations in Indonesia, including the Constitution of the Republic of Indonesia of 1945, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, and Law Number 32 of 2009 concerning Environmental Protection and Management. Secondary legal materials include books, legal writing materials (such as legal and scientific journals), theses, dissertations, and sources from the Internet or official websites. This secondary legal material was used to support the primary legal material in this study (Christiani, 2016).

RESULT

The appeal decision from the Panel of Judges of the Bangka Belitung High Court chaired by Winarto S.H., accompanied by member judges Setia Rina, S.H., M.H., and Sabarulina Ginting, S.H., M.H., is an important decision in the field of environmental law both in an empirical and doctrinal context. On the empirical aspect, this ruling has protected environmental fighters from criminal slavery, a form of SLAPP. At the doctrinal level, this ruling encourages the development of environmental law in Indonesia, where the Panel of Judges, through legal discovery, uses the Anti-SLAPP provisions as a consideration to qualify for the participation of environmental fighters as justification.

In the case of Robandi et al., the Panel of Judges gave the following considerations that remembering, that the Defendants' actions by affixing the signature and stamp of the RT to the letter submitted by the witness Yuniot Man Sefendi, S.STP., when the Defendants had resigned as RT (there was no letter of dismissal as the Chairman of the RT) was an act that had fulfilled the elements of the Public Prosecutor's First and Second Indictments, but the actions of the Defendants were solely to provide participation in the community in the public interest of the pollution effect in the form of a bad odor. caused by the production activities of PT. BAA (Ltd), so that the defendants must be exempt from all Criminal Charges.

Taking these matters into consideration, the Panel of Judges seems to be of the opinion that, despite the Public Prosecutor's indictment against Article 228 of the Criminal Code jo. Article 55, paragraph (1) of the Criminal Code and Article 263, paragraph (1) of the Criminal Code jo. Article 55., paragraph (1) of the Criminal Code (second indictment), the act is no longer unlawful. The Panel of Judges saw that there was a justification because the defendants' actions were an effort to fight for the public interest (environment), which is protected by Article 66 of the PPLH Law. Therefore, the Panel of Judges gave a verdict that was free from prosecution (ontslag van vervolging) because there was no element of an objective error. Undoubtedly, this ratio decidendi is a type of legal decision made by the Panel of Judges that uses the Anti-SLAPP provisions as justification.

In addition, in SLAPP cases, judges often remove SLAPP cases from the main issue of environmental conflicts. This was seen in the Robandi case in the court of first instance, where the Panel of Judges did not consider the Legal Counsel's objection to the anti-SLAPP provisions. According to Pring and Canan, SLAPP cases are effective in achieving their strategic goal of transforming forums, conflicts, and issues by separating the case from its main problem.

However, the judges at the appellate level took a more progressive approach by linking the SLAPP case to the lawsuit against PT BAA's defamation, as they argued that the party aggrieved by Robandi et al.'s lawsuit would never have filed the case.

Another interesting fact about the case is that the Panel of Judges used one of the remedies of the Anti-SLAPP provision, the restoration of a good name. The Panel of Judges asked for the restoration of the rights of the defendants in their ability, position, dignity, and dignity. This is in line with the increasing practice of SLAPP cases in various countries, where the restoration of a good name is one of the important ways to eliminate the negative "stigma" that often befalls environmentalists who face SLAPP efforts.

While progressive decisions have been made to protect environmentalists from these silencing measures, one important note must be made. Unfortunately, the Panel of Judges did not explain the justification for the Criminal Code in the quo case. The Criminal Code has four categories of justification: (1) actions committed due to violence (overmacht); (2) actions carried out as a forced defense (noodweer); (3) actions taken to implement the legal order; and (4) actions taken to execute the position order.

Without this explanation, the judge's consideration does not provide a clear and firm picture of the category of reasons that support the participation of environmental fighters. These explanations are crucial as precedents for subsequent judges when determining the types of participation that can be considered justifiable grounds in SLAPP cases and the limitations associated with the use of such justifiable grounds.

To overcome this problem, the explanation must return to Article 66 of the PPLH Law, which protects environmental defenders. This article must be read carefully in relation to Article 65 of the PPLH Law, which regulates the rights and obligations of everyone working in the environmental sector. A complete reading shows that participation in fighting for environmental sustainability is everyone's right and obligation. Furthermore, the question that must be answered is under what conditions or when each person's participation can change from a right to an obligation.

In this case, the author offers four criteria (cumulative) that can transfer the right to *participate in environmental issues* as an obligation to *defend the environment*:

- a. Parties who carry out business or activities do not carry out their obligations in environmental protection and management, especially Article 68 of the PPLH Law.
- b. There is an *actual hazard* or *foreseeable danger* to human health and the environment.
- c. The State as an *obligatory holder* under the principles of the Public Trust Doctrine has not taken adequate measures to prevent or address such harm; and
- d. The form or expression of participation is still within proportionate limits and does not constitute an act that poses a direct danger to human safety or the environment.

In the case of Robandi et al., it is clear that all these criteria are met. Thus, the participation carried out by Robandi et al. must be seen as a form of effort to carry out legal obligations, especially Article 67 of the PPLH Law which states that "everyone is obliged to maintain the preservation of environmental functions and control pollution and/or environmental damage." In other words, even though it is classified as a criminal act, the act committed by Robandi et al. is an implementation of the obligation to protect the environment so that the act loses its unlawful nature as long as it is carried out proportionately and does not cause direct harm to others and the environment. In short, the loss of the unlawful nature of the actions of Robandi, et al., is due to these acts in carrying out legal orders, as referred to in Article 50 of the Criminal Code.

DISCUSSION

Case Chronology

This case study began in Kenanga Village, Bangka Belitung. Robandi, Muhammad, Mulyadi, Syamsul Effendi, Heti Rukmana, and Aditama (Robandi et al.) are six heads of RTs and one State Civil Apparatus (ASN) in Kenanga Village, Sungailiat, Bangka, who are part of the Kenanga Village community who filed a class action lawsuit against PT Bangka Asindo Agri (PT BAA) over alleged pollution in the local area by the company's tapioca factory waste. After the class action lawsuit was rejected by the court, Robandi et al. were reported to the police for alleged violations of office under Article 228 of the Criminal Code, as well as falsification of documents based on Article 263 (1) of the Criminal Code related to the management of class action documents.

This report led to legal proceedings at the Sungailiat District Court. In the trial process, the defendants, through their legal representatives, applied for Anti-SLAPP protection under Article 66 of the PPLH Law, but their application was rejected by the court of first instance. Ultimately, the defendants were found guilty in Decision No. 475/Pid.B/2020/PN Sgl. The Panel of Judges in this decision decided that the actions of citizens were included in the category of unlawful acts, so they were punished. This decision has drawn criticism from various parties, especially environmental activists, because it is considered to ignore the right of citizens to defend their environment from pollution by companies (Hukumonline 2023).

The Defendants (Robandi et al.) then appealed. The defendants' anti-SLAPP defense was eventually accepted by the court at the appellate level, which acquitted the defendants of all criminal charges and restored their rights in their ability, position, and dignity. The Panel of Judges of the Bangka Belitung High Court, in its decision No. 21/PID/2021/PT BBL emphasized that the actions of the defendants were part of their constitutional right to fight for a healthy environment, as stipulated in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management. The ruling is an important legal development in which the submission of Article 66 of the PPLH Law was first accepted by the criminal courts and sets an important precedent in the application of the anti-SLAPP principle, which aims to protect individuals or groups from criminalization while fighting for their environmental rights.

After being acquitted of criminal charges by the appeals court, Robandi et al. filed a pretrial application seeking compensation for their forced labor and trial, but the application was rejected by the panel of judges.

In that case, Robandi et al. underwent a series of coercive attempts before the anti-SLAPP defense was accepted by the appeals court. The process had a terrible effect on the defendants, where two months after the court ruled that the defendant was proven innocent, one of the defendants admitted that the residents of Kenanga Village began to be silent regarding air pollution due to PT BAA's business operations even though the unpleasant smell from the tapioca factory still smelled.

Legal Analysis of the Application of Anti-SLAPP Principles

A strategic lawsuit against public participation (SLAPP) is a legal challenge aimed at people who criticize or participate in an interest group. According to Black's Law Dictionary, a SLAPP is a lawsuit that "Demands made by developers, corporate executives, or elected officials to detain people

who demonstrate against some type of high-value initiative or who take an adverse position on a matter of public interest”

By definition, a SLAPP is used to prevent community participation. Businessmen and rulers often use them to protect their interests from public criticism, and essentially, SLAPPs are used to prevent public participation. The SLAPP criteria were given by Gerege W. Pring and Penelope Canan are as follows:

1. There are complaints, complaints, and demands from the community regarding the impact of the damage that has occurred.

This point refers to the expression of public dissatisfaction with adverse conditions, especially those related to environmental, social, or economic damage. Communities raise complaints or protests because they are directly affected, for example, by river pollution, deforestation, noise, or loss of access to natural resources. In addition to complaints, they can also file legal or administrative lawsuits to hold the party deemed to have caused damage accountable. (Asshiddiqie, 2005)

2. This is done collectively, individually, and by non-governmental organizations.

- a. Efforts to voice complaints or demands can come from
- b. Individuals, namely, residents who are directly affected
- c. Community groups or communities that collectively experience impacts and voice aspirations together.
- d. Non-Governmental Organizations (NGOs) usually assist the community in an advocacy or litigation manner and fight for environmental and social justice as part of their social duties (Arizona, 2015).

3. Communication is made to the government or authorized officials.

The community or advocacy organization conveys such complaints, aspirations, or demands through official channels, for example:

- a. Through a letter of objection or a written complaint.
- b. Apply for mediation or a hearing.
- c. Conducting petitions or public campaigns
- d. Alternatively, they can report directly to agencies such as the Ministry of Environment, House of Representatives of the Republic of Indonesia, Ombudsman, and law enforcement agencies. This communication aims to make the government aware of and follow up on problems that occur in accordance with existing legal authority and mechanisms (Ministry of Environment and Forestry [MoEF], 2019).

4. This is done on issues that concern public interest or public concern.

The problems raised are not just personal interests but also concern the interests of many people, such as public health, access to clean water, environmental sustainability, social justice, and sustainable development.

In Indonesia, Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law) first stipulated provisions for SLAPP. Article 66 of the PPLH Law contains provisions on anti-SLAPP and provides immunity to people who fight for the right to a good and healthy environment to avoid SLAPP. It was created to protect communities that participate in environmental protection activities.

The preparation of Article 66 of the PPLH Law has 2 (two) main elements of Anti-SLAPP, namely: participation/expression of public interest (environment). Participation is essential for protecting and managing the environment. This is based on the principles stipulated in Article 2 of PPLH Law. Community participation is also a key aspect of environmental law policy. In Romans 1 number 7 of

the Explanation of the PPLH Law, it is stated that: "The fundamental difference between Law Number 23 of 1997 concerning Environmental Management and this Law is the strengthening contained in this Law on the principles of environmental protection and management which are based on good governance because in every process of formulation and application of instruments for the prevention of pollution and/or environmental damage and Countermeasures and Law enforcement requires the integration of aspects of transparency, participation, accountability, and justice."

The Anti-SLAPP (*Strategic Lawsuit Against Public Participation*) principle is an important part of environmental law in Indonesia, aiming to protect individuals or groups from lawsuits that intimidate or silence public participation in environmental protection. Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) explicitly states that everyone who fights for the right to a good and healthy environment cannot be prosecuted, either criminally or civilly. This principle emphasizes that community participation in environmental management must be respected and protected by the state as a form of protection of citizens' constitutional rights to a clean and healthy environment (Sebastian & Masyhar, 2023).

Policies regarding anti-SLAPP in environmental management and protection are not only contained in the PPLH Law. In 2013, the Supreme Court issued the Decree of the Chief Justice of the Supreme Court Number: 36/KMA/SK/II/2013 concerning the Enforcement of Donors in Handling Environmental Cases. This Decree provides guidelines for judges to adjudicate environmental cases.

Decree KMA 36/2013 stipulates that a SLAPP defense in the civil realm can be filed through provisions, exceptions, or in a conventional lawsuit. Meanwhile, in the criminal realm, SLAPP defenses can be filed through defenses and decided through interlocutory decisions. Anti-SLAPP defenses in Indonesia, both in the civil and criminal spheres, can only be filed in the form of objections or defenses together with other defenses and not through a separate special motion.

The Bangka Belitung High Court decision in Decision No. 21/PID/2021/PT BBL is one of the important precedents in the application of Anti-SLAPP principles in Indonesia. In its legal considerations, the panel of judges emphasized that Robandi et al. 's actions in fighting for a healthy environment were part of human rights guaranteed by the constitution and should not be criminalized. The court considered that the accusation of committing acts that included his unheld position aimed at the heads of RTs in this hamlet did not have a strong legal basis because their actions were a form of resistance to industrial activities that damaged the environment (Diaz, Putri, & Jegiantho, 2021). This ruling shows that an SLAPP precedent plays an important role in balancing environmental and economic interests, as well as in preventing corporate legal abuses against civil society.

The application of the anti-SLAPP principle in this case also strengthens the legal position of people who are often victims of criminalization when trying to defend their right to a healthy environment. The lawsuit filed against Robandi et al. reflects a strategy often used by corporations to silence public resistance through legal channels. In similar cases, the criminalization of environmental activists often has a chilling effect, where individuals or communities are reluctant to speak out or act in the interest of the environment for fear of legal threats (Maharani & Sari, 2024). Therefore, the decision of the Bangka Belitung High Court is a progressive step in upholding the right to immunity for environmental fighters and ensuring that the law is not used as a repressive tool against people who fight for a healthy environment in Indonesia.

The application of the Anti-SLAPP principle in the Indonesian legal system still faces various challenges, especially in terms of law enforcement and interpretation at the lower judicial level. Some cases show that not all judges understand or apply this principle consistently, so there are still legal loopholes that allow the criminalization of environmental fighters (Sebastian & Masyhar, 2023). Therefore, it is necessary to strengthen stricter legal policies, including the revision and harmonization of regulations, to provide more comprehensive protection for the community in fighting for their environmental rights.

Impact and Implications of Decisions

The Bangka Belitung High Court decision in Decision No. 48/PID/2021/PT BBL provides stronger legal protection for activists and residents in the fight for a healthy environment. The application of

the anti-SLAPP principle in this case confirms that communities participating in environmental protection efforts cannot be criminalized or subjected to legal sanctions simply for voicing ecological interests. This decision is proof that the judiciary can play an instrument of environmental justice that not only protects the rights of individuals but also ensures that environmental exploitation carried out by corporations or other interested parties is not left unchecked (Sebastian & Masyhar, 2023)

The broader impact of this ruling is the emergence of legal precedents that can be used as references for handling similar cases in the future. This decision not only protects Robandi et al. but also provides a stronger legal basis for courts to apply anti-SLAPP principles more consistently. This decision is also expected to encourage increased public awareness of the right to fight for a healthy environment and strengthen environmental policies that better support ecosystem sustainability. In addition, this ruling encourages the government to adopt more concrete measures to ensure that environmental policies in Indonesia are not only normative but can also be effectively implemented in daily legal practice (Maharani & Sari, 2024).

This ruling's impact affects not only the case of Robandi et al. but also the environmental legal system in Indonesia as a whole. With this precedent, lower courts have a stronger legal reference for handling similar cases, thereby reducing the possibility of criminalizing communities fighting for environmental rights (Arifin, Setiyanto, Mubiin, & Fatahillah, 2024). In addition, this decision affirms the importance of the state's role in providing legal protection for environmental activists, especially by increasing the effectiveness of anti-SLAPP-related regulations and ensuring that every citizen can participate freely in environmental protection efforts without fear of being criminalized.

The successful application of the anti-SLAPP principle in Robandi et al. proves that environmental law can be an effective tool for protecting people's rights if applied appropriately. However, to ensure the effectiveness of this principle in the future, concrete steps are needed, such as increasing the capacity of judges and law enforcement officials to understand environmental regulations, as well as a more massive public campaign related to people's rights to fight for a healthy environment (Maharani & Sari, 2024). The sustainability of legal protection for environmental defenders must be a top priority in strengthening environmental policies so that people are no longer victims of criminalization when fighting for their environmental rights.

CONCLUSION

Robandi et al. provide a real example of the criminalization of citizens who fight for the right to a healthy environment. The legal process that initially punished citizens protesting environmental pollution shows a loophole in legal protections for environmental fighters. However, the Bangka Belitung High Court's Decision No. 48/PID/2021/PT BBL, which annulled the decision and applied the anti-SLAPP principle, is a progressive step in Indonesia's environmental law. This decision affirms that people have a constitutional right to fight for a clean and healthy environment without fear of being criminalized. Moreover, this ruling sets an important precedent for upholding environmental justice, providing stronger protection for activists and citizens in the face of legal threats from parties with economic interests in environmental exploitation.

Conflict of Interest

All authors state that there is no conflict of interest.

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