

The Status of Anti Eco-SLAPP Provision from the Indonesian Criminal Law Perspective: Between Grounds for Dismissing Prosecution or Grounds for Excluding Punishment

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Abstract: Indonesia already has an anti-SLAPP provision in the environmental sector—known as anti eco-SLAPP—as regulated in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management. Despite this provision, its implementation remains inconsistent, leading to debate. This issue is inseparable from the perspective of criminal law, which recognizes both grounds for dismissing prosecution (*vervolgingsuitsluitingsgronden*) and grounds for excluding punishment (*strafuitsluitingsgronden*); thus, this study aims to provide conceptual clarity while asserting the status of the anti eco-SLAPP provision. This research falls under the category of normative legal research, prioritizing the use of secondary data, including primary and secondary legal materials. Based on the data used, the documentation study/library study technique with tools in the form of written materials as described was used and qualitatively analyzed. Reflecting on the case involving Daniel Frits Maurits Tangkilisan, this study demonstrates that, from the criminal law perspective, the anti eco-SLAPP provision in Indonesia functions both as grounds for dismissing prosecution and as grounds for excluding punishment. In the context of grounds for dismissing prosecution, the prosecution/indictment is inadmissible (*niet ontvankelijke verklaard*). Meanwhile, in the context of grounds for excluding punishment, the judge imposes a decision of dismissal of all legal charges (*ontslag van alle rechtsvervolging*).

Keywords: Environmental Defender, Freedom of Expression, Grounds for Dismissing Prosecution, Grounds for Excluding Punishment, SLAPP

I. Introduction

Currently, the world is facing various challenges related to environmental issues, such as climate change, depletion of natural resources, pollution (Martono et al., 2024, p. 2298), and deforestation (Smith & Nurse, 2025, p. 1). Environmental defenders continue striving to raise public awareness in encouraging sustainable lifestyles and combating environmental degradation (Droz, 2021, p. 60). However, these environmental defenders often experience restrictions on their freedom of expression and assembly (Smith & Nurse, 2025, p. 4) through efforts at criminalization, marginalization, silencing, as well as other forms of violence and injustice (Smith & Nurse, 2025, p. 2). One way to suppress the struggle for the right to a good and healthy environment is through criminalization (popularly meaning the wrongful application of criminal law enforcement) as known by the term Strategic Lawsuits against Public Participation (SLAPP).

Essentially, SLAPP constitutes a civil lawsuit and/or a criminal report (Indrawati, 2022, p. 116) filed by powerful parties with the aim of silencing their critics through protracted and costly legal proceedings (Arvan, 2026, p. 1). SLAPP is typically used as a tool to suppress public participation (Borg-Barthet & Farrington, 2024,

p. 840) expressed through freedom of expression in the fields of human rights, social justice, and environment by targeting journalists, activists, academics, and their organizations (Arvan, 2026, p. 6). The impacts of SLAPP practices are far-reaching. For environmental defenders, SLAPP causes financial burdens, psychological pressure (Anthony, 2009, p. 3), and damages to reputation (Arvan, 2026, p. 164). For the general public, this practice creates a “chilling effect,” silencing public debate and hampering community engagement (Arvan, 2026, p. 164). Meanwhile, for judicial institutions, its impact is to reduce the efficiency of case management. On a broader level, SLAPP also threatens freedom of expression and opinion (Arvan, 2026, p. 5).

In response to SLAPP practices, particularly in the field of environment, various countries have enacted anti eco-SLAPP laws as an effort to protect individuals from baseless SLAPP lawsuits. Such laws enable courts to promptly dismiss unfounded lawsuits (Chen et al., 2025, p. 387) against environmental defenders. Moreover, these laws significantly reinforce freedom of expression (Chen et al., 2025, p. 388) which is fundamentally guaranteed by the constitution (Lee et al., 2025, p. 368). In Indonesia, freedom of expression is guaranteed in the 1945 Constitution of the Republic of Indonesia, which states “Every person shall have the right to the freedoms of association and assembly, of expression of opinion.” (Article 28E paragraph (3) 1945 Constitution of the Republic of Indonesia). Within the anti eco-SLAPP framework, this freedom of expression receives protection in Article 66 of Law Number 32 of 2009 on Environmental Protection and Management (Law 32/2009), which stipulates that “Every person who strives for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly.” (Article 66 Law Number 32 of 2009 concerning Environmental Protection and Management). Although not a law that specifically regulates anti eco-SLAPP (Indrawati, 2022, p. 130, 2023, p. 309), the *a quo* article remains viewed as a progressive step in combating SLAPP.

The problem is that judges do not consistently apply the provision of Article 66 of Law 32/2009, leading to debate. Even though it has been reaffirmed by Constitutional Court Decision 119/PUU-XXIII/2025 that such protection is intended for “Every Person” (*vide* Constitutional Court Decision 119/PUU-XXIII/2025, pp. 128–130 & 135), judges tend to focus on the article charged by the public prosecutor without considering the environmental context underlying the case (Indrawati, 2022, p. 128). One such case involved Daniel Frits Maurits Tangkilisan. This situation is inseparable from the criminal law perspective, which recognizes both grounds for dismissing prosecution (*vervolgingsuitsluitingsgronden*) and grounds for excluding punishment (*strafuitsluitingsgronden*). Based on the above, this study will focus on analyzing the status of *a quo* article, whether as grounds for dismissing prosecution or as grounds for excluding punishment. This study is important not only to provide conceptual clarity but also to assert its implications for the struggle for the right to a good and healthy environment, especially when facing the potential criminalization of environmental defenders.

II. Research Method

This research, viewed from the standpoint of the data source, falls under the category of normative legal research, which prioritizes the use of secondary data (see Sumardjono, 2021, pp. 21–23): primary legal material in the form of Law Number 32 of 2009 concerning Environmental Protection and Management, Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases, and Jepara District Court Decision Number 14/Pid.Sus/2024/PN Jpa *jis*. Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG and Supreme Court Decision Number 6459 K/PID.SUS/2024; and secondary legal material in the form of references that discuss anti eco-SLAPP, grounds for dismissing prosecution (*vervolgingsuitsluitingsgronden*) and grounds for excluding punishment (*strafuitsluitingsgronden*). Based on the data used, the documentation study/library study technique, which utilizes written materials as tools (Sumardjono, 2021, p. 36), was employed. Since this research falls under the category of normative legal research, the researcher used a specific technique, namely content analysis, to conduct a qualitative analysis of the referred-to written materials (Sumardjono, 2021, p. 37).

III. Results and Discussions

As previously mentioned, one of the cases representing the debate in question is the case involving Daniel Frits Maurits Tangkilisan. As the defendant in the *a quo* case, Daniel Frits Maurits Tangkilisan was charged with committing a criminal act of “unlawfully distributing information intended to incite hatred against certain

community groups based on ethnicity, religion, race, and inter-group relations (*Suku, Agama, Ras, dan Antargolongan* [SARA])” as stipulated in Article 45A paragraph (2) *jo.* Article 28 paragraph (2) of Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 7).

The case began when Daniel Frits Maurits Tangkilisan made a post on his Facebook account about the condition of Cemara Beach in Karimunjava. The defendant then replied to comments from various parties on the post by saying “shrimp-brained people (*masyarakat otak udang*)” and “mosques built with shrimp farmers’ money (*masjid/mushola dibangun dari duit petambak*).” These statements resulted in several people from Karimunjava and Kemujan being offended and feeling insulted because the term “shrimp-brained people” is a metaphor for describing people as stupid. Furthermore, the words “mosques built with shrimp farmers’ money” were also considered untrue, as mosques had existed prior to the presence of shrimp farmers in Karimunjava. Nevertheless, the defendant held that the comment saying “shrimp-brained people” was directed at those who did not understand the environmental damage being caused. Regarding his choice of words, the defendant stated he never thought there would be differing perceptions that would cause hatred (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 51).

Based on these facts, Daniel Frits Maurits Tangkilisan was found legally and convincingly guilty of committing the criminal act as charged and was sentenced to 7 (seven) months’ imprisonment and a fine of Rp 5,000,000.00 (five million rupiah) (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, pp. 70–71). The legal considerations forming the basis for Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa are as follows:

Considering, that the Defendant ... further commented with the statement “shrimp-brained people enjoy eating free shrimp while being eaten by shrimp farmers. Basically, shrimp-brained people are like the shrimp livestock themselves. They are fed well, abundantly & regularly to be eaten,” which was derogatory and ... indicates the group is stupid, since ‘shrimp brain’ is a metaphor depicting stupidity because a shrimp’s brain is tiny, and such foolish people enjoy eating free shrimp (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 62);

Considering, that based on facts revealed in court, ... the aforementioned witnesses and several people from Karimunjava and Kemujan did not accept and felt insulted due to the words “shrimp-brained people,” meaning the minds of Karimunjava residents were likened to shrimp, which are animals, and people who are dumb or stupid, as well as statements amounting to “mosques built with shrimp farmers’ money” when in fact mosques existed prior to the presence of shrimp farmers in Karimunjava (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 63);

Considering, that the Defendant’s act of posting these comments created a sense of hatred among some groups in Kemujan Village and Karimunjava Village, as it triggered pro and contra, resulting in the formation of groups supporting the report against the Defendant, who were seen as supporters of shrimp farmers, while those not supporting the report were described as supporters of tourism. This was also seen during nearly every hearing, where the public expressed various opinions or staged demonstrations related to the case, with some seeking the Defendant’s acquittal and others wanting him to be punished (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 63);

Considering, that regarding the Defendant’s Counsel’s argument, the Judges held that the element of hatred does not necessarily require the occurrence of unrest or violence, as the information disseminated by the Defendant had incited hatred among a group of people as previously considered, satisfying the element (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 64);

Considering, that based on the above considerations, the Defendant was proven to have knowingly posted comments directed toward inciting hatred against the Karimunjava community group, and he was not entitled to label the Karimunjava community as “shrimp-brained people” or claim that houses of worship were built with shrimp farmers’ money. Thus, the element of “intentionally and unlawfully distributing information intended to incite hatred against certain community groups based on ethnicity, religion, race, and inter-group relations (SARA)” has been proven legally and convincingly (Jebara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 65).

Regardless of the decision of conviction (*veroordeling*), the defendant's counsel raised the defense that he was an environmental defender and therefore could not be criminally prosecuted (Jepera District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 65). Regarding this argument, the Judges addressed and further questioned as follows:

Considering, that in this case, the Judges acknowledge that the Defendant is an Environmental Defender or Activist and that the current case is related to shrimp farm activities in the Karimunjava Islands ... however, does being an Environmental Defender or Activist confer immunity from the law, such that one can call others "shrimp-brained people" and "offend places of worship," causing some residents of Karimunjava to feel offended and fostering hatred (Jepera District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 66).

The essential issue relates to the anti eco-SLAPP provision for environmental defenders. Although agreeing that legislation exists in Indonesia regulating this matter, the First Stage Judges nevertheless considered that the referenced provision could not be applied to shield Daniel Frits Maurits Tangkilisan from criminal liability. This is seen from the following legal considerations:

Considering, that ... the Judges agree with the Defendant's Counsel regarding the existence of Protection for Environmental Defenders or what is better known as anti-SLAPP (Strategic Lawsuit against Public Participation) as regulated in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management and for identifying anti-SLAPP in criminal cases involving Environmental Defenders as set forth in Article 78 of Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases (Jepera District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 66);

Considering, however, that attention must be paid to the provision of Article 78 paragraph (3) of Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases which states that:

"The struggle to realize the right to a good and healthy environment as referred to in paragraph (1) and paragraph (2) shall be carried out in accordance with the applicable law, except:

- a. there is no other alternative or choice of action besides the act that has been committed; and
- b. the act is committed in order to protect a greater legal interest or the interests of the wider public" (Jepera District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 66)(Article 78 Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases);

Considering, that in the trial the Defendant, in posting a comment containing the words "shrimp-brained people" and "offends the house of worship," was not in a situation where there was no other alternative or action to be taken besides the act in question, nor was the act carried out in order to protect a greater legal interest or the interests of the wider public as per Article 78 paragraph (3) of Supreme Court Regulation Number 1 of 2023, and therefore the Defendant may commit an act as referred to in Article 78 paragraph (2) of Supreme Court Regulation Number 1 of 2023, provided that the Defendant's actions must comply with applicable law or, in other words, must not conflict with the law, especially not constitute a criminal offense (Jepera District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 67);

Considering, that upon further examination, the comment by the Defendant which is at issue in the *a quo* case was not directed at the party allegedly the owner or person related to the shrimp pond, but rather the Defendant used the word "people," and the Defendant explicitly stated that the comment was intended for the general public. Therefore, in the opinion of the Panel of Judges, this form of criticism or protest or expression by the Defendant was directed at anyone, thus causing feelings of offense and sparking hatred among some residents of Karimunjava (Jepera District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 67);

Considering, therefore, because the Defendant was proven to have committed the criminal act as charged in the first indictment by the Public Prosecutor, then the Defendant's act does not meet the provisions of

anti-SLAPP as regulated in Article 78 paragraph (3) of Supreme Court Regulation Number 1 of 2023 and, as such, the argument of the Defendant's legal counsel concerning anti-SLAPP need not be considered further (Jepara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, p. 67).

In contrast to the Jepara District Court Decision Number 14/Pid.Sus/2024/PN Jpa, on the question of "Is the Defendant an environmental (activist) defender?" (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 14) and "Can anti-SLAPP provision be applied to the Defendant?" (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 14), the Panel of Judges at the Appellate Stage in the legal considerations of the Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG—as affirmed by the Supreme Court Decision Number 6459 K/PID.SUS/2024—actually stated as follows:

Considering that ... it was found as fact that damage occurred at Cemara Beach in Karimunjawa as a result of shrimp pond operations, where the Defendant, as a board member of Kawali and an environmental defender, has served as IT and Propaganda since 2021 and has carried out many activities related to a good and healthy environment in the Karimunjawa Islands (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 16);

Considering that the Defendant's posts cannot be separated from the context of the Defendant's thoughts and attitudes as a Kawali board member, active in the process of prevention, mitigation, and enforcement regarding environmental damage, as an individual and as part of a group of environmental observers who have the right to a good and healthy environment at Karimunjawa Island's coast, with shrimp pond activities having caused evident environmental damage to the coast. From the Defendant's experience and knowledge, there are financial flows from shrimp pond operations to the community for cleaning and building communal facilities so that a portion of society no longer pays attention to environmental damage caused by shrimp pond activities. Considering the turmoil in the Defendant's mind as an environmental activist for a good and healthy environment, over the obvious environmental damage to the beach due to the shrimp pond, the Defendant posted expressions stemming from their environmental spirit, in the form of protest or criticism with allusive/figurative language as an opinion on social media, which was not intended by the Defendant to spread hatred (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 16);

Considering that ... as a result, the Defendant's content, which aligns with Article 78 paragraph (2) letter d and paragraph (3) letter b of Supreme Court Regulation Number 1 of 2023 *jo.* Article 66 of Law Number 32 of 2009, constitutes the expression of an opinion on social media closely related to the condition of a society that ignores its social sensitivity in fighting for the environment in the face of coastal damage due to shrimp ponds in the communities of Karimunjawa and Kemujan. Naturally, the Defendant's opinion was expressed for the benefit of broader and larger interests, to prevent widespread environmental destruction—not only for all residents of Karimunjawa and Kemujan, but also to safeguard the national and even global environment, for the sake of preserving and continuing Karimunjawa Island as a tourism paradise (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, pp. 16–17);

Considering, based on the considerations above, the Appellate Panel concludes there is a clear link between the Defendant's statements and acts so that the Defendant's actions fulfill all elements of the indictment, since, through the Defendant's activities as an environmental defender, the acts were aimed at a larger interest, namely the protection of the environment in the Karimunjawa Archipelago (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 17);

Considering, based on the considerations above, the Appellate Panel is of the opinion that **the anti-SLAPP provision, as regulated in Article 66 of Law Number 32 of 2009 on Environmental Protection and Management, can be applied to the Defendant** (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 17); (emphasis by the Authors).

Considering, based on the above considerations, the Appellate Panel is of the opinion that **although the Defendant's acts have been proven to meet the elements of a criminal offense, such acts cannot be prosecuted because, pursuant to Article 66 of Law Number 32 of 2009 on Environmental Protection and Management, the Defendant's acts were carried out in order to fight for a good and healthy**

environment, **so the Defendant must be dismissal all legal charges** (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 17); (emphasis by the Authors).

Considering, based on the above considerations, that the provisions of **Article 77 of Supreme Court Regulation of the Republic of Indonesia Number 1 of 2023 on Guidelines for Adjudicating Environmental Cases must be declared applicable to the Defendant's case** (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 18). (emphasis by the Authors).

Therefore, based on the above legal considerations, the Appellate Panel must overturn the Jepara District Court Decision Number 14/Pid.Sus/2024/PN Jpa (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, pp. 18–19) and, through the Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, render its own judgment in the court's decision:

1. Declares that the Defendant is proven to have committed the acts as charged by the Public Prosecutor, however the Defendant is also proven to be a defender of the right to a good and healthy environment;
2. **Dismisses the defendant therefore from all legal charges (*ontslag van alle rechtsvervolging*);** (emphasis by the Authors).
3. (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 19).

The differing legal considerations and rulings between the Panel of Judges of the Jepara District Court and the Panel of High Judges of the Semarang High Court (as well as the Panel of Supreme Judges of the Supreme Court) illustrate an inconsistency in understanding the status of the anti eco-SLAPP provision as regulated in Article 66 of Law 32/2009, particularly from the perspective of criminal law, which recognizes both grounds for dismissing prosecution and grounds for excluding punishment. In short, according to Topo Santoso, the fundamental difference between these two reasons lies in whether or not the merits of the case (*pokok perkara*) are examined; *in casu*, grounds for dismissing prosecution do not examine the merits of the case, whereas grounds for excluding punishment do the opposite (*vide* Santoso, 2023, pp. 778–779).

Expressis verbis-ly, the provision of Article 66 of Law 32/2009 stipulates that “Every person who defends the right to a good and healthy environment **cannot be prosecuted criminally** or sued civilly” (Article 66 Law Number 32 of 2009 concerning Environmental Protection and Management) (emphasis by the Authors). If the phrase “cannot be prosecuted” is interpreted grammatically, that is, interpreting the meaning of statutory provisions by explaining them in everyday general language (Sudikno Mertokusumo, 2014, p. 74), then the *a quo* article is more accurately considered as grounds for dismissing prosecution. Its implication is that anti eco-SLAPP protection for environmental defenders should apply from the earliest stages of investigation or prosecution, not just be considered after the defendant stands trial, without the necessity of entering into the merits of the case. This is in accordance with the provision of Article 76 paragraph (4) of Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases (Supreme Court Regulation 1/2023), which states that “prosecution by the public prosecutor **cannot be accepted without having to examine the merits of the case**” (Article 76 paragraph (4) Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases) (emphasis by the Authors). Even if entering into the merits of the case is unavoidable, pursuant to the provision of Article 76 paragraph (7), it will later be held that “the indictment is inadmissible” (Article 76 paragraph (7) Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases).

Nevertheless, the provision of Article 66 of Law 32/2009 can also be regarded as a ground for excluding punishment in the form of “executing orders of law” interpreted broadly, or “law in the material sense,” namely, all generally binding regulations, *in casu* including Supreme Court Regulation. Based on Article 77 of Supreme Court Regulation 1/2023, it is stated that “**In the event that, after examining the merits of the case**, the judge concludes that the acts charged by the public prosecutor are proven, but the defendant is also proven to be a defender of the right to a good and healthy environment as referred to in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management, **the judge shall impose a verdict of dismissal of all legal charges**” (Semarang High Court Decision Number 374/PID.SUS/2024/PT SMG, p. 18). Meanwhile, one of

the grounds to impose a decision of dismissal of all legal charges is the existence of grounds for excluding punishment, whether justificatory defense (*rechtvaardigingsgronden*) or excusatory defense (*schulduitsluitingsgronden*).

IV. Conclusion

The anti eco-SLAPP provision as regulated in Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management has not yet been consistently applied, whether as a grounds for dismissing prosecution (*vervolgingsuitsluitingsgronden*) or as a grounds for excluding punishment (*strafuitsluitingsgronden*). Reflecting on the case involving Daniel Frits Maurits Tangkilisan, this study shows that, from the perspective of criminal law, the anti eco-SLAPP provision in Indonesia stands as both a ground for dismissing prosecution and a ground for excluding punishment. In the context of grounds for dismissing prosecution, the prosecution/indictment is inadmissible (*niet ontvankelijke verklaard*). Meanwhile, in the context of grounds for excluding punishment, the judge imposes a decision of dismissal of all legal charges (*ontslag van alle rechtsvervolg*).

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