

Conference Paper

Analysis of Meaningful Community Participation in Environmental Sustainability

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Abstract.

Indonesia has declared that obtaining a good and healthy environment is part of its constitution and human rights. Moreover, the policies governing public participation in creating the environmental policies supporting this assertion, should be considered. This study aims to analyze meaningful community participation in environmental sustainability. The results show that community participation in protecting a good and healthy environment often encounters resistance from business actors whose business activities are suspected to cause environmental pollution or damage. The actions of business actors who report to the police or sue affected communities and environmental rights fighters or activists, carrying out community participation in the form of conveying information, complaints, and objections through media or demonstrations are intended by the plaintiff or the reporting party to remain silent and stop participation.

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1. INTRODUCTION

Community participation is essential in environmental management, particularly for a good and healthy environment, as the fulfillment of their rights as mandated by Article 28H of the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the 1945 Constitution of the Republic of Indonesia),[1] which states: “Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to obtain a good and healthy environment, and to enjoy the fruits of his labor.” As a component of human rights, the state must respect, implement, and protect the right to a wholesome environment. To fulfill the right to a decent and healthy environment, everyone has the right to environmental education, access to environmental information, participation, and justice. In other words, access to information, participation, and justice are required for the fulfillment of the right to a safe and healthful environment.[2]

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Article 65, paragraphs (1), (3), and (4) of Law No. 32 of 2009 on Environmental Protection and Management contain additional regulations. From Law No. 4 of 1982 concerning Basic Provisions for Environmental Management to Law No. 32 of 2009 concerning Environmental Protection and Management, public participation and community participation have been regulated for decades. People's rights to the environment and environmental management are governed by Law No. 32 of 2009 Concerning Environmental Protection and Management, also known as the PPLH Law.[3] Article 66 regulates the existence of five environmental rights, namely: As part of human rights, everyone has the right to a clean and healthful environment. Everyone has the right to environmental education, information access, participation, and justice in order to realize their right to a clean and healthy environment.[4] Everyone is permitted to submit suggestions and objections regarding business plans and activities that are anticipated to impact the environment. Everyone is entitled to play a role in protecting and managing the environment by abiding by applicable laws and regulations. Everyone has the right to submit a complaint when environmental pollution or damage is suspected.[5]

Article 66 of the PPLH Law is an example of participation in the form of community control. The significance of community control is predicated on the fact that the number of environmental cases exceeds the capacity of good environmental managers, resulting in suboptimal efforts to preserve and restore the environment. Legislators deem this arrangement as a form of protection for those who are constructing a sustainable environment to be necessary. Anti-Strategic Lawsuit Against Public Participation (henceforth referred to as Anti-SLAPP) is the name given to Article 66. A SLAPP can be interpreted as a court-based strategy to eliminate public participation.[6]

The purpose of a SLAPP, as understood, is to suppress or eliminate community participation. There are numerous reasons why Anti-SLAPP regulation is necessary, including: Frequently, the government or other authorized parties suppress environmental activists. There are frequent reports of defamation claims against citizens who report environmental incidents to authorities. In response to the aforementioned issues, the Supreme Court issued Decree of the Chief Justice of the Supreme Court No. 36/KMA/SK/II/2013 regarding the Enforcement of Guidelines for Handling Environmental Cases Related to Article 66 UUPPLH, which states, "Anti-SLAPP is legal protection for environmental fighters..." The Supreme Court implicitly interpreted SLAPP as existing even if no legal action was taken by the community.[7]

Nonetheless, in the same provisions, it is determined that the plaintiff's claim in a civil action is a SLAPP and that a provision, exception, or counterclaim may be filed. On the other hand, reporting illicit acts committed by applicants is a defensible SLAPP. These

two legal remedies must first be determined by an interlocutory ruling. In civil cases, the Supreme Court gives the defendant three alternatives for filing legal remedies. However, there are limitations to the treatment of SLAPP in criminal proceedings, which can only protect suspects or defendants from SLAPP after the case has been examined in court. Consequently, the regulation of the Anti-SLAPP concept in laws and regulations is still weak, limited, and inadequate in providing legal certainty to all parties.[8] According to data from the Indonesian Forum for the Environment (WALHI), there were 146 cases of criminalization against environmentalists on the island of Java between 2014 and 2019, specifically in the regions of Jakarta, West Java, Central Java, and East Java. According to data compiled by the Institute for Community Studies and Advocacy (ELSAM), there were 22 cases involving environmental activists between January 2020 and April 2020. The Institute for Community Studies and Advocacy (ELSAM) also reported that environmental activists experienced 27 instances of criminalization in 2019, resulting in 128 individuals and 50 community groups taking legal action. According to additional data submitted by ELSAM, 22 cases of violence against environmental human rights defenders were reported in 2020.[9]

The fact that three Indramayu farm laborers demonstrated against the construction of the PLTU project by placing banners alongside the red and white flag is evidence of the community's silence. The following day, the position of the flag was changed. In accordance with the criminal provisions of the Law on State Symbols, residents were deemed suspects and held culpable for actions they did not commit due to this manipulation. This case demonstrates that the regulation and application of Anti-SLAPP in Indonesia still require improvement. When individuals raise environmental concerns, the same pattern will continue to recur. Sanctions will be applied to the community in any manner possible to eliminate community participation.[10]

The case of activist Heru Budiawan, alias Budi Pego, who was criminalized for opposing the conversion of the Banyuwangi forest into a gold mine, is another example. Budi Pego was prosecuted under Article 107, Letter A of Law Number 27 of 1999, which relates to Crimes Against State Security, for allegedly propagating communist ideology. Upon closer inspection, Budi Pego's actions are included among those that fight for the right to a clean and healthy environment. However, community participation in the decision-making process is prohibited. Environmental justice is hindered by Indonesia's numerous environmental problems. This attempt was thwarted by interested parties, so it can be said that Budi Pego's actions were inversely proportional to the interpretation made by law enforcement officials of the Anti-SLAPP concept outlined in Article A quo.[11]

Based on the aforementioned issues, legal protection for Anti-SLAPP fighters has not been optimally implemented. Counter-reporting, whether in the form of demands or litigation against environmental activists, frequently leads to arbitrary indictments and decisions. Environmentalists are frequently accused of defamation, flying an inverted flag, destroying public facilities or property, inciting, propagating communist ideology, extortion, land seizing, etc.[12] Environmental justice that is inclusive is the participation-based realization of people's rights to a decent and healthy environment. This is consistent with the opinion of Arcioni and Mitchelle, who stated that environmental justice pertains to public participation in environmental management decision-making.

2. METHODOLOGY/ MATERIALS

This study employed normative legal research, also known as library legal research, which indicates that legal research was conducted solely by examining library materials or secondary data. Formal law is the focal point of normative legal research. Given that normative legal research is founded on formal law, the data consist of secondary data, including primary, secondary, and tertiary sources.[13] Primary legal materials are authoritative, meaning that they have authority in the form of statutes, official records, or treatises in establishing statutory regulations and various judge's decisions. In contrast, secondary legal material consists of all non-official legal publications, such as books, legal dictionaries, legal journals, and commentary on court decisions. Then, tertiary legal materials, such as Indonesian dictionaries, provide explanations or aid authors in conducting research.[14]

3. RESULTS AND DISCUSSIONS

Article 66 of the PPLH Law in Indonesia defines anti-Eco-SLAPP as follows: "Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly." Even though the law protects those who advocate for environmental rights, SLAPP lawsuits continue to occur in practice. This is owing to numerous factors. First, the clarification provisions of Article 66 of the PPLH Law narrow the article's meaning. The article's clarification states, "This provision is intended to defend victims and reporters who file lawsuits due to environmental pollution and damage. This protection is intended to prevent acts of retaliation by the reported party through criminal prosecution and civil litigation, while preserving the judicial independence." [15]

Article 66 of the PPLH Law is a symbol of legal protection and a manifestation of the law's accommodating attitude toward diverse forms of community participation. The lack of regulation surrounding the Anti-SLAPP procedure makes it difficult for law enforcement officials to utilize Article 66 of the PPLH Law. Article 66 of the PPLH Law is normatively unambiguous, but it is still interpreted differently by law enforcers.[16] Anti-SLAPP arose from the belief of organizations fighting for environmental rights and human rights that freedom of expression and participation in issues related to societal interests is an act of democracy upholding that must be protected. The provisions of Article 66 of the PPLH Law imply that community and environmental activists who fight for the right to a decent and healthy environment have the right to immunity from criminal and civil prosecution.[17]

The provisions of this article protect against criminalization attempts in environmental cases against the participation of a community contending for the right to a clean and healthy environment. Conceptually, according to Article 65, paragraph 1 of the PPLH Law, everyone has the right to a safe and healthful environment as part of their human rights. The government of Indonesia efforts to socialize and educate law enforcement officials can increase their understanding of Anti-SLAPP.[18] In identifying and processing Anti-SLAPP cases, the acquired knowledge is applied with excellent coordination among law enforcement officials. This coordination is achieved by maximizing the function of the judiciary to ensure that SLAPP victims are not further processed. In the future, Anti-SLAPP laws in Indonesia can be implemented appropriately to satisfy the community's right to a decent and proper environment devoid of restrictions on free speech.[19]

The protection provided to everyone is intended only for those who have previously taken legal action. This restricts protection to particular communities. In contrast, those who do not use legal mechanisms should be afforded protection, as the form of participation outlined in Article 65 of the PPLH Law is broader than participation through the legal system. If a person participates and asserts their environmental rights through channels other than a lawsuit in court, they cannot be protected by the PPLH Law. People who demonstrated their aspirations and demanded their rights without utilizing a legal mechanism, for instance, were then reported. According to Pring and Canan, the explanation of this article is also inconsistent with the Anti-SLAPP concept, which does not limit protection to victims who pursue legal mechanisms.[20]

Second, the comprehension of SLAPP and anti-SLAPP by Indonesian law enforcement officers needs to be improved. The increase in SLAPP cases indicates that law enforcers have accepted demands and litigation against those who fight for the environment in the public interest until recently. Thirdly, the fact that Indonesia has not taken

progressive measures to reform environmental law, particularly with regard to Anti-SLAPP, demonstrates the government's propensity to support corporations directly or indirectly. Fourth, the KMA's presence is more consistent with the Anti-SLAPP concept. Nonetheless, the parties battling for their environmental rights are still undergoing the trial process, which will be concluded with an interlocutory decision. This decree has not completely safeguarded the public, as they must still prove in court that they have been victimized by SLAPP.[21]

The Anti-SLAPP concept has been implemented accurately, there is no need for the community to undergo a trial. Moreover, the KMA is still in appeal form, so it is not a regulation. Fifth, legal protection for environmentalists is limited to judicial proceedings, and there is no protection outside of court proceedings. In Indonesia, it may be difficult for SLAPP cases to decrease due to the need for regulations safeguarding environmentalists. In addition, the procedural law system in Indonesia, both in civil and criminal cases, has not yet provided guidelines for the processing and handling of SLAPP cases.[22]

Several measures must be implemented to maximize Anti-SLAPP implementation in Indonesia. First, as an initial step, effective outreach and education of the public and law enforcement about SLAPPs are required. The community is socialized and educated so that they are aware of their rights and how to respond to demands or lawsuits if they become victims of SLAPP. Then, law enforcement officials must understand the significance of Anti-SLAPP in order for the implementation of laws protecting environmental activists to proceed smoothly.[23] Reasonable regulations can only function as intended if law enforcement personnel comprehend their intent. Second, cooperation between law enforcement officials is required so that they have the same understanding of SLAPPs and comprehend the significance of Anti-SLAPPs, allowing them to coordinate efforts to protect environmental activists. Thirdly, according to George Pring, SLAPP can be stopped if all facets of society and the government collaborate to establish a national action plan to study, investigate, and document recommendations for SLAPP, and if this national action plan is an ongoing investigation.[24]

4. CONCLUSION AND RECOMMENDATION

There are no implementation regulations for Article 66 of the UUPPLH, which serves as the legal basis for the protection of environmental activists. This reality has contributed to the escalation of criminalization cases against environmental activists. Therefore, it is necessary to reformulate legal protection for defenders of the right to a good and

healthy environment, including: revising Article 66 UUPPLH so that it does not give rise to multiple interpretations and can be implemented; the need for redefinition related to the concept of legal protection for environmental defenders or the concept of Anti-SLAPP, it is essential that there is seriousness and synergy among all elements, both government and society; and, finally, ensuring that there is a

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