

ARTICLE

THE URGENCY OF STATE PROTECTION FOR FREEDOM OF SPEECH AND OPINIONS FROM STRATEGIC LAWSUIT THREATS AGAINST PUBLIC PARTICIPATION

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Abstract

Freedom of association, assembly, and expression of opinion is guaranteed through various regulations in Indonesia. However, in its implementation, violations of freedom of speech and expression of opinion are still common. Cases concerning violations of free speech and expressing opinions also often come from attempts with the goal of silencing, referred to as Strategic Lawsuit Against Public Participation (SLAPP). There were many examples of this, such as the case experienced by Budi Pego and Joko Hariono. The SLAPP phenomenon is not new in Indonesia and globally. In the practice of some countries, anti-SLAPP rules are the answer. However, anti-SLAPP rules useful for protecting freedom of speech and expressing opinions do not yet exist broadly. There are two formulations of the problem in this study, namely, first, how was the practice of SLAPP and the state protection of freedom of speech and expression in Indonesia today? Second, what was the concept of establishing anti-SLAPP law regulations to optimize the regulation for the protection of freedom of speech and expression to protect human rights? This research was a type of normative research in decision analysis. The approaches used were a statutory approach, a conceptual approach, and a comparative one. The findings of this study were that SLAPP practices occur in Indonesia, but the empowered rules to prevent SLAPP threats to freedom of speech and expression do not yet exist. In addition, the study also found that courts have also not been empowered to protect these freedoms.

Keywords: Freedom of speech, freedom of expressing opinion, SLAPP, anti-SLAPP



A. Introduction

Human rights as stated by John Locke are rights that are given directly by God the Creator as natural rights.¹ Meanwhile, based on Article 1(1) of Law Number 39 of 1999 concerning Human Rights (UU HAM):

“ Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity. ”

If we look at both definitions, human rights are all rights inherent in humans, including the right to life, the right to speak, the right to express opinions in public, and the right to receive an education. These rights are basic rights for human life and cannot be separated from and in human life.² Especially in the right to freedom of speech and expression, Cato said, “If a person cannot speak of his own will, that person can hardly do anything of his will alone.”³

Freedom of speech and expression of opinion in Indonesia are regulated in Article 28E(3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that “Everyone has the right to freedom of association, assembly, and expression of opinion”. Its fulfillment was then also realized in Article 25 of the Human Rights Law and Law Number 9 of 1998 concerning Freedom of Expression of Opinion in Public (Law on Freedom of Expression of Opinion). Although several of these regulations have guaranteed the normative fulfillment of freedom of speech and expression of opinion, in its implementation this is often considered less than optimal.

SLAPP (Strategic Litigation Against Public Participation) in practice is one of the threats to the protection of freedom of speech and expression in Indonesia. SLAPP itself is a term developed by Canan and Pring in 1988.⁴ According to Canan and Pring, SLAPP is:

*“ a lawsuit involving communications made to petition for a governmental action or outcome, which results in a baseless suit filed against individuals or non-governmental organizations, on a substantive issue of some public interest or social significance. ”*⁵

1 Marzuki, *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2017), pp. 3

2 *Ibid.*

3 Sandra Coliver. *Buku Pedoman ARTICLE 19 tentang Kebebasan Menyampaikan Pendapat*. (Inggris: Article 19 Center against Censorship, 1993).

4 Marzuki, *Loc.Cit.*

5 Penelope Canan dan George W. Pring. “Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative And Qualitative Approaches”, *Law & Society Review* 22, Nomor 2 (1988): pp. 385-395.



SLAPP happens in Indonesia. First example, the case involving Saiful Mahdi, an academic in Aceh who was found guilty by the court for defamation after criticizing the educational institution where he worked.⁶ Second, the case involving Bintang Emon, who was threatened and reported to the Ministry of Communication and Information of the Republic of Indonesia for criticizing the demands in the Novel Baswedan case.⁷ These two cases are classified as SLAPP because they were systematic attempts to silence people through the use of legal mechanisms and judicial facilities against freedom of speech and expression, which has been guaranteed by Article 28E UUD 1945, Article 19(2) of the International Covenant on Civil and Political Rights which has been ratified through Law 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights, Article 25 of the Human Rights Law and the existence of the Freedom of Expression Law. In addition environmental cases sees the criminalization of environmental activists, including 21 cases of criminalization in 2014, 8 case in 2015, 49 cases in 2016, and 54 cases in 2017 and in civil lawsuits alone so far there has been 1 case in 2013.⁸

SLAPP is currently not only happening in Indonesia, but also in other countries such as America, Canada, and the Philippines. SLAPP is thus a real threat to freedom of speech and expression globally.⁹ Therefore, many countries have finally formed anti-SLAPP regulations to respond to this and in order to protect freedom of speech and expression. Anti-SLAPP regulations themselves are “rules that function to complicate, limit, or even close the possibility for anyone to file a lawsuit or lawsuit that is solely intended to silence freedom of expression”.¹⁰ In this case, America, Ontario (Canada), and the Philippines have formed anti-SLAPP regulations.

What about Indonesia? In Indonesia, anti-SLAPP regulations actually already exist in some form, namely in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). However, this is still sectoral in scope, namely in relation to environmental protection and management.¹¹ This means that there is no comprehensive definition and regulation related to anti-

6 Zakki Amali. "Dosen Unsyiah Saiful Mahdi Divonis 3 Bulan Karena Kritik Kampus", <https://tirto.id/dosen-unsyiah-saiful-mahdi-divonis-3-bulan-karena-kritik-kampus-ePZb>. (accessed 19 April 2022).

7 Sahid Hadi. "Bintang Emon is Getting SLAPP-ed", <https://www.cnnindonesia.com/nasional/20200619113234-13-515121/bintang-emon-is-getting-slapp-ed>, (diakses accessed 20 April 2022).

8 Sembiring Raynaldo. "Merumuskan Peraturan Anti Strategic Lawsuit Againsts Public Participation Di Indonesia", *Jurnal Bina Hukum Lingkungan* 3, Nomor 2 (2019): pp. 195.

9 *Ibid.*, pp. 192.

10 *Ibid.*

11 Sembiring Raynaldo, *Loc. Cit.*



SLAPP, in the sense of covering freedom of speech and expressing opinions in general. Despite in reality, SLAPP phenomenon having occurred many times in Indonesia.¹²

The purpose of this study is to determine the practice of SLAPP in Indonesia and analyze state protection of freedom of speech and expression. This study ultimately also offers a concept for the formation of anti-SLAPP law regulations to optimize the regulation of protection. freedom.

B. Research Methodology

This research is normative research. The types of data used consist of primary legal materials and secondary legal materials. Primary legal materials are binding legal materials, consisting of norms or basic rules, laws and regulations. This refers to the UUD 1945, Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, Law Number 39 of 1999 concerning Human Rights, Law Number 9 of 1998 concerning Freedom of Expression in Public, Law of the Republic of the Philippines S. B no. 3080, *Anti-Slapp Advisory Panel Report to The Attorney General Ontario (Canada)*, and *Chapter 55. Strategic Lawsuit Against Public Participation* § 16–5501. The decisions used in this study consist of Decision Number 314/Pid.B/2015, Decision Number 559/Pid.B/2017/PN.Dyw, Decision Number 174/PID/2018/PT.SBY, and Supreme Court Decision No. 1567 K/Pid. Sus/2018. Furthermore, secondary legal materials are used in this study which consist of materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, such as scientific works of legal and non-legal scholars/experts, previous research results, journals, and minutes of decisions.

This study uses three approaches. *First*, a legislative approach that examines laws and regulations related to freedom of speech and expression as basic reference material in conducting research. *Second*, a conceptual approach that begins by identifying existing doctrinal principles or views and then gives rise to a new definition of SLAPP. *Third*, a comparative approach is used to compare anti-SLAPP regulations in the United States, the Philippines, and Ontario (Canada).

12 Business & Human Rights Resource Centre. “Strategic Lawsuits Against Public Participation: Southeast Asia Cases & Recommendations For Governments, Businesses, & Civil Society”, <https://www.business-humanrights.org/en/from-us/briefings/strategic-lawsuits-against-public-participation-southeast-asia-cases-recommendations-for-governments-businesses-civil-society/>(accessed 20 April 2022).



C. Results and Discussion

1. SLAPP Practices and State Protection of Freedom of Speech and Opinion in Indonesia

One of the state's obligations towards human rights is realized by protecting the freedom of speech and expressing opinions of each individual. As stated in Article 28I paragraph (4) of UUD NRI 1945, the protection, advancement, enforcement and fulfillment of human rights is the responsibility of state. Manfred Nowak argues that the obligation to protect must also be understood as the state's obligation to protect its people from actions by third parties (including individuals) that have the potential to violate human rights. This means that the obligation to protect human rights has two dimensions, namely the dimension of prevention against actions by third parties that have the potential to violate human rights and the dimension of restitution when third parties have violated human rights.¹³ In the context of speech and expression, this obligation requires states to prevent various forms of violations of freedom of speech and expression, including violations arising from SLAPPs.

Freedom of speech and expression is one of many human rights. Freedom of speech and expression will encourage society to respect differences of opinion and mutual criticism so that dynamic dialogue is possible towards the advancement of people's way of thinking so that the country becomes more democratic. Freedom of speech and expression is interpreted as free ideas or thoughts.¹⁴ According to R. Herlambang Perdana Wiratraman, freedom of speech and expression is not granted by the state. Therefore, there is no privilege *to* limit the state to limit human rights, especially since the state is built on the basis of this freedom.¹⁵ So that freedom of speech and expression does not cause conflict, then in expressing intentions it must be done properly and correctly, not containing inflammatory or hateful speech, expressing opinions in polite language and as much as possible providing suggestions on the problems being criticized. Conflicts over freedom of speech can be influenced by persons responding or reacting poorly, judging that the communication is not good. In expressing our opinions, we should be able to accept the shortcomings

13 United Nation Human Rights Office of High Commissioner. Guiding Principles on Business and Human Rights. Implementing the United Nation "Protect, Respect, and Remedy" Framework. (Geneva:United Nation, 2011), pp. 3.

14 Sabela Amira Rahma dan Dina Wahyu Pritaningtias,"Kajian Freedom of Speech and Expression dalam Perlindungan Hukum terhadap Demonstrasi di Indonesia". *Lex Scientia Law Review* 1, Nomor 1 (November, 2017): pp. 83.

15 Suhendri. "Pemenuhan Hak Kebebasan Berekspresi di Indonesia" (Tesis Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Bandar Lampung, 2019), pp. 39.



that are corrected and then fixed, instead of exaggerating the problem.¹⁶

Freedom of speech and expression has been guaranteed through various regulations, as mentioned in the previous sub-chapter. However, the existence of these laws is not sufficient to protect citizens from SLAPP attacks.¹⁷

People who exercise their freedom of speech and express their opinions in some cases often get counterclaims and/or countersuits from the criticized party. This responses may be in the form of SLAPP. which is used to prevent or punish other parties who use the right to speak and express opinions in public.¹⁸ SLAPP in its development is carried out in the form of criminal lawsuits, civil lawsuits, and administrative actions. This is primarily intended to intimidate, threaten, and/or cause fear for the victim. This action can eliminate/silence Freedom of speech and express opinions of public participation.¹⁹

There are several cases that have become *milestones* for *SLAPP* in Indonesia. This is reflected in the case of Dr. Rignolda Djamaludin. Dr. Rignolda is an environmental expert who focuses on marine environmental issues who was asked to testify according to his expertise in the Buyat Bay pollution case allegedly carried out by PT Newmont Minahasa Raya (PT. NMR). In addition to testifying in court, Dr. Rignolda also conveyed his opinion to the media according to his expertise and partisanship as an environmental activist. In his testimony, Dr. Rignolda stated that there was indeed pollution in Buyat Bay which caused Minamata disease suffered by the people living around Buyat Bay. Dr. Rignolda's testimony and statement finally made PT NMR sue Dr. Rignolda for defamation. An example of the case experienced by Dr. Rignolda is one form of SLAPP. Dr. Rignolda in his capacity as a member of the community, expert, and environmental activist conveyed his opinion which was then "responded" to with a lawsuit by PT. NMR.²⁰

Another SLAPP case happened to Budi Pego and Joko Hariono, who were sued for exercising their rights in freedom of speech and opinion.

First, the Budi Pego case. This case began on Monday, April 3, 2017, when protesters from villages around Mount Salakan blocked gold mining activities

16 Sabela, Amira Rahma, *Op. Cit.*, pp. 82-83.

17 Sofia Aya."Strategic Lawsuit Against public Participation dalam Hukum Perlindungan Konsumen"(Sripsi Fakultas Hukum Program Ilmu Hukum Kekhususan Hukum Tentang Kegiatan Ekonomi Universitas Indonesia, 2016), pp.104.

18 *Ibid.*,pp. 58.

19 Raynaldo Sembiring. "Kriminalisasi atas Partisipasi Masyarakat: Menyisir Kemungkinan terjadinya SLAPP terhadap Aktivistis Lingkungan Hidup Sumatera Selatan", *Jurnal Hukum Lingkungan 1*, Nomor 1 (Februari, 2021): pp. 212-213.

20 *Ibid.*, pp. 214.



carried out by PT Bumi Sukses Indonesia (BSI). This action was carried out in order to defend the rights of the community, especially the right to a good and healthy environment. This is because PT BSI's operational activities had a negative impact on the community. The protesters made banners containing writings related to the rejection of mining activities carried out by PT BSI at Budi Pego's house. Budi Pego and other protesters began their action after the banner containing the rejection was completed. The next day, Budi Pego was suddenly called by the police to be questioned for information about the existence of a hammer and sickle image that was unknowingly used on one of the banners used during the action.²¹ Because of this, Budi Pego was named a suspect and tried for crimes against state security because he was suspected of spreading communist teachings. Budi Pego is threatened with criminal charges under Article 107a Law Number 27 Year 1999 Concerning Amendments to the Criminal Code Relating to Crimes Against State Security.

The judge who tried this case in his decision accepted the fact that the demonstration was carried out in order to reject mining activities and also recognized the right to a good and healthy environment as a constitutional right. However, the judge rejected the legal aspect of holding the demonstration because it did not meet the formal-procedural requirements for holding a demonstration in Indonesia. In addition, the judge in his considerations also rejected the use of Article 66 of the Environmental Protection Law as immunity for Budi Pego.

Budi Pego was convicted through Decision Number 559/Pid.B/2017/PN.Dyw. This decision was also strengthened by Decision Number 174/PID/2018/PT SBY and Supreme Court Decision No. 1567 K/Pid.Sus/2018.

Second, the case of Joko Hariono. This case began when Joko Hariono made a comment in a closed Facebook group on November 10, 2013, writing "*Nek pimpinane bowo modele koyok buto*". This comment was made because the company did not pay full wages at that time and the company did not give its employees the opportunity to earn other income outside. Then, the comment made by Joko Hariono caused controversy, because the main director of the company where Joko Hariono worked, Budi Kusmarwoto, felt insulted and his good name was tarnished, and considered the comment to have a negative impact on the company. So, Budi Kusmarwoto reported Joko Hariono on the basis of defamation through electronic media under Article 27(3) *in conjunction* with Article 45(1) of Law

21 Putusan Nomor 559/Pid.B/2017/PN.Dyw, hlm. 40-41; lihat juga Putusan Nomor 174/PID/2018/PT SBY; lihat juga Putusan Mahkamah Agung Nomor 1567 K/Pid.Sus/2018.



Number 11 of 2008 concerning Electronic Information and Transactions.²²

The judge ruled failure to prove the charges. According to the judge, Joko Hariono was not at fault because he did not specifically mention the name Budi Kusmarwoto in his comments.²³ In addition, the judge in his consideration also mentioned that the elements requiring the content be of insulting and/or defamatory nature were not fulfilled. The judge finally in Decision Number 314/Pid.B/2015 acquitted Joko Hariono.

Based on the two cases above, the Budi Pego and Joko Hariono cases are clearly SLAPP cases. The Budi Pego case is a SLAPP because Budi Pego carried out a demonstration which is actually part of the freedom of speech and expression, but he had to be silenced using the criminal law mechanism. Meanwhile, the Joko Hariono case is a SLAPP because the commenting activity he did on Facebook is also a form of freedom of speech and expression. However, if the decisions on the two cases above are observed, the judges did not at all use the guarantee of fulfillment of freedom of expression as a legal basis in their considerations when deciding. In fact, in the Joko Hariono case, an expert in the field of freedom of speech and expression had explained that Joko Hariono's actions were part of human rights that should be protected by the state. However, the judges did not adequately use the articles relating to freedom.

This clearly shows that the protection of freedom of speech and expression in Indonesia still has serious problems at the court level. *First*, this is because the guarantee of fulfillment of freedom of speech and expression is not supported by other normative rules that are useful for preventing the threat of SLAPP. *Second*, at the practical level, the court as representation country not yet capable use articles related to the guarantee of freedom of speech and expression in Indonesia. So, the court in this case has not fully become a tool of power that carries out the function of preventing violations of freedom of speech and expression from third parties, especially from the SLAPP trap.

2. The Concept of Anti-SLAPP Law Regulation to Optimize the Regulation of Protection of Freedom of Speech and Expression of Opinions as an Effort to Protect Human Rights in National Legal Development

The obligation to guarantee protection for freedom of speech and

22 Decision Number 314/Pid.B/2015/PN. KRS., pp. 3 and 14–17.

23 Ibid., pp. 17–18.



expression is a state obligation. Philosophically, this obligation must be in line with the second principle which states “just and civilized humanity”.²⁴ In this case, according to Kaelan, the term humanity contained in the second principle of Pancasila morphologically means “conformity with human nature”.²⁵ Thus, the second principle of Pancasila demands that the implementation of government, the formation of national legislation and other aspects of national-scale statehood must be in accordance with human rights value.²⁶ In addition, Indonesia is a democratic State of Law as stated in Article 1(3) of the UUD 1945, which means that everything must be based on applicable law. Therefore, in order to realize one of the goals of the state as stated in the fourth paragraph of the Preamble to the UUD 1945 which states “Protecting the entire Indonesian nation and all of Indonesia’s territory”, Indonesia as a state of law in forming legislation must be adequate and based on norms and values that are in accordance with its people.

If we refer to the SLAPP practices in the previously mentioned cases, the state’s obligation to protect people’s freedom of speech and opinion is not yet optimal. This is because there is no comprehensive anti-SLAAP regulation in Indonesia.

SLAPP itself has become a global phenomenon and many states now seek to overcome this bad practice. Historically, Washington DC was recorded as the US State to form regulations related to anti-SLAPP, namely in 1989.²⁷ Then, this was also followed by several other countries such as the province of Ontario (Canada). This proves that the sociological-global practice of forming anti-SLAPP regulations as a solution to prevent threats coming from SLAPP is a response to SLAPP. Meanwhile, in ASEAN, based on the Business and Human Rights Resource Center (BHRRC) report in March 2020, only the Philippines has regulations related to anti-SLAPP to date.²⁸ In fact, based on BHRRC research on SLAPP in ASEAN, anti-

24 Fariz Imam Fahreza.”Perlindungan kebebasan Berekspresi di Yogyakarta studi Pembatasan Berekspresi Mahasiswa Papua”(Skripsi Fakultas Hukum Universitas Islam Indonesia, 2018), pp. 77.

25 Kaelan. *Filsafat Pancasila Pandangan Hidup Bangsa Indonesia*. (Yogyakarta: Paradigma, 2002).

26 Hadi. “Konstruksi Teoritis Tanggung Jawab Korporasi Terhadap Pelanggaran Hak atas Lingkungan Hidup dalam Kerangka Hukum Bisnis dan Hak Asasi Manusia”(Skripsi, Fakultas Hukum Universitas Islam Indonesia, 2018) pp.129.

27 *Loc.cit.*

28 *Loc.cit.*



SLAPP regulations are urgently needed to be formed by every country in ASEAN.²⁹

Indonesia has basic anti-SLAPP regulations in Law No. 32 of 2009 concerning Environmental Protection and Management which states “everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or civilly” however, its nature is still sectoral.³⁰ The main concept to be achieved in this writing is to optimize the regulation of protection of freedom of speech and expression as an effort to protect human rights in the development of national law by offering a concept of regulatory arrangements related to anti-SLAPP. The mechanisms that can be taken are:

First , formulate an adequate definition of SLAPP in Indonesia. This aims to formulate regulations that are in accordance with Indonesian conditions. Meanwhile, as previously mentioned, currently there are several countries that have implemented regulations related to anti-SLAPP such as America, Ontario (Canada), and the Philippines. ³¹As a comparison, the definition of SLAPP itself in the Republic of the Philippines law S. B no. 3080 *Sec. 4 Definition of Terms*, is:

“Strategic Lawsuit Against Public Participation” or SLAPP includes any civil complaint, counter-claim, cross-claim, third (fourth, etc.) - party complaint, or complaint-in-intervention, criminal complaint or information, or administrative complaint filed against individual or individuals, groups, labor unions, entity or associations, community residents, or the like by reason or arising out of their exercise of freedom of speech, expression, or of the press, or of the right of the people peaceably to assemble, or petition the government for redress of grievances in matters of public concern, and is intended to harass, vex, or silence individual or individuals, groups, labor unions, entity or associations, community residents, or the like, or exert undue pressure on them, or deplete their resources.”

The Government of Ontario (Canada), later, provided another definition that could be We Look in *AntiSlap Advisory Panel Report to The Attorney General in Ontario (Canada)*, which was subsequently adopted in *the Protection of Public Participation Act 2013*, as mentioned:

“...a lawsuit initiated against one or more individuals or groups that speak out or take a position on an issue of public interest. SLAPPs use the court system to limit the effectiveness of the opposing party’s speech or conduct. SLAPPs can intimidate opponents, deplete their resources, reduce their ability to participate in public affairs, and deter others from participating in discussion on matters of public interest”

29 *Op.cit*, pp. 16.

30 *Op.cit*.pp.198.

31 *Ibid* . pp.192.



The two definitions above show the different types of SLAPP legal actions. In the Philippines, *the Rules of Proceures for Environmental Cases* define SLAPP as a criminal, civil and even administrative legal action. While in Canada it only provides legal protection in the field of civil lawsuits. This means that the possibility of SLAPP in Canada is only in civil lawsuits.³² Furthermore, America defines SLAPP as stated in *Chapter 55 Strategic Lawsuit Again Public Participation* § 16–5501, namely:

(1) "Act in furtherance of the right of advocacy on issues of public interest" means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) "Claim" includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(3) "Issue of public interest" means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) "Personal identifying information" shall have the same meaning as provided in § 22-3227.01(3).

Furthermore, the definition of SLAPP in America shows that America interprets SLAPP as an action of complaint against parties who defend or use their right to express themselves on matters relating to the public

32 Loc.cit



interest, such as parties who give their voice to topics being discussed by the legislature, health and safety, public figures, social, and economic.

If we look at the definition of SLAPP from several countries and pay attention to the SLAPP phenomenon in Indonesia, the definition of SLAPP that the author offers is as follows:

SLAPP is a lawsuit, complaint, and/or report based on civil, criminal, or administrative law directed at a person/group of people and/or non-governmental institutions that use their rights verbally or in writing in expressing public interest issues, as a form of effort to silence freedom of speech and expression of opinion.

In this case, the “public interest issue” referred to by the author is “issues related to health or safety, environmental welfare, economy, social, and politics that are of public concern or concern the livelihoods of many people and the sustainability of national life”. The breadth of meaning of this definition needs to be studied more deeply by considering the cases that occur and using the judge’s conviction as a form of limitation on the scope of SLAPP in Indonesia. Such as in the social and political fields, namely criticism conveyed in relation to legislation that is being formed or designed by the legislative institution. Then, another example related to environmental welfare is the criticism conveyed regarding areas that will be used as mining areas, such as the Budi Pego case.

Second , the concept of anti-SLAPP law regulation. The broad scope of SLAPP requires a separate regulation for its regulation. This regulation is intended to optimize in terms of protecting and respecting the right to freedom of speech as mandated by the constitution. Anti-SLAPP regulation needs to be regulated in law, because the fulfillment and protection of freedom of speech and expression must be based on the will of the people. This is because the people are the owners of freedom of speech and expression (*the right holder*). In the Indonesian constitutional system, the will of the people is represented by the People’s Representative Council, whose legal product is law. So, axiomatically the law becomes a legal product that actually gets legitimacy for this regulation.

The content of the material that the author offers in the regulation of anti-SLAPP laws at least includes:

- a. General provisions, which contain definitions.
- b. The regulated content material contains principles and objective.
- c. Position Subject.
- d. Scope SLAPP.



- e. The scope of anti-SLAPP, this is related to guarantees of legal protection for freedom of speech and opinion so that everyone who exercises their freedom of speech and opinion is free from threats.
- f. Government obligations and responsibilities.

The regulation of this law is expected to be a solution to the less than optimal implementation of the regulation of freedom of speech and expression of opinion in Indonesia. This is a form of effort to help maximize the development of national law based on human rights owned by every human being.

D. Conclusions & Recommendations

Based on the description in the discussion, it can be concluded as follows. *First*, the practice of SLAPP in Indonesia actually occurs through judicial forums, but the state's function is not yet adequate in protecting freedom of speech and expression, both at the level of normative legislation and judicial practice. *Second*, the concept of forming an anti-SLAPP law can be started by defining SLAPP according to the Indonesian context, followed by a conceptual format in principle for the law in accordance with the legislation. The definition and conceptualization of the formation of this anti-SLAPP law also has philosophical, legal, and sociological relevance. From a philosophical perspective, this is related to one of the goals of the state and the second principle of Pancasila. To achieve one of the goals of the state, there needs to be a regulation made based on human rights values to protect the Indonesian nation itself, by forming an anti-SLAPP law. From a legal perspective, this refers to Article 28E(3) of the UUD 1945.

Based on the conclusions above, several suggestions can be made. First, for the executive and legislative institutions, it is important to maximize the space for the public to express their freedom of speech and express their opinions. This can be done by jointly forming an anti-SLAPP law whose definition of SLAPP is in accordance with the construction of this study. Meanwhile, for judges, it is recommended to make human rights the basis of the approach in deciding every case examined in trial.

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