

Reconstructing Anti- Strategic Lawsuits Against Public Participation Regulation: A Legal-Political Response to 'Rubber Articles' and Democratic Regression in Indonesia's Criminal Justice System

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Abstract

Introduction: This study analyzes the systemic threat of Strategic Lawsuits Against Public Participation (SLAPPs) to Indonesian democracy, particularly how 'rubber articles' within the criminal law are weaponized to silence dissent.

Purposes of the Research: The research evaluates the legal politics perpetuating SLAPPs and proposes the urgent establishment of comprehensive, cross-sectoral Anti-SLAPP regulations. Employing qualitative doctrinal legal research with statute, conceptual, and comparative approaches.

Methods of the Research: The method used in this study is qualitative doctrinal legal research to examine criminal law practices. The research comprehensively integrates three main approaches, namely a statute approach, a conceptual approach, and a comparative approach. Primary and secondary legal materials were collected through structured documentary study and analyzed prescriptively.

Findings of the Research: it finds that multi-interpretable norms in the Electronic Information and Transactions Law and Criminal Code, coupled with a lack of early dismissal mechanisms, create a chilling effect and undermine constitutional rights. This research recommends legal reconstruction through the adoption of Anti-SLAPP regulations, including constitutional threshold tests and cost-shifting rules, to protect democratic integrity and restore the rule of law. **Keywords:** Anti-SLAPP; Legal Politics; Rubber Articles; Criminalization; Constitutionalism.

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INTRODUCTION

The Constitution of the Republic of Indonesia normatively places sovereignty in the hands of the people as the main pillar of a democratic state based on the rule of law (demokratische rechtstaat). The guarantee of freedom of expression and public participation as stipulated in Article 28E paragraph (3) of the 1945 Constitution is not merely a decorative text, but a vital instrument in maintaining the mechanism of checks and balances. However, contemporary legal discourse in Indonesia is currently faced with a worrying paradox: criminal law, which should protect human rights, has instead transformed into a weapon to stifle citizens' critical voices.

The phenomenon of Strategic Lawsuits Against Public Participation (SLAPPs) has now metastasized like a "cancer" in Indonesian democracy. Like cancer cells that systematically destroy healthy tissue, SLAPPs exploit loopholes in the criminal justice system to stifle public scrutiny. SLAPP-based lawsuits or criminal reports are not intended to seek

substantive justice, but rather are designed to intimidate, drain economic resources, and discourage critical actors from pursuing the grueling legal process.¹ The escalation of criminalization against human rights defenders, environmental activists, and academics in Indonesia demonstrates that SLAPPs are no longer merely a legal coincidence or a residue of law enforcement officials' ignorance. Rather, the use of this criminal instrument has shifted into a structured legal-political strategy. In a political landscape tending toward "illiberal democracy," the law is often commodified by alliances between corporate oligarchs and political elites to protect their political-economic interests from public criticism.²

The use of "rubber" articles in the Electronic Information and Transactions Law and the defamation articles in the Criminal Code are concrete manifestations of this legal political strategy. The vague boundaries (vagueness) in these criminal norms grant excessive discretion to law enforcement officials, who in practice often side with those in power. This situation exacerbates the chilling effect, where the public resorts to self-censorship due to the ever-present threat of criminalization.³ The structural nature of SLAPPs in Indonesia is also evident in the absence of an early dismissal mechanism in our criminal procedure code. The current justice system allows manipulative criminal complaints to proceed to trial, with no protection for defendants fighting for their constitutional rights. The absence of comprehensive anti-SLAPP regulations reflects the legislature's reluctance to create a safe space for public participation, which in turn weakens the resilience of the national constitution.⁴ Theoretically, SLAPPs constitute an abuse of legal power that violates the principle of equality before the law. When the law is used to serve the interests of an elite minority and suppress critical voices, the law loses its moral legitimacy. If left unchecked, the cancer of SLAPPs will slowly kill the cells of democracy, leaving procedures devoid of substance, and transforming a state based on the rule of law into a state governed by law.⁵

The study of protecting public participation from the threat of criminalization has become a significant topic in Indonesian legal literature. In their research, Handayani et al. mapped the diverse nature of the SLAPP phenomenon in Indonesia, encompassing not only civil lawsuits but also criminal complaints targeting activists.⁶ Furthermore, Maharani and Sari highlighted that the current Anti-SLAPP policy has not been effective in preventing the criminalization of people who fight for the right to a healthy environment.⁷ On the other hand, Haikal emphasized the need to optimize legal protection based on Anti-SLAPP as a vital instrument to protect activists from retaliatory litigation.⁸ Although previous research has provided a strong foundation for the existence of SLAPPs, there are gaps in the analysis

¹ Raynaldo Sembiring. "Merumuskan Peraturan anti strategic Lawsuit against public participation di Indonesia." *Bina Hukum Lingkungan* 3, no.2 (2019): 186-203. <https://bhl-jurnal.or.id/index.php/bhl/article/view/93>

²Thomas Power and Eve Warburton. *Democracy in Indonesia: From Stagnation to Regression*, (Singapore: ISEAS-Yusof Ishak Institute, 2020), p.189.

³A. Siagian. *Rekonstruksi Regulasi Perlindungan Hukum Jurnalistik Dalam Rangka Kebebasan Pers Berbasis Nilai Keadilan*. Disertasi. Universitas Islam Sultan Agung, 2024

⁴Daffa Habiburrohm And Arief Rachman Hakim. "Rekonstruksi Mekanisme Anti-SLAPP Dalam Penegakan Hukum Lingkungan: Tinjauan Yuridis Kesenjangan Prosedural Dalam UU No. 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana." *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 5, no.2 (2026): 267-284. <https://doi.org/10.24198/litra.v5i2.2731>

⁵Eko 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): 141-162. <https://doi.org/10.22304/pjih.v8n1.a7>

⁶Marsya Mutmainah Handayani, Julio Castor Achmadi, And Prilia Kartika Apsari. "Berbagai Wajah Fenomena SLAPP di Indonesia." *Jurnal Hukum Lingkungan Indonesia* 8, no.1 (2021): 152-192. <https://doi.org/10.38011/jhli.v8i1.369>

⁷Farhanas Maharani And Indah Sari. "Efektifitas Kebijakan Anti-Slapp Di Indonesia Untuk Mencegah Kriminalisasi Peran Serta Masyarakat Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup Yang Baik Dan Sehat." *Lex Omnibus: Jurnal Hukum Tata Negara Dan Administrasi Negara* 1, No.2 (2024): 14-30. <https://jurnal.dokterlaw.com/index.php/lexomnibus/article/view/84>

⁸Muhamad Fikri Haikal. "Optimalisasi Perlindungan Hukum Berbasis Anti-SLAPP Terhadap Kriminalisasi Aktivis Lingkungan Hidup." *Unizar Law Review* 7, no.2 (2024): 103-113. <https://ulr.unizar.ac.id/index.php/ulr/article/view/73>

that need to be filled. Most current studies tend to limit their analysis to the environmental protection sector (as stipulated in Article 66 of the Environmental Protection and Management Law) or are descriptive in nature regarding the effectiveness of existing regulations. Few studies have in-depthly linked the national criminal law policy that maintains "rubber articles" with the phenomenon of democratic backsliding at the national level, as well as how to formulate a cross-sectoral anti-SLAPP legal reconstruction (cross-sectoral anti-SLAPP framework).

The novelty of this research lies in its proposed reconstruction of anti-SLAPP regulations, no longer sector-specific (only on environmental issues), but rather systemically integrated into national criminal procedure law. This research positions the anti-SLAPP instrument as a "constitutional shield" that requires judicial authorities to conduct a bad faith threshold test from the pre-trial stage to mitigate abuse of authority. Therefore, this study is expected to provide theoretical contributions in enriching the discourse of democratic criminal law politics, as well as practical contributions in the form of policy recommendations for lawmakers to break the chain of criminalization that harms people's sovereignty. Based on the above background, the author chose the title: "Legal Politics of Rubber Articles and the Decline of Democracy: Reconstruction of Anti-SLAPP Regulations in Indonesian Criminal Justice."

METHODS OF THE RESEARCH

This research uses a qualitative doctrinal legal research method with a critical approach to criminal law norms and practices in Indonesia.⁹ In order to comprehensively analyze the SLAPP phenomenon, this study integrates three main approaches: the statute approach, the conceptual approach, and the comparative approach.¹⁰ The legislative approach is used to analyze the inconsistencies between the articles in the Electronic Information and Transactions Law and the Criminal Code against the constitutional mandate of Article 28E paragraph (3) of the 1945 Constitution. Meanwhile, the conceptual approach is applied to deconstruct the use of law as an instrument of repression through the theories of Penal Populism and Chilling Effect.¹¹ The main data sources in this research are primary and secondary legal materials.¹² Primary legal materials include the constitution, criminal laws, and court decisions relevant to the criminalization of activists in Indonesia. Secondary legal materials were obtained through a literature search of reputable journals (such as Scopus, Web of Science, and HeinOnline) to obtain the latest theoretical discourse on global anti-SLAPP regulations. The legal materials were collected through a systematic documentary study, which was then validated using legal source triangulation to ensure the objectivity of the analysis.¹³ Data analysis was carried out using prescriptive-analytical content analysis techniques.¹⁴ Researchers not only describe prevailing norms but also critically evaluate the

⁹Aristo Marisi Adiputra Pangaribuan. "Metode Wawancara dalam Penelitian Hukum Doktrinal dan Sosio-Legal." *Undang: Jurnal Hukum* 6, No.2 (2023): 351-383. <https://doi.org/10.22437/ujh.6.2.351-383>

¹⁰Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, (Jakarta: Kencana, 2017), p. 133.

¹¹ [Mark Austin](#) Walters, *Criminalising Hate: Law as Social Justice Liberalism*, edis, 1 (Landon: Palgrave Macmillan Cham, 2022), p. 222.

¹²Undari Sulung and Mohamad Muspawi. "Memahami sumber data penelitian: Primer, sekunder, dan tersier." *Edu Research* 5, No.3 (2024): 110-116. <https://doi.org/10.47827/jer.v5i3.238>

¹³ Wiyanda Vera Nurfaejrian, Muhammad Wahyu Ilhami, Arivan Mahendra, Muhammad Win Afgani, and Rusdy Abdullah Sirodj. "Triangulasi data dalam analisis data kualitatif." *Jurnal Ilmiah Wahana Pendidikan* 10, No. 17 (2024): 826-833. <https://doi.org/10.5281/zenodo.13929272>

¹⁴ Muhamad Akbar. *Harmonisasi Hukum Integrasi Rantai Pasok Sistem Logistik Nasional Dalam Transformasi Pengelolaan Kepelabuhanan= Harmonization Of Supply Chain Integration Laws In The National Logistics System In Port Management Transformation*. Disertasi. Universitas Hasanuddin Makassar, 2025.

legal politics behind these regulations and their implications for protecting vulnerable groups. A comparative approach is employed by examining anti-SLAPP legislation mechanisms in other jurisdictions, such as the United States and the Philippines, to formulate an adaptive policy model for Indonesia's criminal procedure system.¹⁵ The entire analysis process aims to produce a theoretical synthesis that encourages the reconstruction of criminal law that is more democratic and protective of citizens' constitutional rights.

RESULTS AND DISCUSSION

A. The Political Anatomy of Rubber Articles: A Manifestation of Democratic Backsliding in the Criminal Justice System

The defense against the existence of "rubber" articles in Indonesia's criminal law landscape is not a legislative accident, but rather a conscious and calculated legal policy choice. Theoretically, legal policy is a directive for the formation of law, which is heavily influenced by the political configuration of those in power.¹⁶ In Indonesia, the tendency to maintain norms subject to multiple interpretations, such as those against insulting the president's dignity, defamation, and the spread of false news, in the Electronic Information and Transactions Law, demonstrates the political elite's desire for flexible "punishment instruments." This flexibility of norms grants law enforcement officials broad discretion to frame criticism as a criminal offense, systematically facilitating the practice of SLAPPs against critical public voices.

This phenomenon is a strong indicator of the democratic backsliding that is currently plaguing Indonesia's constitutional system. This decline did not occur through a drastic military coup, but rather through a gradual "melting" of democratic values within the legal system itself.¹⁷ The use of criminal law enforcement to serve the interests of power stability rather than protecting citizens' constitutional rights marks a shift from the rule of law to the rule by law. In this context, the law is no longer positioned as a constraint on power, but rather as a facilitator for elite interests to control the public narrative and mitigate potential civil disobedience. Furthermore, the persistence of these problematic articles reflects the strong influence of "Penal Populism," where criminal policies are often packaged as maintaining public order and morality, but are essentially tools of repression. Political elites use the rhetoric of protecting state symbols and social harmony as moral justification for criminalizing dissent.¹⁸ SLAPP practices then thrive in such a legal ecosystem; powerful actors with access to legal resources exploit the ambiguity of these provisions to initiate criminal proceedings aimed at weakening public participation economically and psychologically.

From a socio-legal perspective, the persistence of SLAPPs is closely linked to the strengthening alliance between corporate oligarchs and state power. In many cases, SLAPPs often arise in strategic sectors such as agriculture and the environment, where public criticism is perceived as a threat to smooth investment.¹⁹ Our criminal law, which still retains colonial roots, has proven highly compatible with these extractive interests. By maintaining repressive articles, the state indirectly provides the legal infrastructure for

¹⁵ Farhanas Maharani and Indah Sari. (2024), *Op. Cit.*

¹⁶ Moh. Mahfud MD. *Politik Hukum di Indonesia*, Cetakan ke-8 (Jakarta: Rajawali Pers, 2018), p. 1-2.

¹⁷ Steven Levitsky and Daniel Ziblatt, *How Democracies Die*, (New York: Broadway Books, 2018), p. 176-180.

¹⁸ John Pratt and Michelle Miao. "Penal populism: The end of reason." *Get Your Knee Off Our Necks: From Slavery to Black Lives Matter*. (Cham, Springer International Publishing, 2022), p. 111-140.

¹⁹ Thomas Power and Eve Warburton, (2020). *Op. Cit.*

capital holders to silence environmental rights defenders through intimidating criminal justice channels.

This trend also reveals an institutional failure to integrate constitutional values into organic legal norms. Although the 1945 Constitution has guaranteed freedom of expression since the amendments, national legal policy has often moved in a direction contrary to the spirit of constitutionalism.²⁰ There is a kind of "deliberate disharmony" between constitutional promises and the reality of criminal legislation. Elastic articles are maintained as a reserve of power for those in power to reach areas of criticism that cannot be quelled through discursive debate in the public sphere.

The impact of this pro-SLAPP legal policy creates a massive and structured chilling effect. When one or two critical figures are successfully prosecuted under these loose laws, the message of fear is automatically sent to all levels of society.²¹ Fear of criminalization leads to self-censorship, ultimately killing the democratic dialectic. This is where the SLAPP "cancer" has deeply damaged the very fabric of public participation, reducing Indonesian democracy to a mere electoral procedure devoid of any substance of effective public oversight.

Furthermore, the existence of the "rubber" clause reflects the legalized power imbalance within the criminal justice system. Under the SLAPP scheme, criminal law no longer operates on the principle of equality before the law but instead becomes an instrument for asserting social hierarchy.²² Vulnerable groups and activists are positioned as subjects who must be disciplined, while powerful actors using SLAPPs hide behind legitimate legal procedures. This imbalance is exacerbated by the burden of proof imposed by defamation laws, which often ignore the public interest as a justification.

The eighth paragraph highlights that this criminalization policy is often systemically discriminatory. Statistics show that environmental activists and human rights defenders are the groups most frequently targeted by this "rubber" article. This demonstrates that our criminal law policy is not neutral; it has a selective policy direction in choosing who needs to be protected and who needs to be silenced.²³ The state's failure to formulate clear boundaries in these articles constitutes a form of disregard for the principle of strict legality (*lex stricta*), which is the spirit of just criminal law.

In conclusion, the persistence of rubber-stamped provisions as SLAPP instruments in Indonesia reflects a legal policy that remains power-oriented rather than justice-oriented. This type of legal policy systematically betrays the mandate of reform and the ideals of a constitutional state based on the rule of law. As long as our criminal legislation paradigm places the protection of authority above the protection of individual rights, SLAPPs will continue to be a primary weapon in marginalizing critical voices, accelerating the decline of democracy, and undermining the integrity of the national legal system in the eyes of the international community.

²⁰ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Edisi Revisi (Jakarta: Sinar Grafika, 2021), p.284.

²¹ Ricki Rahmad Aulia Nasution, et al. "Analisis Dampak Strategic Lawsuit Against Public Participation (SLAPP) Terhadap Perlindungan Lingkungan di Indonesia." *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2024, No.1: 94-103. <https://doi.org/10.22304/pjih.v8n1.a7>

²² Putri Mayessa Vegatasia Soetiyono, Yunia Estisari, Shambawa Dharma Raditya, Samaya Dharma Mandala, and Anto Kustanto. "Strategic Lawsuit Against Public Participation (SLAPP) From Indonesian Law Perspective." *Lex Publica* 12, no. 1 (2025): 237-263. <https://doi.org/10.58829/lp.12.1.2025.296>

²³ Jessica Chandra. "A Comparative Study of Laws in Indonesia and Malaysia Pertaining to the Crime of Domestic Violence." *JlHK* 6, no. 2 (2025): 93-104. <https://doi.org/10.46924/jlhk.v6i2.238>

B. Constitutional Marginalization and the Failure of the Criminal Justice System as a Shield for Public Participation

The practice of criminalization through the SLAPP strategy in Indonesia has created systematic exclusion, leading to the constitutional marginalization of critical groups. Conceptually, constitutional marginalization occurs when fundamental rights guaranteed by the constitution, such as the right to information and the right to participate in government, are rendered meaningless by the looming threat of criminal prosecution.²⁴In this context, public participation is no longer seen as a pillar of democracy, but rather as a legal risk. Critical groups, particularly those working in the agrarian and anti-corruption sectors, are often forced to withdraw from the public sphere not because of the falsity of their arguments, but because of their inability to withstand the burden of manipulative judicial processes.

The SLAPP strategy works by exploiting the resource asymmetry between the complainant (a powerful actor) and the accused (a vulnerable group). This marginalization is palpable when activists or ordinary citizens must face legal proceedings that can take years, drain financial resources, and damage their social reputations.²⁵Constitutionally, this constitutes a violation of the right to fair legal certainty and protection from discriminatory treatment. However, Indonesia's current criminal justice system tends to ignore the motives behind reporting, allowing state instruments to be used for intimidating private interests.

The failure of the Indonesian criminal justice system to provide a protective mechanism (shield) is rooted in a rigid and narrow interpretation of the principle of legality in procedural law. Our current Criminal Procedure Code lacks an initial screening mechanism capable of detecting bad faith in a report at the pre-trial stage. As a result, any report that meets the formal elements of a crime, even if it substantively constitutes an attempt to silence a person, will be processed all the way to court. This lack of filtering makes the justice system not a place to seek justice, but rather an arena for powerful actors to carry out "character assassination" of civil disobedience.

Furthermore, the judge's role as guardian of the constitution is often undermined by a dominant legalistic-positivistic mindset. Many judges in SLAPP cases tend to focus solely on fulfilling the elements of the "rubber" articles without considering the context of human rights protection and the public interest the defendant is pursuing.²⁶In fact, within the framework of modern constitutionalism, judges should be able to apply the public interest defense doctrine as a justification or excuse. The judge's failure to recognize the SLAPP dimension in a criminal case reinforces the judiciary's position as part of this marginalizing structure.

In addition to failures at the trial stage, systemic failures also occur at the investigation and prosecution stages. Law enforcement officials often fail to distinguish between educational criticism and personal attacks. This is exacerbated by the lack of comprehensive internal guidelines for the police and prosecutors in handling cases involving public

²⁴Hartiwiningsih, Hartiwiningsih, Seno Wibowo Gumbira, and Jaco Barkhuizen. "Dysfunctional Factors of Environmental Law on Strategic Lawsuit Against Public Participation and Developing Remedial Strategies Through Reconstruction Criminal Law System Model in Indonesia." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 3 (2023): 2. <https://doi.org/10.22304/pjih.v10n3.a6>

²⁵Marsya Mutmainah Handayani, Julio Castor Achmadi, and Prilia Kartika Apsari. "Berbagai Wajah Fenomena SLAPP di Indonesia." *Jurnal Hukum Lingkungan Indonesia* 8, no. 1 (2021): 152-192. <https://doi.org/10.38011/jhli.v8i1.369>

²⁶Yudhitiya Dyah Sukmadewi, Endah Pujiastuti, Tri Mulyani, Supriyadi Supriyadi, and Kartika Widya Utama. "Penguatan Regulasi Anti-SLAPP Dalam Perlindungan Hukum Aktivis Lingkungan di Indonesia." *JURNAL USM LAW REVIEW* 9, no. 1 (2026): 475-495. <https://doi.org/10.26623/julr.v9i1.13110>

participation. Without an integrated anti-SLAPP policy, authorities often use their discretion to expedite legal proceedings against activists, while counter-reports from vulnerable groups are often halted at the investigation stage.

This marginalization also leads to the collapse of the democratic ecosystem at the local level. In areas rich in natural resources, SLAPPs are often used to break down indigenous resistance to corporate expansion.²⁷ When community leaders are criminalized, the entire community experiences collective trauma that halts their advocacy efforts. This is a particularly serious form of constitutional injury, where the state fails to fulfill its protective function and instead becomes a facilitator of repression through its own criminal justice system. Doctrinally, the Indonesian criminal justice system should adhere to the principle of substantive due process of law, not merely procedural. However, in the SLAPP case, what occurred was "process as punishment."²⁸ Prior to the judge's decision, the defendant had already experienced marginalization through detention, asset confiscation, and psychological pressure. The state's failure to prevent this abuse of legal process reflects a weak commitment to the ideals of a state based on the rule of law that upholds human dignity.

The absence of cross-sectoral anti-SLAPP regulations has resulted in partial and inconsistent legal protection in Indonesia. Although Article 66 of the Environmental Law provides some respite for environmental advocates, in practice, this article is often ignored as it is considered less powerful than purely criminal law. This disharmony demonstrates that our justice system lacks "immunity" to SLAPP attacks across issues ranging from corruption and cybercrime to consumer protection.

In conclusion, the constitutional marginalization experienced by critical groups is clear evidence that Indonesia's current criminal justice system is unable to function as a shield for public participation. Instead, it often serves as a weapon for elites to bypass civilian oversight. Without revolutionary procedural law reform and strengthening constitutional understanding among law enforcement officials, the justice system will continue to be trapped in a cycle of legitimizing criminalization, detrimental to popular sovereignty and the sustainability of democracy in Indonesia.

C. Reconstructing the Anti-SLAPP Regulation: Toward a Democratic and Protective Criminal Justice System

Reconstructing anti-SLAPP regulations in Indonesia requires a paradigm shift from punitive criminal law to protective criminal law. A crucial initial step is to explicitly integrate norms protecting public participation into national criminal procedure law (KUHP) and substantive law. Conceptually, an ideal anti-SLAPP regulation should act as a "circuit breaker" against any criminalization attempts lacking a substantive legal basis.²⁹ This aims to restore the dignity of the constitution which guarantees freedom of expression, so that citizens' critical voices are once again seen as an asset of democracy, not a criminal offense.

²⁷Thomas Power and Eve Warburton, (2020). *Op. Cit.*

²⁸Angelika Permata Adam, Arif Mahfudin Ibrahim, Tri Mega Putri Aruan, Nazwa Tolingguhu, Reza Al'Asfah, Tri Meutia Nur Auliya Palahuwata, Arini Labaka, and Hilal Perdana Maini. "Penerapan asas due process of law dalam hukum acara pidana di Indonesia." *Jurnal Hukum Bisnis (J-KUMBIS)* 4, no. 1 (2026): 16-27. <https://doi.org/10.37606/j-kumbis.v4i1.408>

²⁹Daffa Habiburrohm and Arief Rachman Hakim. "Rekonstruksi Mekanisme Anti-SLAPP dalam Penegakan Hukum Lingkungan: Tinjauan Yuridis Kesenjangan Prosedural dalam UU no. 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana." *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 5, no.2 (2026): 267-284. <https://doi.org/10.24198/litra.v5i2.2731>

A key component of this reconstruction is the adoption of an Early Dismissal mechanism, or early counterclaim, that allows judges to dismiss cases at an early stage before they even enter the main trial. In the criminal justice system, judges should be given the constitutionally mandated authority to conduct a "threshold test" on incoming complaints. If there are indications that the complaint was filed with malice (*mala fides*) to stifle public participation on an issue of public interest, the judge has the right to declare the complaint inadmissible. This mechanism would significantly reduce the burden on the judiciary and prevent the use of legal proceedings as a tool of psychological intimidation for activists.

In addition to procedural mechanisms, legal reconstruction must expand the doctrine of excusive and justificatory reasons through formal recognition of Public Interest Defense.³⁰ An ideal anti-SLAPP regulation should explicitly state that statements or actions taken to defend the public interest, human rights, or the environment are not subject to criminal penalties. This affirmation is crucial to providing legal certainty for citizens, ensuring they feel confident in conducting social oversight. With this material protection, the loose provisions of the Electronic Information and Transactions Law or the Criminal Code will no longer have unfettered reach, as they are limited by the protection of the public interest, which is hierarchically higher.

The importance of cost-shifting will also be a crucial tool in future anti-SLAPP regulations. Globally, parties found guilty of committing a SLAPP are often required to pay all legal costs incurred by the defendant/respondent, and may even be subject to punitive fines as a form of restitution.³¹ In Indonesia, this regulation needs to be adopted to create a deterrent effect for oligarchs and powerful actors, preventing them from recklessly using criminal instruments as a weapon. If the financial risks for SLAPP filers become too high, the frequency of legal use as a tool of intimidation is predicted to decrease drastically.

This reconstruction must also include strengthening the role of the Judicial Commission and the Supreme Court in formulating SLAPP Case Handling Guidelines for judges.³² These guidelines should guide judges in demonstrating constitutional sensitivity in examining the power relations between complainants and respondents. Judges should no longer be passive "mouths of the law," but rather legal activists capable of detecting attempts to silence democracy behind the trappings of normative articles. Ongoing education and training on international human rights standards are essential for law enforcement officers in this new system.

In a comparative perspective, Indonesia can adopt successful elements from the Rules of Procedure for Environmental Cases in the Philippines which already has a progressive Anti-SLAPP mechanism.³³ The Philippines allows defendants in environmental cases to file an anti-SLAPP defense, which must be decided by the court within 30 days. Adapting a similar mechanism to Indonesia's legal system, not only for environmental issues but also for corruption and human rights, would provide comprehensive protection. This comparison demonstrates that countries with similar legal systems are capable of making breakthroughs to safeguard their civil space.³⁴

³⁰Jimly Asshiddiqie. *Konstitusi Ekonomi*, Edisi Terbaru (Jakarta: Kompas, 2016), p. 145-152.

³¹Irawan Harahap, and Riantika Pratiwi. "Perkembangan pengaturan anti-SLAPP di bidang lingkungan hidup menurut hukum Indonesia." *Jotika Research in Business Law* 2, no.2 (2023): 83-89. <https://doi.org/10.56445/jrbl.v2i2.96>

³²Daffa Habiburrohim and Arief Rachman Hakim. (2026). *Op. Cit*

³³Lidya Nelisa. "Urgensi penguatan ketentuan prosedural anti-SLAPP di Indonesia untuk melindungi pembela HAM lingkungan dari serangan litigasi." *Jurnal Hukum Lingkungan Indonesia* 8, no.1 (2021): 118-151. <https://doi.org/10.38011/jhli.v8i1.373>

³⁴Irawan Harahap and Riantika Pratiwi. (2023). *Op. Cit*.

Furthermore, there needs to be regulatory synchronization between ministries and law enforcement agencies to create a "safe zone" for complainants or witnesses. SLAPPs often arise as a counterattack against citizens who report alleged corruption or environmental damage. Therefore, anti-SLAPP regulations must synergize with the Witness and Victim Protection Law to ensure that every individual participating in public participation enjoys legal immunity, both criminally and civilly. This synchronization will close the gap for powerful actors to carry out criminalization through various legal channels.

The ideal implementation of Anti-SLAPP regulations also demands transparency and public accountability in every police investigation process.³⁵ An effective complaint mechanism is needed if an investigator is deemed to have allowed SLAPPs to continue without investigating any indication of malice from the complainant. Strong external oversight will enhance the professionalism of law enforcement officers in handling sensitive cases, and minimize the potential for abuse of power.

In conclusion, the reconstruction of the Anti-SLAPP regulation is not merely a technical improvement to the law, but rather a political commitment to restore popular sovereignty to its rightful place. Constitutional integrity can only be restored if the state acts as a protector of critical and courageous voices. With a comprehensive Anti-SLAPP regulation, Indonesian criminal justice will transform from an instrument of marginalization to the final bastion of justice and democracy. This is a new direction for Indonesian criminal law policy that must be championed to ensure a more inclusive and dignified democratic future.

CONCLUSION

Indonesian criminal law politics currently stands at a worrying crossroads between the ideals of constitutionalism and the reality of legalistic repression. The defense against the existence of loose provisions in criminal legislation is not merely a normative residue, but rather a structured legal political strategy designed to facilitate SLAPPs as instruments for silencing critical voices. This phenomenon demonstrates a real democratic backsliding, where the rule of law is being misused as a tool of power to marginalize vulnerable groups and constitutional activists. Indonesia's current criminal justice system has proven to be a failure as a shield for public participation due to the absence of early protection mechanisms capable of filtering malicious reports. The entrapment of law enforcement officials within a rigid legal positivism paradigm has resulted in the legal process being transformed into punishment itself (process as punishment). Without fundamental legal reconstruction through comprehensive anti-SLAPP regulations, citizens' constitutional rights to freedom of expression will continue to be eroded by the "cancer" of criminalization, which in turn will undermine the integrity of Indonesian democracy in the eyes of the international community

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