THE IMPLEMENTATION OF ARTICLE 66 ENVIRONMENTAL PROTECTION AND MANAGEMENT LAW OF STRATEGIC LEGAL ACTION AGAINST PUBLIC PARTICIPATION DUE TO CRIMINAL ACTS OF ENVIRONMENTAL DESTRUCTION AT STATE COURT

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ABSTRAK
Permasalahan lingkungan hidup semakin beragam di semua wilayah, mulai dari skala kecil hingga skala besar yang serius. Pasal 66 Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup mengenai dugaan korban pencemaran lingkungan hidup dilindungi oleh negara. Namun kenyataannya saat ini korban semakin parah, terampas haknya dan tidak adanya perlindungan hukum oleh salah satu pihak dalam upaya hukum yang ditempuh. Peneliti akan mengkaji lebih dalam mengenai pandangan hakim sebagai penegak hukum terhadap keberadaan Pasal 66. Penelitian empiris ini menggunakan metode deskriptif normatif, yaitu dengan mendeskripsikan pendapat hakim terhadap penerapan Pasal 66 tentang Tindakan Hukum Strategis Terhadap Partisipasi Masyarakat dan dianalisis dengan menggunakan pendekatan deskriptif, dengan perspektif hukum administrasi. Hasil kajian menunjukkan, hakim menilai masih sedikitnya laporan atau gugatan kasus lingkungan hidup karena Jember belum menjadi kawasan industri skala besar. Secara hukum, pasal 66 UU PPLH merupakan bentuk perlindungan yang harus dilaksanakan dengan baik. Namun harus hati-hati dan mengakomodasi seluruh nilai yang ada. Sebab lembaga peradilan tidak bisa menolak setiap gugatan yang didaftarkan.
Kata Kunci: upaya hukum strategis terhadap partisipasi masyarakat, hukum administrasi, pengadilan negeri.

ABSTRACT
Environmental problems are increasingly diverse in all regions from small scale to serious large scale. Article 66 Environmental Protection and Management Law reporting on allegations of environmental pollution will be protected by the state. However, the current reality is that the victims are getting worse, deprived of rights

and no legal protection by a party in the legal efforts taken. Researchers will examine more deeply the views of judges as law enforcers regarding the existence of Article 66. This empirical research used normative-descriptive, by describing the judges' opinions on the implementation of Article 66 on Strategic Legal Action Against Public Participation and analyzed with administrative law perspective. The study results indicate that the judge believes there are still few reports or lawsuits on environmental cases because Jember is not yet a large-scale industrial area. By law, article 66 is a form of protection that must be implemented properly. However, it must be careful and accommodate all existing values. Because the judiciary cannot reject every registered lawsuit.
Keywords: strategic legal action against public participation, administrative law, state court.

Introduction

Strategic Legal Action Against Public Participation abbreviated as SLAPP is a lawsuit made by a company or individual who is suspected of polluting/destroying the environment against the complainant, whether from an individual community, group, or agency that cares about the environment to cause fear, psychological/physical disturbances, and material loss. the pioneer or informant. In the Environmental Protection and Management Law (UUPPLH) of article 66: "Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or be sued civilly."[1]

Based on the Law, the reporting party or providing information regarding alleged environmental pollution by a company or group of people and even individuals will be protected by the state. Thus, the government has high hopes for anyone who knows about policies or behaviors of environmental damage so that they are not afraid or actively voice, reporting on the alleged threat of environmental damage. In the principle of good governance as well as being discussed in state administrative law, the community is an important part of the state's development efforts actively, not passively.

But unfortunately, various facts have occurred, such as the case of Salim Kancil et al. It has a powerless effect on individuals or groups when voicing facts, especially about environmental conditions. The existence of a guarantee as referred to in Article 66 does not necessarily have a significant legal effect on the reporter or information

[1]"UU No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup [JDIH BPK RI]," accessed September 20, 2022, https://peraturan.bpk.go.id/Home/Details/38771/uu-no-32-tahun-2009.

provider, on the contrary, parties who do damage to the environment are getting fresher to file a lawsuit against the reporter or information provider.

The existence of these laws and regulations must be a protector for every community that cares about their environment, not even a fire in the husk that can burn itself at any time. So about the terms that appear indirectly to have their own space for movement, the community or justice enforcers must also provide space to reject and even reject various things that can shift the meaning or real purpose of the existence of these laws and regulations, especially as the existence of Article 66 within the scope of public concern for the environment.

Community involvement in building and protecting the environment is one of the important instruments in the environmental law system. Even as has been stated above, people must still be guaranteed their space for movement, their rights are guaranteed to carry out an active role in the development of their country [2]. So Strategic Legal Action Against Public Participation absolutely must not occur for any reason and regardless of the circumstances. In this case, the judges, in particular, investigators and related devices are obliged to understand the meaning and purpose of the existence of Article 66. It's not just the sound of the article, and the mention before the court, but naturally, it must be increased to guarantee protection, both in the field and before the court.

Indonesia has recently reconstructed many laws and regulations in environmental law in particular. Including the presence of Law no. 32 of 2009 concerning Environmental Protection and Management, which is a clear reform in the realm of environmental law enforcement, starting from the change in investigative authority as contained in Article 6 paragraph 1 UUPPLH, Article 7 paragraph 1 and Article 8 paragraph 2, must be carried out carefully and without compromise with either party. This is important, that of the many facts that exist, there is a lot of confusion regarding the facts of reports made by the public with the results of the investigations carried out.

Legal protection for people who care and fight for their environment is not only a right that must be obtained, but the state must be present and protect its citizens who play an active role in protecting the environment, as mandated by law. Therefore, it takes commitment and firmness from the relevant parties or authorities, so that the

[2]Salma, "Indonesian Supreme Court Justice Introduces Anti-SLAPP Policy to Address Public Silencing," *Universitas Gadjah Mada* (blog), February 5, 2024, https://ugm.ac.id/en/news/indonesian-supreme-court-justice-introduces-anti-slapp-policy-to-address-public-silencing/.

synergy in development and environmental conservation is getting bigger and shorter in making it happen [3]. In this regard, the author feels this must be confirmed directly regarding firmness and commitment. Because of that, the researcher views Article 66 as an attraction for an in-depth study of the views of the judge as the enforcer of the law.

Thus, learning from legal facts that occurred in several places, one of which was the case of Salim Kancil, a community activist who fought for his environment from destruction, but ended up with the loss of life and other cases. So the researchers looked at the research locus that had been determined, namely Jember Regency with an area of 3,293 km² with various environmental sectors that exist and are one of the districts that have a fairly good rate of development, it is possible for friction, especially in environment conservation, to attract writers to explore opinions, commitments of law enforcement regarding Article 66 UUPPLH. Of course, so that objectivity and maximization of analysis can be achieved, the author does not only try to discuss the opinions of the judges in the State Court as the locus of research, the author will also discuss the facts and opinions about law enforcers with state administrative law, especially in the realization of the principles is in it with connectivity to environmental law enforcement whose existence is undeniable in fighting for, building, preserving and protecting citizens/society. [4]

The term state administration comes from the Latin, namely administrate which in Dutch is interpreted the same as besturen which means government function. State administrative law is a translation of 'administratief rech' (Dutch). However, the term ‘recht administration’ is also translated into other terms, namely state administrative law and government law.[5] According to Utrecht, State Administration is a combination of administrative positions (apparatus/tools) under the leadership of the government, the President, and the Ministers, who carry out part of the government's work (government tasks) that are not submitted to the legislative and judicial bodies**.**[6]

In this study, the author uses several theories or approaches as an analytical tool on the subject matter that has been determined; namely, state administrative law as a basic reference in the implementation of article 66 along with the arguments of the

[3]Terrance M. Hurley and Jason F. Shogren, “Environmental Conflicts and the SLAPP,” *Journal of Environmental Economics and Management*, Vol. 33, No. 3, July 1, 1997, p. 253-273.

[4] Syofiarti Syofiarti, Titin Fatimah, and Nur Aini, “Perlindungan Hak Masyarakat Hukum Adat dalam Pengelolaan Hutan,” *Nagari Law Review*, Vol. 7, No. 2, December 11, 2023, p. 253-268.

[5] J.B Daliyo, *Pengantar Hukum Indonesia*, (Jakarta: PT Prenhallindo, 2001), p. 71–75.

[6] E Utrecht, *Pengantar Hukum Administrasi Negara Indonesia*, (Jakarta: PT. Ictiar Baru, 1985), p. 1-4.

judges who follow it as a form of commitment to protect the community, especially those who play an active role in reporting or providing information related to allegations of environmental damage/pollution. In addition, the author feels that a sociological approach is necessary to analyze the situation/condition of the environment at the locus of this research being carried out.

Regarding administrative law as the main theory in the analysis of this research, several points become the main points as a normative tool or approach in unraveling the problems that have been determined, including the general principles of good governance under Article 3 of Law No. 28 of 1999:

a. Legal certainty. Legal certainty is one of the principles in the administration of a legal state. This can be in the form of strengthening the foundation directly related to statutory regulations, propriety, constancy, and justice in every government administration policy, including the government in a broad and narrow sense. Especially in cases of protection of people who care about their environment as stated in Article 66, the government is obliged to provide legal certainty under the words in the article as a form of automatic protection.
b. Justice, this principle requires the Agency or law enforcement to determine or make decisions by considering the interests of the parties as a whole and not discriminatory and not on any basis other than the principle of legal justice. So parties or communities who fight for the rights to their environment, care for and participate in protecting and preserving the environment from irresponsible parties as mandated by the law, especially the environmental law, should get the values of justice that are applied to their efforts towards the environment.
c. Not abusing authority, this principle is a principle that requires every Government Agency including law enforcers not to use their authority in the context of fulfilling their interests or other interests that are not in accordance to grant their existing authority, do not exceed, and do not confuse their powers. In this case, law enforcers as good government representatives, should prioritize the principle of high professionalism according to their respective authorities, including in taking action in environmental cases.
d. Honesty, this principle of openness includes the principle of government in serving the community to gain access and obtain correct, honest and non-discriminatory information in the administration of government, including in enforcing environmental law, safeguarding the basic rights of the community related to the environment while still paying attention to the protection of personal rights, class, and individual or state confidentiality.
e. Good service, the principle of good service is intended to provide timely services, clear procedures and costs, in accordance with service standards, and the provisions of laws and regulations. In the case of the implementation of Article 66 by a group/agency, the government must be present as a special servant with regard to consistent procedures and time along with the government's

commitment which is represented through its law enforcers for justice, legal certainty, openness and not arbitrarily.

f. Benefit, the principle of expediency means that the government must also prioritize the principle of balanced benefits, such as:
   1) The interests of each individual;
   2) The interests of the individual with society;
   3) Community and foreign interests;
   4) The interests of community groups with other community groups;
   5) The interests of the government with its citizens;
   6) The interests of present and future generations;
   7) The interests of humans and their ecosystems;
   8) Interests between sex/gender.

   In this principle there is an emphasis on points e, f, and g, because there is continuity inherent in environmental conservation, as well as in the context of realizing an active attitude in eliminating actions that can cause environmental damage.
g. Accuracy, the principle of accuracy is a principle that means; that a decision or action must be based on official and complete information and documents to support the legality of the determination or implementation of a decision or an action. Similarly, related decisions or actions are carefully prepared before taking decisions or actions. This also applies not only to the government, in this case, the law enforcers, but also to the public or the whistleblowers, and informants, to act carefully and factually before making a decision.

The principle of public interest is intended to make the government prioritize the welfare and public benefit in an aspirational, accommodative, selective, non-discriminatory, and fast/responsive manner. This is important for the preservation of the environment, especially the environment that is in the struggle due to alleged destruction or pollution.

State Administrative Law is a law that regulates state administration, including how the principles of good government administration are based on good values and principles/principles that are made. The existence of the principles of good governance/ general principle of good government in state administrative law is an important element that is the focus of discussion. Therefore, these principles should be upheld based on the norms of decency, propriety, and existing legal rules, as stated in the Law of the Republic of Indonesia number 28 of 1999, especially in article 1 number 6, namely; "The general principle of good governance is the principle that upholds the norms of decency, propriety, and legal norms, to realize a clean and free state administration from corruption, collusion and nepotism."[7]

[7]Darda Syahrizal, *Hukum Administrasi Negara & Pengadilan Tata Usaha Negara*, (Yogyakarta: Pustaka Yustisia, 2012), p. 31-32.

In the implementation of good governance, the functions of the law and the judiciary are important to continue to be guarded and implemented. The government also participates in making regulations, especially regarding environmental law or environmental management, and issuing policies, which are not only implemented by the community but also elements of government from the center to the region.

Method

This research is a normative-descriptive research, in this study, the author observes and is directly involved by deepening the situation that occurs [8]. This research is descriptive, namely by looking for factual data systems regarding the implementation of Article 66 of the Strategic Legal Action Against Public Participation (SLAAP) from the perspective of state administrative law.[9]

One of the methods used in deepening the facts is interviews, questions, and answers conducted by researchers with research subjects (informants).[10] As well as further in-depth interviews conducted by researchers with research subjects (informants). This is done to obtain more data[11] and documentation, data related to research material, whether in the form of notes/research results, books, photos, archives, etc.[12] In this case, the material is about the implementation of Article 66 of the SLAAP in the study of environmental law, especially from the point of view of administrative law.

The approach used is normative-sociological to obtain understanding regarding the existence of article 66 as a guarantee of legal protection that must be given by the government to pioneers related to environmental destruction or pollution by certain parties on the SLAAP which is currently rampant.

Results and Discussion

1. The Implementation of Article 66 on Strategic Legal Action Against Public Participation on criminal acts of environmental destruction

Environmental problems are getting more and more complicated. Among them are many business people who not only violate environmental laws and regulations; but

[8] Iskandar Iskandar, *Metodologi Penelitian Kualitatif*, (Jakarta: Gaung Persada, 2009), p. 11.
[9] Soerjono Soekamto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1984), p.10.
[10] Adi Rianto, *Metodologi Penelitian Sosial Dan Hukum*, (Jakarta: Granit, 2004), p. 20.
[11] Irawati Singarimbun, *Teknik Wawancara: Metode Penelitian Survey*, (Jakarta: LP3ES, 1989), p. 193.
[12] Adi Rianto, *op.cit.*, p. 20.

also as fellow human beings do not have awareness and concern for the environment and do not realize that the environment is a basic right of all parties. Even in the area of law enforcement as a response to various existing violations which are one of the efforts and forms of seriousness of the law on environmental conservation, it provides legal immunity for people who care about their environment; namely as stated in article 66 as an Anti-Strategic Lawsuit Against Public Participation against possible resistance by the perpetrators of violations against the environment.

There is a need for firmness and activeness of law enforcers, especially in the judiciary as in their jurisdiction. The judges of the district or general courts are indeed in charge of the existence of environmental disputes. The existence of law enforcement apparatus in environmental cases seems to have to continue to encourage the application of legal immunity as stated in article 66, apart from being a mandate of the existing law, it is also an independent act as a law enforcement apparatus so that its functions can be carried out properly and have a positive impact to society and the environment.

The handling of a case in a court is generally filled with administrative patterns as enforced. Because every report there is a system of rules and mechanisms that are applied, starting from the administrative system to the technical handling of cases, both pre-trial and during the trial. Starting from the examination of files, and evidence to the statement of the trial that was carried out. So from this, all parties will be required to comply with and implement the rules that have been put in place.

Concerning reports or lawsuits on environmental cases carried out by the community, especially in the Jember District Court, the judges said that it was minimal because Jember itself is still not included in the industrial area on a large scale. Therefore, the intersection between community environmental interests and industrial interests is not like in other areas such as environmental disputes in Banyuwangi, Lumajang, and others. However, even so, it should be a common concern, that the environment as stipulated in law number 32 of 2009 concerning UUPPLH, should be a common concern, even before the emergence of a dispute. On top of that, law enforcement agencies in the Jember District Court, in particular, consider that all parties, including officeholders, can minimize environmental damage from various activities, whether caused by policies or others.

The fact about environmental disputes, both those that exist at the community level and those that have reached the realm of the judicial process of the dispute; it seems that the community as the most disadvantaged party often experiences

difficulties when dealing with certain capital owners or authorities. Even more recently, as happened in the Banyuwangi district, for example, people who opposed the existence of project activities around their place of residence which caused flooding in community settlements around the project were even sued back by the project owner so that 3 environmental fighters were charged with guilt and received a 3 months' sentence. confinement. This is an irony in environmental issues. The reality of the dispute and the administration of the dispute should be the subject of discussion before the court. So that the case can be handled in its entirety. Even judges cannot make decisions on their own beliefs if there is still a clear law governing it.

Environmental problems are indeed loaded with interests or even with each other's power, including financial strength. That is, it is not the law that can be bought, but all means will be taken to justify actions that violate the law on the environment. As a consequence of the rule of law which is understood as legality and formality, legal wisdom sometimes becomes abstract and even escapes before the law itself. As a consequence, there are quite many environmental problems that should be the concern of all parties when there is pollution, destruction, and the like with one form of concrete action in the form of reporting related parties by the community based on the participatory principle in Article 2 UUPPLH to authorized institutions, but then the form of The participatory process resulted in the disclosure by the reported party and the existence of Article 66 of the UUPPLH seemed useless and powerless to provide immunity to the complainants.

If you look at the evidence from Article 66 of the 2009 UUPPLH, namely: "Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or be sued civilly" clearly and firmly is the right of immunity for the complainants, both the community or other parties. Therefore, law enforcers, especially in the scope of the general court, can use this article as an article for the protection of whistleblowers in environmental cases being fought for. This is not merely a legal formality, but is how the judges in particular implement as a source of law in environmental disputes.

Concerning reports or lawsuits on environmental cases carried out by the community, especially in the Jember District Court, the judges said that it was minimal because Jember itself is still not included in the industrial area on a large scale.

Legally, Article 66 is a form of protection that must be implemented properly. But still must be careful and accommodate all existing values. The world of justice

cannot reject every lawsuit that exists [13]. As the end of a struggle for justice, the judiciary, especially the judges who handle cases regarding environmental disputes, should indeed put their capacity as fairly as possible for the sake of the law and the applicable legal basis. Whatever the reason, the article which refers to the immunity right for the whistleblower coupled with the existing environmental law principles, must strive to realize and provide the reporter right through article 66 of the UUPPLH as a form of protection for what he reports. Although pressure from the reported party, for example, through back reporting, must be seen from all aspects, especially the reality of the assertiveness of Article 66 of the UUPPLH.

Law enforcers must try when there is an environmental case and it is a violation/human error, then the party concerned must be processed according to the mechanism and the complainant must be given his immunity rights under Article 66 of the UUPPLH. The fact about the community that fights for the environment as a basic right of all living things, especially the community; turns out that in the judiciary they are always defeated and silenced, even though the damage and pollution of the environment by the reported party is clear; in the future, it is better not to have to happen what is indicated as the application of law and law enforcement that is not following the statement of the existing law. A judge as a law enforcer must be able to understand and enforce the law as the source of law and the legal reality that should be.

Environmental problems are increasingly diverse and appear in all regions and communities, ranging from small scale to large and serious scale. The government through law enforcers must be present, especially in the area of litigation related to environmental problems that are fought for by the community as a form of implementation of the principle of state responsibility as well as the constitutional mandate, namely Article 28 of the 1945 Constitution.

2. Implementation of Article 66 of Environmental Protection and Management Law on *Strategic Lawsuit Against Public Participation Strategic Lawsuit*

The application article 66 of Environmental Protection and Management Law number. 32 in 2009; it seems that it is often not the main consideration for law enforcers, in this case, the judges, so many people still fight for their environment through judicial administration, not a few who experience a Bali lawsuit/Strategic Lawsuit Against Public Participation. Therefore, all parties related to environmental activities need to consolidate and escort for implementing Article 66 seriously.

[13] Mia Banulita and Titik Utami, "Legal Construction of Anti Eco-SLAPP Reinforcement in Indonesia," *Yuridika,* Vol. 36, No. 03, September 3, 2021, p. 699-710.

On the other hand, natural resource management is a development effort. The goal is to improve the quality of life of the people in general. Therefore, it is understood that development in addition to providing a positive impact in the form of welfare, but on the other hand also has a negative impact. In the environmental dimension, the negative impact is the occurrence of environmental damage [14]. As I said in the previous chapter the existence of environmental fighters is often considered as an obstacle to development and anti-progress, in fact, they only defend their rights, namely in the form of preserving a clean and healthy environment as part of human rights.

As guaranteed by law, everyone has the right to sue when his or her rights are injured, or harmed. The goal is that the right is restored or compensated equal to the loss that arises as a result of the loss in question. No exception in environmental problems that place a person as a legal subject who suffers losses in various forms, as a result of environmental management activities. Therefore, it is relevant to provide legal protection to environmental fighters for those who are directly affected by losses due to environmental damage.

Legal activities within the scope of fighting for environmental rights can be pursued by individuals or groups that are accommodated in their organizations, both legal entities and non-legal entities. Their existence as a community that is aware of their environment with actions to fight before the law is an important thing in the sustainability of environmental protection and management as mandated in Article 65 paragraph (4): “Everyone has the right to play a role in the protection and management of the environment under the laws and regulations" and the details of its protection are contained in Article 66 which reads "Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or in prison. sue civilly” further explained in the explanation of this UUPPLH that “This provision is intended to protect victims and/or complainants who take legal action as a result of environmental pollution and/or destruction. This protection is intended to prevent retaliation from the reported party through criminal prosecution and/or civil lawsuits while still taking into account the independence of the judiciary.

Community rights guaranteed by the law on environmental protection and management include; (1) Everyone has the right to a good and healthy environment as part of human rights. (2) Everyone has the right to environmental education, access to

[14]Adam Bodnar and Aleksandra Gliszczyńska-Grabias, “Strategic Lawsuits against Public Participation (SLAPPs), the Governance of Historical Memory in the Rule of Law Crisis, and the EU Anti-SLAPP Directive,” *European Constitutional Law Review, Vol.* 19, No. 4, December 2023, p. 642-663.

information, access to participation, and access to justice in fulfilling the right to a good and healthy environment. (3) Everyone has the right to submit proposals and/or objections to business plans and/or activities that are estimated to have an impact on the environment. (4) Everyone has the right to play a role in the protection and management of the environment in accordance with the laws and regulations. (5) Everyone has the right to make a complaint due to allegations of environmental pollution and/or destruction.[15]

However, from these rights, this protection is not automatically given when the community prosecutes or fights for their environmental rights before the law, of course through various considerations that are under applicable legal provisions. Everyone is part of a society that has the same rights, obligations, and roles in environmental protection and management, without exception. It is not limited to where the domicile is, whether rural, remote, or urban communities are an important part of realizing a good and healthy environment. The community will be effective if controls the existing environmental management. This is the dimension of community participation for creating good and healthy environment protection and management.[16]

In principle, as emphasized in environmental protection and management law, especially on the principles of good governance, environmental protection, and management are imbued with the principle of participation, namely in the form of community participation in fighting for a good and healthy environment. However, the community, as the author has described above, often encounters obstacles in environmental law enforcement efforts, including these obstacles in the form of: *Strategic Lawsuit Against Public Participation*/ SLAPP, namely the act of suppressing public participation by using legal instruments. Indonesia does not yet have a concrete explanation regarding SLAPP. Article 66 of Law 32/2009 and KMA Decree 36/2013 only explain the principles and forms of protection for victims of SLAPP. Whereas a concrete explanation determines the Anti-SLAPP steps which can then be applied in Indonesia. because seeing the development of environmental problems in Indonesia shows that apart from civil lawsuits several other lawsuits can violate the rights of

[15] "UU No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup [JDIH BPK RI]."

[16]Samsul Wahidin, *Dimensi Hukum Perlindungan & Pengelolaan Lingkungan Hidup*, (Jakarta: Pustaka Pelajar, 2014), p. 74.

community participation to get a good and healthy environment, namely: violence, threats of violence, and criminalization which are not included in the discussion.[17]

Based on this fact, it would not be an exaggeration if the application of Article 66 of the law on environmental protection and management in the context of an effort to overcome SLAAP has not been maximized because there is no concrete explanation regarding the intent of 'protection for victims or the complainant and countermeasures from the reported party' so that the most likely interpretation of the understanding of article 66 means that the community will only get this protection if they have taken litigation.

3. Implementation of Article 66 of the UUPPLH on SLAAP from a State Administrative Law Perspective

The strict application of Article 66 of the law on environmental protection and management as a form of Anti-SLAPP including efforts that must be realized as a form of implementation in Indonesia [18]. because in recent years the increasing number of violence, "criminalization", intimidation, and lawsuits against people who express their opinions and objections to development in the natural resources sector which causes a lot of losses to the community and damage to the environment. Criminalization is not intended as in criminology, namely as a determination of behavior/actions that were not previously a crime to become a crime, they can be punished. The criminalization referred to is according to Kontras data, which mentions criminalization as a forced punishment of whistleblowers. Also the opinion of Bambang Widjojanto in his book "Criminalization Silences People's Voices." Criminalization in this case is not a term born in the academic world, it was born from the dynamics of law in the arena of seeking justice. Interestingly, the term criminalization is given meaning and adopted by those who fight for justice, namely by the victims and those who defend themselves. Practically criminalization is a form of abuse of authority in law enforcement done by fabricating evidence and facts so that a person or group of people is legally considered to have committed a crime.[19]

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[17] Raynaldo Sembiring, "Kriminalisasi Atas Partisipasi Masyarakat: Menyisir Kemungkinan Terjadinya SLAPP Terhadap Aktivis Lingkungan Hidup Sumatera Selatan," *Jurnal Hukum Lingkungan Indonesia*, Vol. 1, February 25, 2014, p. 207.

[18] Hartiwiningsih Hartiwiningsih, Seno Wibowo Gumbira, and Jaco Barkhuizen, "Dysfunctional Factors of Environmental Law on Strategic Lawsuit Against Public Participation and Developing Remedial Strategies Through Reconstruction Criminal Law System Model in Indonesia," *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)*, Vol. 10, No. 3, December 18, 2023, pp. 411-430.

[19]Bambang Widjojanto, "BeWe Menggugat: Kriminalisasi Membungkam Suara Rakyat" (Jakarta: Intrans Publishing, 2016), p. 205.

Strategic Lawsuit Against Public Participation (SLAPP) is an act of suppressing public participation by using legal instruments. Therefore, judging from some of the principles contained in state administrative law regarding this matter, including:

1. The principle of legal certainty, namely the principle that exists in the administration of a legal state. Therefore, Indonesia has provided laws and regulations; including anti-strategic lawsuits against Public Participation. The existence of Article 66 in its application has a lot of contact with the public who need a concrete explanation so that it is not used as a tool and a toy in front of the law who is fighting for rights to the environment. As the reality of environmental law today, not a few industrial players pollute the environment but are immediately brought to the realm of law the community as victims is getting worse after legal action from the report.
2. The principle of justice or impartiality. In administrative law, justice is seen as a form of state effort in protecting the jurisdiction. The implementation of Article 66 is still considered partial. Many legal efforts made by the community always fail and even plunge environmental fighters into prison. This fact is not in line with the principle of justice contained in state administrative law that this principle requires the Agency, law enforcement officials should be impartial if the fact of environmental pollution occurs.
3. The principle of not abusing authority. Deprivation of rights and no protection for people who are victims of environmental destruction or pollution by a party in the legal remedies taken. In this case, law enforcers, especially as representatives of good government, should prioritize the principle of high professionalism according to their respective authorities, including in environmental cases.
4. The principle of openness. on this principle, the government, through agencies related to the environment, is still informational; This means that only certain people can access important information about the environment, starting from the existence of a budget devoted to environmental management to legal protection for the community.
5. The principle of good service, in the case of the implementation of article 66 by a group or agency, the government must be present as a special servant regarding consistent procedures and times as well as government commitments represented through law enforcers for justice, legal certainty, openness and not arbitrarily.
6. The principle of benefit, meaning that in this principle the government must also prioritize the principle of benefits in a balanced manner, especially the interests of the community with other community groups; government with its

citizens; current and future generations; The public interest through maximizing the objectives of environmental law as referred to in Article 66 and the constitutional mandate in Article 28 of the 1945 Constitution. In addition, at this point, there is an inherent continuity of environmental conservation, as well as in the context of realizing an active attitude in eliminating actions that can cause environmental damage.

7. The principle of accuracy, this principle is a principle that means; that a decision or action must be based on official and complete information and documents to support the legality of making or implementing a decision on an action. This also applies not only to the government, in this case, the law enforcers, but also to the public or the whistleblowers, and informants, to act carefully and factually before making a decision. However, based on the facts, the procedures that have been fulfilled by the community are sometimes not in line with the provisions of the environmental law which are fought for as the main basis in efforts to protect the environment.
8. The principle of public interest, it is intended for the government to prioritize the welfare and public benefit in an aspirational, accommodative, selective, and non-discriminatory, and fast/responsive manner. Currently, there are many struggles over the environment by affected communities, either because of industrial or other interests; but once again the government through its law enforcers, must see and understand reality as the main fact before the law; because in general, the environment pollution that the community is fighting for is visible and clear on the scale of the damage and pollution.

In the implementation of good governance, the functions of the law and the judiciary are important to continue to be guarded and implemented. Because the government also participates in making regulations, especially regarding environmental law or environmental management.

Conclusion

Based on data and analysis, the application of article 66 Environmental Protection and Management Law in the anti-strategic Lawsuit Against Public Participation effort has not been maximized because there is no concrete explanation regarding the purpose of 'protection for victims or complainants and countermeasures from reported parties' so the most likely interpretation of the understanding of article 66 is the community will only get this protection if it has taken litigation.

Based on the principles contained in state administrative law as the basis for good governance, one of them is through the strict application of Article 66 as a form

of Anti *Strategic Lawsuit Against Public Participation* (SLAPP) including efforts that must be realized as a form of implementation in Indonesia. In recent years, the increasing number of violence, "criminalization", intimidation, and lawsuits against people who express their opinions and objections to development in the natural resources sector has caused a lot of losses to the community and damage to the environment

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