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Beyond Legal Formalism: Protecting Environmental Defenders from Eco-SLAPPs through Progressive Legal Theory

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A B S T R A C T

This article examines the limitations of legal formalism in protecting environmental defenders from strategic lawsuits against public participation in environmental disputes (Eco-SLAPPs). It advances a progressive legal framework that prioritizes substantive justice over procedural rigidity. Employing normative legal research with statutory, conceptual, and case approaches, the study qualitatively analyzes Article 66 of Indonesia's Environmental Protection and Management Law, relevant judicial decisions, and policy documents from 2009 to October 2026. The concepts examined are legal formalism, progressive law, access to justice, and anti-SLAPP protection. The analysis indicates that formalistic interpretation permits retaliatory litigation despite statutory safeguards. A progressive approach strengthens judicial recognition of public participation, supports early dismissal of abusive claims, and reinforces effective protection for environmental defenders.

INTRODUCTION

Environmental defenders play a fundamental role in safeguarding ecological sustainability, promoting governmental accountability, and ensuring meaningful public participation in environmental governance. Their activities frequently involve challenging environmentally destructive development projects, exposing regulatory violations, and advocating for communities affected by pollution and resource exploitation. Nevertheless, these efforts often expose environmental defenders to intimidation, criminalization, and retaliatory legal proceedings. Evidence from 2,743 documented environmental conflicts worldwide demonstrates that environmental mobilization is frequently accompanied by criminalization and violence (Scheidel et al., 2020). The repression of environmental defenders also reflects broader inequalities in environmental governance (Middeldorp & Le Billon, 2019). These circumstances reveal a fundamental contradiction: individuals exercising legally recognized environmental rights may simultaneously become targets of legal mechanisms intended to maintain justice and public order.

One manifestation of this contradiction is the growing use of Strategic Lawsuits Against Public Participation in environmental disputes, commonly referred to as Eco-SLAPPs. Such actions involve the instrumentalization of legal proceedings to discourage environmental advocacy, suppress public criticism, or impose disproportionate financial and psychological burdens on individuals and communities. Unlike ordinary litigation aimed primarily at resolving genuine legal disputes, Eco-SLAPPs may operate as instruments of intimidation by exploiting procedural complexity and inequalities between litigating parties. Their consequences extend beyond individual defendants because retaliatory proceedings can discourage broader public engagement in environmental decision-making. From an environmental justice perspective, meaningful participation constitutes an essential dimension of justice alongside distributive equity and recognition (Schlosberg, 2004). Accordingly, protecting environmental defenders requires more than formally recognizing their rights; it demands effective safeguards against the misuse of legal processes.

Indonesia provides a particularly relevant context for examining this problem. Article 28H(1) of the 1945 Constitution recognizes the right to a good and healthy environment, while Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management establishes protection against criminal prosecution and civil litigation for individuals defending environmental rights. However, the existence of these normative guarantees has not eliminated the vulnerability of environmental defenders to retaliatory proceedings. Previous research has identified fundamental difficulties in translating anti-SLAPP principles into an effective Indonesian regulatory framework and highlighted the weaknesses of procedural safeguards against abusive litigation (Nelisa, 2022; Sembiring, 2019). These studies suggest that the principal challenge does not lie exclusively in the absence of legal recognition but also in the discrepancy between statutory protection and its practical enforceability.

Indonesia's anti-SLAPP framework has subsequently undergone significant normative development. Supreme Court Regulation Number 1 of 2023 introduced judicial guidelines for adjudicating environmental cases, while Minister of Environment and Forestry Regulation Number 10 of 2024 specifically addressed legal protection for individuals defending the right to a good and healthy environment. More importantly, Constitutional Court Decision Number 119/PUU-XXIII/2025 clarified the protective scope of Article 66, extending its interpretation to victims, complainants, witnesses, experts, and environmental activists participating in environmental protection or pursuing legal remedies. The Court also emphasized protection against retaliation through criminal prosecution, civil litigation, and other legal measures while preserving judicial independence. Despite these developments, the central question remains whether expanded normative protection necessarily produces effective protection throughout criminal and civil proceedings.

This problem becomes particularly significant when examined through the relationship between legal formalism and substantive justice. Legal formalism emphasizes adherence to established rules, procedural requirements, and legally recognized classifications. Although such an approach can promote predictability and consistency, excessive reliance on formal legal categories may obscure the broader context and retaliatory purposes of litigation. Formalism should not be regarded as inherently undesirable because legal rules serve legitimate functions in constraining judicial discretion (Schauer, 1988). Nevertheless, formal legal reasoning becomes problematic when procedural compliance is treated as sufficient justification without adequately examining whether legal proceedings undermine constitutionally protected participation. In Eco-SLAPP disputes, this tension arises when environmental advocacy is assessed exclusively through the formal elements of alleged offences or civil claims, while the possibility of retaliatory litigation receives insufficient consideration.

Progressive legal theory offers an alternative perspective by emphasizing the social purposes of law and the primacy of human welfare over rigid textual interpretation. Progressive law conceptualizes legal institutions as instruments serving humanity rather than requiring human interests to submit unconditionally to legal formalities (Rahardjo, 2016). This perspective encourages legal actors to respond critically to the limitations of conventional interpretation and to consider the broader social consequences of legal decisions (Aulia, 2018). Applied to environmental protection, progressive legal reasoning requires judicial authorities to consider the public-interest character of environmental advocacy, inequalities between litigants, and the potential chilling effects of retaliatory proceedings. However, progressive interpretation should not eliminate procedural safeguards or judicial independence. Its legitimacy depends on integrating substantive justice with reasoned interpretation, evidentiary accountability, and legal certainty.

Existing Indonesian scholarship has examined several dimensions of anti-SLAPP protection. Previous studies have investigated regulatory deficiencies and the urgency of strengthening Indonesia's anti-SLAPP framework (Kamal et al., 2024). Other research has examined whether anti-SLAPP protection functions as a ground for excluding criminal liability or terminating prosecutorial authority (Firdaus & Aziz, 2025). Recent scholarship has also evaluated anti-SLAPP effectiveness through the interrelationship of legal substance, institutional structure, and legal culture (Sukmadewi et al., 2026), while another study proposed recognizing environmental defence as a potential justification in criminal proceedings (Wardana et al., 2026). These contributions have considerably advanced the understanding of anti-SLAPP protection. Nevertheless, they leave room for a more focused theoretical examination of how formalistic legal reasoning itself may reproduce procedural vulnerability and how progressive legal theory can provide a coherent interpretive framework without undermining legitimate adjudication.

Against this background, this article addresses two interconnected questions: how does legal formalism constrain the effective protection of environmental defenders against Eco-SLAPPs in Indonesia, and how can progressive legal theory reconstruct anti-SLAPP protection toward substantive environmental justice? Employing normative legal research through statutory, conceptual, and case-based approaches, the study examines relevant legal instruments, judicial decisions, and scholarly literature within the period 2009–October 2026. Its principal contribution lies in developing a progressive anti-SLAPP interpretive framework integrating early identification of retaliatory proceedings, contextual assessment of environmental advocacy, and proportionate judicial protection. Rather than rejecting legal formalism entirely, the proposed approach reorients procedural interpretation toward its constitutional and ecological purposes. By connecting progressive legal theory with operational anti-SLAPP safeguards, this article seeks to advance a model of environmental justice in which legal certainty and substantive protection function as mutually reinforcing principles.

LITERATURE REVIEW

Legal Formalism and the Limits of Procedural Neutrality

Legal formalism refers to legal reasoning that places significant weight on the language of authoritative rules, established classifications, and the procedural conditions governing adjudication. It promises consistent decisions while limiting judicial subjectivity. Formalism therefore should not be equated with injustice: rule-bound decision-making can safeguard legal certainty and restrain arbitrary power (Schauer, 1988). Difficulties arise, however, when adherence to legal form prevents decision-makers from recognizing the social purpose of a rule or the context in which legal procedures are employed.

In disputes involving environmental advocacy, ostensibly neutral criminal charges or civil claims may operate within relationships characterized by substantial asymmetries of economic resources and institutional influence. A strictly element-based assessment might determine whether the formal requirements of an allegation have been met while overlooking whether the proceedings primarily seek to punish protected participation. The relevant theoretical problem is consequently not whether procedural rules should be abandoned, but whether they can be interpreted consistently with the constitutional purpose of protecting public participation. A critical approach must distinguish legitimate enforcement of rights from the strategic deployment of otherwise lawful procedures.

Eco-SLAPPs and Environmental Participation

The SLAPP concept originated in scholarship examining how civil litigation can redirect political disagreements into costly judicial proceedings and thereby inhibit public participation (Canan & Pring, 1988). Environmental disputes are especially susceptible because advocates often challenge projects supported by financially powerful actors. Litigation can impose legal expenses, consume time, damage reputations, and deter participation regardless of the eventual outcome. This deterrent or chilling effect extends to individuals who have never been sued but anticipate similar retaliation (Preston, 2014).

The importance of anti-SLAPP safeguards thus exceeds the protection of individual defendants. Such mechanisms can influence environmental participation and enforcement (Norman, 2010). Recent empirical research on climate litigation in the United States likewise suggests that the existence of anti-SLAPP protection affects the jurisdictions in which advocates pursue corporate climate claims (Arvan, 2026). These findings support understanding anti-SLAPP rules as part of the institutional conditions for effective environmental participation rather than merely as defenses raised after litigation has commenced.

In Indonesia, Article 66 of Law Number 32 of 2009 supplies a substantive foundation for protecting those defending environmental rights. Yet the effectiveness of such recognition depends on procedures capable of identifying retaliatory claims before the burdens of prolonged proceedings defeat its purpose. Comparative research on Indonesia, California, and the Philippines has highlighted the need for stronger procedural protection (Nelisa, 2022). Identification of an Eco-SLAPP cannot rely solely on self-identification: courts must assess the connection between the impugned activity and public-interest participation, alongside objectively ascertainable indications of retaliation.

Progressive Legal Theory as an Interpretive Framework

Progressive legal theory, associated with Satjipto Rahardjo, challenges the assumption that faithful implementation of legal texts necessarily produces justice. It understands law as an institution oriented toward human dignity and social welfare, rather than an autonomous system whose formal operation is an end in itself (Rahardjo, 2016). Subsequent scholarship clarifies that progressive adjudication requires contextual and socially responsive interpretation, while also warning that the label "progressive" should not excuse unreasoned departures from legal standards (Aulia, 2018).

Applied to Eco-SLAPPs, this theory offers a basis for interpreting protective provisions in light of the democratic and ecological functions of environmental advocacy. Its orientation is consistent with an account of environmental justice that treats meaningful participation and recognition as essential alongside distributive outcomes (Schlosberg, 2004). Nevertheless, progressive reasoning must operate through identifiable legal criteria, transparent justification, and respect for opposing parties' procedural rights. The conceptual synthesis adopted in this article therefore connects three analytical dimensions: the public-interest character of environmental participation, objective indicators of retaliatory legal action, and proportionate procedural responses. This synthesis provides a theoretical foundation for evaluating whether anti-SLAPP protection can preserve legal certainty while preventing formal procedures from being used to suppress environmental rights.

METHODOLOGY

This study employs normative legal research using a qualitative doctrinal design to assess whether Indonesia's anti-SLAPP framework adequately protects environmental defenders and how progressive legal theory may inform its interpretation. Normative legal research evaluates legal norms, principles, and judicial reasoning through authoritative legal materials rather than measuring social outcomes through fieldwork (Marzuki, 2021). Three complementary approaches are applied: statutory, conceptual, and case-based analysis.

The statutory approach examines Article 28H(1) of the 1945 Constitution and Article 66 of Law Number 32 of 2009 on Environmental Protection and Management, including relevant amendments under Law Number 6 of 2023. It also examines Supreme Court Regulation Number 1 of 2023 on Guidelines for Adjudicating Environmental Cases and Minister of Environment and Forestry Regulation Number 10 of 2024 on legal protection for environmental defenders. Particular attention is given to whether these instruments provide clear standards for identifying retaliatory proceedings, determining procedural responses, and protecting legitimate access to courts.

The conceptual approach analyzes legal formalism, progressive law, substantive environmental justice, and the chilling effect of litigation. These concepts are operationalized through three analytical dimensions: the connection between the defendant's conduct and public-interest environmental participation; objective indications that legal proceedings serve a retaliatory purpose; and the availability of timely, proportionate procedural protection. The analysis draws on doctrinal scholarship and peer-reviewed literature to assess how these dimensions can be reconciled with legality, evidentiary safeguards, and judicial independence.

The case approach uses purposive selection of judicial decisions directly addressing the legal protection of environmental participation. The principal materials comprise Bangka Belitung High Court Decision Number 21/Pid/2021/PT BBL, Semarang High Court Decision Number 374/PidSus/2024/PT Smg and its cassation decision Number 6459 K/Pid.Sus/2024, and Constitutional Court Decision Number 119/PUU-XXIII/2025. These decisions are selected for their relevance to anti-SLAPP interpretation, rather than as a statistically representative sample of Indonesian environmental litigation.

The documentary observation period extends from the enactment of Law Number 32 of 2009 to October 2026. Primary materials consist of legislation, implementing regulations, and published judgments; secondary materials comprise scholarly articles and legal treatises. Materials are analyzed through systematic legal interpretation and qualitative comparison of normative protections, judicial reasoning, and procedural consequences. Findings are synthesized prescriptively to propose an interpretive framework for recognizing and addressing Eco-SLAPPs. As a doctrinal study, it does not claim to measure the prevalence of retaliatory litigation or empirically establish the effectiveness of particular safeguards.

RESEARCH RESULT

Normative Development of Anti-SLAPP Protection in Indonesia

The examination of Indonesia's environmental legal framework reveals a gradual transition from general statutory recognition toward more specific procedural protection. Article 66 of Law Number 32 of 2009 establishes that individuals defending the right to a good and healthy environment cannot be subjected to criminal prosecution or civil lawsuits for their protected participation. However, the original provision did not establish comprehensive procedural mechanisms for distinguishing legitimate litigation from retaliatory legal proceedings. Consequently, the effectiveness of statutory immunity remained closely dependent on judicial interpretation and the procedural stage at which protection was recognized.

A significant development occurred through Supreme Court Regulation Number 1 of 2023. Articles 48–51 provide judicial guidance concerning civil claims directed against environmental participation, including opportunities to raise anti-SLAPP objections and obtain preliminary judicial consideration. Meanwhile, Articles 76–78 address anti-SLAPP protection in criminal proceedings. Article 77 expressly allows defendants whose alleged conduct has been established to receive a release from all legal charges when their activities qualify as protected environmental advocacy. These provisions represent an important development because they translate the substantive protection of Article 66 into identifiable judicial procedures.

Minister of Environment and Forestry Regulation Number 10 of 2024 further introduced administrative mechanisms for identifying retaliatory actions and providing legal assistance. Its protection framework encompasses individuals, environmental organizations, academics, experts, indigenous communities, and other recognized participants. Nevertheless, administrative protection and judicial determination operate through different institutional procedures. This distinction indicates that recognition of protected environmental activities does not automatically prevent the initiation or continuation of judicial proceedings.

Judicial Findings: Formalistic Adjudication and Environmental Advocacy

Judicial decisions demonstrate how the interpretation of environmental participation influences the practical effectiveness of anti-SLAPP protection. In *Robandi et al.*, Bangka Belitung High Court Decision Number 21/Pid/2021/PT BBL concerned community representatives opposing pollution associated with tapioca production. The defendants were prosecuted following their participation in activities challenging the environmental consequences of industrial operations. Although the defendants invoked anti-SLAPP protection, the Sungailiat District Court convicted them without substantively addressing their environmental defence. On appeal, the Bangka Belitung High Court reversed the conviction and recognized their conduct as participation in protecting environmental interests. The appellate court consequently released the defendants from criminal charges pursuant to Article 66 of Law Number 32 of 2009 (Bangka Belitung High Court, 2021).

The comparison between the two judicial levels reveals a significant difference in legal reasoning. The first-instance proceedings concentrated on the alleged criminal conduct, whereas the appellate court examined its relationship to environmental participation. The case demonstrates that the recognition of protected activities can alter the legal consequences of conduct otherwise assessed through ordinary criminal provisions. A similar interpretive divergence emerged in the prosecution of Daniel Frits Maurits Tangkilisan, an environmental activist who criticized shrimp farming activities in Karimunjawa. Jepara District Court Decision Number 14/Pid.Sus/2024/PN Jpa imposed imprisonment and a fine under electronic information legislation. However, Semarang High Court Decision Number 374/PidSus/2024/PT Smg reversed the

conviction after examining the environmental context of the contested expression.

The appellate court considered the defendant's environmental advocacy and the broader public interest associated with preventing ecological degradation. Applying Article 66 and Article 77 of Supreme Court Regulation Number 1 of 2023, it released the defendant from all legal charges. The Supreme Court subsequently upheld the appellate judgment through Decision Number 6459 K/Pid.Sus/2024 (Semarang High Court, 2024; Supreme Court of Indonesia, 2024). These decisions demonstrate that anti-SLAPP protection has influenced judicial outcomes. Nevertheless, both cases required appellate intervention after adverse first-instance judgments. The observed limitation therefore concerns not only the availability of substantive protection but also its timing within criminal proceedings.

Constitutional Expansion and Early Judicial Intervention

A further development emerged through Constitutional Court Decision Number 119/PUU-XXIII/2025. The Court determined that the previous explanation of Article 66 unduly restricted protection to victims or complainants pursuing legal remedies concerning environmental damage. Such an interpretation was inconsistent with the broader statutory recognition of environmental participation. The Constitutional Court therefore adopted a constitutionally required interpretation extending protection to individuals involved in environmental advocacy, including victims, complainants, witnesses, experts, and environmental activists. It also clarified that prohibited retaliation may involve criminal prosecution, civil litigation, or other legal measures, subject to the preservation of judicial independence (Constitutional Court of Indonesia, 2025).

This judgment establishes that anti-SLAPP protection must be interpreted according to the substantive character of environmental participation rather than exclusively through predetermined classifications of eligible applicants. The decision strengthens the constitutional foundation for assessing the purposes and consequences of legal proceedings affecting environmental defenders. An additional development appeared in Cibinong District Court Decision Number 212/Pdt.G/2025/PN Cbi. The proceedings concerned a civil lawsuit against environmental experts Bambang Hero Saharjo and Basuki Wasis arising from their expert testimony in environmental litigation. Through a preliminary ruling delivered in October 2025, the court accepted the defendants' objections and declared the claim inadmissible under the anti-SLAPP framework (Cibinong District Court, 2025).

Unlike the criminal appellate decisions, this civil case demonstrates the practical availability of early judicial intervention. It therefore provides evidence that Indonesian procedural law already permits preventive protection in certain circumstances, although the application of comparable safeguards differs between civil and criminal proceedings.

Identified Gaps in Procedural Protection

The comparison of statutory provisions, administrative arrangements, and judicial decisions produces three principal findings. First, substantive legal protection has developed more rapidly than uniform mechanisms for identifying retaliatory proceedings. The regulatory framework recognizes environmental advocacy as protected participation, but different institutional procedures govern how this protection becomes effective.

Second, procedural protection differs between civil and criminal cases. Supreme Court Regulation Number 1 of 2023 provides for preliminary consideration of anti-SLAPP objections in civil proceedings, while Article 77 expressly contemplates release after examination of the merits in criminal cases. The resulting distinction creates different levels of exposure to prolonged litigation despite the existence of comparable protected environmental interests.

Third, the administrative protection mechanism under Ministerial Regulation Number 10 of 2024 requires an application, documentary assessment, and institutional determination. Substantive assessment may take up to 60 days following completion of the application. Although this mechanism provides additional protection, a ministerial determination does not itself replace judicial authority to terminate litigation.

Overall, the findings reveal a developing but procedurally differentiated anti-SLAPP system. Constitutional interpretation has expanded substantive protection, and judicial regulations have created mechanisms for its implementation. However, the effectiveness of these safeguards remains dependent on timely recognition of environmental participation and coordination between administrative institutions and courts. These findings provide the doctrinal foundation for examining whether progressive legal reasoning can strengthen procedural protection without compromising legal certainty and judicial independence.

DISCUSSION

Legal Formalism and Its Limitations in Protecting Environmental Defenders against Eco-SLAPPs

The findings demonstrate that the principal challenge confronting environmental defenders in Indonesia extends beyond the availability of legal protection to the manner in which such protection is interpreted and implemented. Although Article 66 of Law Number 32 of 2009 explicitly protects individuals defending environmental rights, its application remains vulnerable to legal formalism that prioritizes procedural compliance over the substantive purposes of environmental justice. This condition exposes a fundamental contradiction: legal proceedings designed to uphold justice may simultaneously function as instruments for suppressing legitimate environmental participation.

Legal formalism traditionally emphasizes the application of established rules, statutory classifications, and procedural requirements. Such characteristics are essential for maintaining legal certainty, predictability, and institutional accountability. However, the assumption that formal compliance necessarily produces just outcomes overlooks the social circumstances underlying particular disputes (Schauer, 1988). In environmental conflicts, the procedural neutrality of legal institutions becomes problematic when legal processes are strategically employed by economically or politically influential actors to discourage public criticism. Consequently, the legitimacy of legal proceedings cannot be determined exclusively through their conformity with formal procedural requirements.

Eco-SLAPPs illustrate this difficulty because their coercive effects frequently arise from the litigation process itself rather than its ultimate outcome. The substantial costs of legal representation, psychological pressure, reputational damage, and prolonged uncertainty may discourage environmental defenders from continuing their activities. Such consequences create a chilling effect that extends beyond individual defendants and potentially weakens collective participation in environmental governance (Canan & Pring, 1988; Norman, 2010). Therefore, eventual acquittal or release from criminal charges does not necessarily eliminate the harm associated with retaliatory proceedings.

This structural limitation is reflected in the judicial treatment of environmental defenders in Indonesia. The appellate proceedings involving Robandi and Daniel Frits demonstrate that the environmental context of allegedly unlawful conduct may receive greater recognition at later judicial stages. Although appellate intervention ultimately provided protection, the necessity of pursuing such remedies reveals the limitations of protection that becomes effective only after substantial procedural burdens have materialized. These decisions indicate that the central problem concerns not merely the interpretation of criminal provisions but also the timing of judicial recognition of protected environmental participation.

The difficulty becomes more pronounced when the unequal relationship between litigating parties is considered. Environmental defenders frequently engage in disputes involving corporations, governmental interests, or other institutionally powerful actors. Formal equality before the law does not necessarily eliminate substantial inequalities in financial resources, access to legal representation, and capacity to sustain prolonged proceedings. Environmental justice consequently requires attention to participation and recognition alongside the distribution of environmental benefits and burdens (Schlosberg, 2004). A legal framework that ignores these inequalities may formally guarantee equal treatment while permitting materially unequal consequences.

Indonesia has progressively strengthened its anti-SLAPP framework through Supreme Court Regulation Number 1 of 2023, Minister of Environment and Forestry Regulation Number 10 of 2024, and Constitutional Court Decision Number 119/PUU-XXIII/2025. Nevertheless, the existence of multiple protective instruments does not automatically ensure their consistent implementation. Their differing institutional functions and procedural mechanisms may create uncertainty regarding the appropriate stage and authority for recognizing retaliatory litigation. Previous research has identified procedural deficiencies and difficulties in transforming statutory anti-SLAPP guarantees into effective protection (Nelisa, 2022; Sembiring, 2019).

An important distinction exists between civil and criminal proceedings. Articles 49 and 50 of Supreme Court Regulation Number 1 of 2023 provide mechanisms for raising anti-SLAPP objections in civil litigation, including preliminary judicial determination. Criminal proceedings, meanwhile, involve different institutional mechanisms, including prosecutorial discretion under Prosecutorial Guideline Number 8 of 2022 and the possibility of release from legal charges under Article 77 of the Supreme Court Regulation. This distinction demonstrates that anti-SLAPP protection cannot be understood as a uniform procedural mechanism applicable identically across different jurisdictions.

The deconstruction of legal formalism therefore does not require abandoning legal rules or institutional safeguards. Rather, it requires reconsidering legal interpretation when procedural requirements are applied without sufficient regard to the constitutional purposes underlying environmental participation. The central weakness of excessive formalism lies in its potential failure to distinguish legitimate legal accountability from the instrumentalization of litigation for retaliatory purposes. Accordingly, the challenge is to establish an interpretive approach capable of preserving legal certainty while preventing legal procedures from undermining substantive environmental justice.

Reconstructing Anti-SLAPP Protection through Progressive Legal Theory

Progressive legal theory provides a conceptual foundation for reconstructing anti-SLAPP protection by challenging the assumption that the mechanical application of legal rules necessarily fulfills the purposes of justice. Its central proposition is that law exists to serve human welfare and must remain responsive to evolving social conditions. Legal institutions should therefore prioritize the protection of human dignity and substantive justice without disregarding the importance of legal certainty (Rahardjo, 2016). Applied to environmental governance, this perspective requires legal protection to extend beyond the formal recognition of environmental rights toward the prevention of legal practices that undermine their effective exercise.

The relevance of progressive legal theory lies in its capacity to reconnect legal interpretation with the social and constitutional functions of environmental participation. Environmental defenders do not merely pursue individual interests; their activities frequently contribute to ecological sustainability, public accountability, and the protection of collective rights. Consequently, retaliatory proceedings against environmental defenders may implicate broader constitutional interests that transcend the immediate dispute between litigating parties. Progressive legal reasoning requires these interests to be considered when determining whether a particular prosecution or lawsuit constitutes legitimate legal enforcement or an abusive restriction on public participation.

Nevertheless, progressive interpretation must not be equated with unrestricted judicial discretion. An excessively flexible approach may generate uncertainty, inconsistent decisions, and potential interference with legitimate legal claims. The implementation of progressive law therefore requires principled interpretation supported by transparent reasoning, identifiable legal criteria, and institutional accountability (Aulia, 2018). Accordingly, the reconstruction proposed in this article integrates progressive legal theory with procedural safeguards rather than treating substantive justice as justification for disregarding established legal requirements.

Constitutional Court Decision Number 119/PUU-XXIII/2025 provides an important normative foundation for this reconstruction. By broadening the interpretation of Article 66 to protect individuals participating in environmental protection, including complainants, witnesses, experts, and environmental activists, the Court emphasized the substantive nature of protected participation. Its simultaneous recognition of judicial independence establishes that anti-SLAPP protection must operate through legally accountable procedures. This constitutional interpretation supports a framework in which the identification of protected environmental activities, rather than rigid classifications of eligible individuals, becomes central to determining the availability of protection.

On this basis, this article proposes a Progressive Anti-SLAPP Review Framework, consisting of three interconnected stages: protected-participation identification, retaliatory-purpose assessment, and proportionate procedural response. These stages translate the human-centered orientation of progressive legal theory into an interpretive model capable of guiding institutional decision-making.

The first stage, protected-participation identification, determines whether the conduct underlying criminal or civil proceedings is substantially connected to the exercise of environmental rights. Relevant activities may include reporting pollution, criticizing environmentally harmful policies, providing expert testimony, organizing community advocacy, or participating in environmental decision-making. The assessment should emphasize the relationship between the challenged conduct and public-interest environmental protection rather than relying exclusively on the formal identity or institutional affiliation of the defendant. Importantly, preliminary protection should not require environmental defenders to conclusively establish environmental damage before their activities can be recognized as protected participation.

The second stage, retaliatory-purpose assessment, examines objectively identifiable circumstances indicating that legal proceedings may have been initiated primarily to suppress environmental advocacy. Relevant indicators include the proximity between environmental criticism and subsequent litigation, disproportionate demands for compensation, repeated proceedings arising from similar activities, documented intimidation, and attempts to discourage continued public participation. Nevertheless, the existence of economic inequality or an environmental dispute cannot independently establish retaliatory intent. Judicial authorities must evaluate the circumstances collectively while distinguishing legitimate legal claims from proceedings designed principally to intimidate environmental defenders.

The third stage, proportionate procedural response, concerns the selection of legally appropriate protective measures according to the available evidence and the authority of the relevant institution. Civil courts may utilize existing anti-SLAPP objection mechanisms under Supreme Court Regulation Number 1 of 2023. In criminal proceedings, investigators and prosecutors should identify potential retaliation through the mechanisms authorized by criminal procedural law and applicable prosecutorial guidelines. Where proceedings have reached adjudication, judges must consider whether the established conduct qualifies for protection under Article 66 and the relevant judicial regulations.

The implementation of this framework requires distinguishing existing legal authority from proposed procedural reform. Although Indonesia already recognizes several anti-SLAPP safeguards, the availability of early judicial intervention differs between civil and criminal proceedings. The implementation of Law Number 20 of 2025 concerning Criminal Procedure provides an opportunity to evaluate whether more coherent early-identification procedures are necessary. However, the creation of new powers to dismiss retaliatory criminal proceedings must be pursued through appropriate regulatory or legislative instruments rather than assumed to exist under current law.

The proposed framework contributes to existing scholarship by integrating three dimensions that are frequently examined separately: the substantive protection of environmental participation, the identification of retaliatory litigation, and the institutional mechanisms necessary to provide timely remedies. Previous studies have addressed regulatory weaknesses, procedural limitations, and the relationship between anti-SLAPP protection and criminal liability (Firdaus & Aziz, 2025; Kamal et al., 2024; Nelisa, 2022). The present reconstruction advances this discussion by organizing these concerns into a sequential model that connects the purpose of environmental protection with the timing and legal authority of institutional intervention.

Importantly, this reconstruction maintains the distinction between protection from retaliatory litigation and unconditional immunity from legal accountability. Individuals invoking anti-SLAPP safeguards must provide sufficient preliminary information connecting their activities to environmental participation and indicating possible retaliation. Judicial authorities must also preserve opportunities for opposing parties to respond and evaluate the evidence. Any procedural consequences must remain consistent with applicable legislation, evidentiary standards, and principles of judicial independence.

Ultimately, progressive anti-SLAPP protection should be understood as an effort to harmonize substantive environmental justice with the rule of law. Legal certainty and substantive justice are not inherently contradictory; their relationship becomes problematic only when procedural mechanisms are detached from the constitutional purposes they are intended to serve. By integrating contextual interpretation, objective indicators of retaliation, and proportionate institutional responses, progressive legal theory offers a framework for transforming anti-SLAPP protection from a predominantly reactive legal defence into a more preventive and accountable system. This reconstruction affirms that the legitimacy of environmental law depends not merely on the formal existence of protective provisions but on their capacity to secure meaningful environmental participation without sacrificing procedural fairness.

CONCLUSIONS AND RECOMMENDATIONS

First, legal formalism limits the effectiveness of Eco-SLAPP protection in Indonesia when procedural compliance is prioritized over the substantive purposes of environmental justice. Although Article 66 of Law Number 32 of 2009 and subsequent regulatory developments recognize environmental participation as a protected right, their implementation remains procedurally differentiated and dependent on institutional interpretation. Judicial decisions demonstrate that protection may become effective only after environmental defenders experience prolonged legal proceedings. Consequently, the fundamental weakness lies not merely in insufficient legal guarantees but in the inability of formalistic legal reasoning to identify retaliatory litigation at an appropriate procedural stage. Substantive environmental justice therefore requires legal protection capable of preventing the misuse of judicial processes without undermining legitimate legal accountability.

Second, progressive legal theory provides a conceptual foundation for reconstructing anti-SLAPP protection through a contextual, preventive, and rights-oriented interpretation of law. This study proposes the Progressive Anti-SLAPP Review Framework, integrating three interconnected stages: protected-participation identification, retaliatory-purpose assessment, and proportionate procedural response. The framework constitutes the article's principal contribution by translating progressive legal principles into structured criteria for institutional decision-making. Rather than rejecting legal certainty, this reconstruction positions substantive justice and procedural fairness as

complementary requirements for protecting environmental defenders while preserving judicial independence.

The Supreme Court should strengthen the consistent implementation of Supreme Court Regulation Number 1 of 2023 through technical judicial guidance, professional training, and standardized criteria for assessing retaliatory litigation. Prosecutors and investigators should incorporate preliminary anti-SLAPP assessments into existing legally authorized procedures, supported by documented reasoning and institutional accountability.

Legislators should consider establishing clearer statutory mechanisms for early identification and procedural protection in criminal Eco-SLAPP cases, including appropriate evidentiary standards and safeguards against misuse. Environmental authorities should improve coordination with law enforcement institutions, facilitate accessible reporting mechanisms, and strengthen legal assistance for environmental defenders. These reforms should prioritize timely protection, institutional coordination, and transparent judicial reasoning. Their implementation must preserve the right to pursue legitimate legal claims while ensuring that legal proceedings cannot be strategically employed to suppress constitutionally protected environmental participation.

ADVANCED RESEARCH

Future research should extend beyond the normative approach employed in this study by empirically examining the effectiveness of anti-SLAPP protection in Indonesian civil and criminal proceedings. Empirical investigations involving environmental defenders, judges, prosecutors, and legal practitioners could identify institutional obstacles, procedural inconsistencies, and the practical consequences of retaliatory litigation. Comparative studies examining anti-SLAPP mechanisms in the Philippines and the United States could provide further insights into the applicability of early-dismissal procedures within Indonesia's legal system. Additionally, subsequent research should evaluate the proposed Progressive Anti-SLAPP Review Framework through systematic analysis of judicial decisions, particularly its effectiveness in identifying protected environmental participation, detecting retaliatory motives, and determining proportionate procedural responses. Particular attention should be directed toward evidentiary standards, institutional coordination, and access to legal assistance. Such investigations would strengthen the empirical foundations of progressive environmental justice and support the development of more consistent, preventive, and accountable anti-SLAPP protection mechanisms.

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