

CRITICAL LEGAL ANALYSIS OF CRIMINALIZATION AGAINST ENVIRONMENTAL ACTIVISTS IN INDONESIA

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ABSTRACT

Environmental activists play an essential role in promoting ecological protection, community rights, and governmental accountability. However, environmental advocacy in Indonesia is increasingly accompanied by legal actions that allegedly criminalize activists and restrict civic participation. This study critically analyzes the phenomenon of criminalization against environmental activists in Indonesia through the framework of Critical Legal Studies. Using a normative and critical legal methodology, the research examines legal provisions, law enforcement practices, and judicial processes associated with environmental activism. The findings reveal that criminalization frequently occurs through the strategic use of defamation laws, public order regulations, and other legal instruments that may be interpreted broadly against individuals and groups challenging powerful economic interests. Such practices create a chilling effect on public participation and undermine democratic engagement in environmental governance. The study further demonstrates that law is not always applied as a neutral mechanism for dispute resolution but can function as an instrument of power that reinforces existing social and economic hierarchies. The unequal distribution of legal resources and political influence often places environmental activists in vulnerable positions when confronting state institutions or corporate actors. The research argues that stronger legal safeguards are necessary to protect environmental defenders and ensure meaningful public participation in environmental decision-making. The study concludes that the criminalization of environmental activism reflects broader tensions between economic development, environmental protection, and democratic freedoms. These findings contribute to critical legal debates concerning the role of law in shaping power relations and the protection of civil society within Indonesia's environmental governance framework.

KEYWORDS *Environmental Activists, Criminalization, Critical Legal Studies, Civil Society, Environmental Governance*

TABLE OF CONTENTS

I.	INTRODUCTION	90
II.	METHOD	95
	<i>A. Normative-Critical Legal Approach</i>	95
	<i>B. Legal Materials and Case Selection</i>	95
	<i>C. Analytical Framework</i>	96
	<i>D. Scope and Limitations of the Analysis</i>	97
III.	THEORETICAL FRAMEWORK: CRITICAL LEGAL STUDIES, CRIMINALIZATION, AND SLAPP	98
	<i>A. Critical Legal Studies and Law as an Instrument of Power</i>	98
	<i>B. Criminalization as a Process of Governing Dissent</i>	99
	<i>C. SLAPP and the Strategic Use of Legal Processes</i>	101
	<i>D. Chilling Effect, Environmental Democracy, and the Protection of Public Participation</i>	
IV.	LEGAL FRAMEWORK FOR ENVIRONMENTAL PARTICIPATION AND DEFAMATION IN INDONESIA	68
	<i>A. Constitutional Protection of Environmental Participation and Freedom of Expression</i>	104
	<i>B. Article 66 of the Environmental Protection and Management Law</i>	105
	<i>C. Defamation under the Electronic Information and Transactions Law</i>	106
	<i>D. The Relationship between Article 66 and Defamation Law</i>	108
	<i>E. The Emerging Constitutional Standard after Decision No. 105/PUU-XXII/2024</i>	109
V.	CRITICAL ANALYSIS OF CRIMINALIZATION: THE DANIEL FRITS MAURITS TANGKILISAN CASE	110
VI.	DISCUSSION ON LAW, POWER, AND THE CHILLING EFFECT	117
VII.	TOWARD AN EFFECTIVE ANTI-SLAPP FRAMEWORK FOR ENVIRONMENTAL ACTIVISTS IN INDONESIA	125
VIII.	CONCLUSION	132

I. INTRODUCTION

Environmental activism occupies a distinctive position within democratic environmental governance because it enables citizens and civil society organizations to expose environmental degradation, challenge administrative decisions, scrutinize corporate conduct, and demand accountability from public authorities. Environmental defenders therefore perform a function that extends beyond conventional advocacy: they contribute to the production and circulation of information necessary for communities to participate meaningfully in decisions affecting land, forests, water, coastal areas, and other ecological resources. Environmental legal mobilization scholarship has demonstrated that law can provide important resources for communities seeking to challenge environmental harm, but legal institutions can also become sites of conflict in which competing

political and economic interests are translated into legal claims (Vanhala 2022). This dual character of law is particularly significant in environmental disputes because such disputes rarely involve only technical questions concerning environmental regulation. They frequently concern the distribution of land, economic benefits, political authority, and access to natural resources. Consequently, environmental activists who publicly criticize corporations, government agencies, or development projects may challenge interests possessing substantially greater economic and institutional resources. The resulting disputes can move from the environmental sphere into the legal sphere, where criminal complaints, civil lawsuits, and defamation claims may become mechanisms through which conflicts over environmental governance are redefined as conflicts over reputation, public order, or individual criminal responsibility. The critical question is therefore not whether environmental activists should be legally accountable for genuinely unlawful conduct. Rather, it is whether legal mechanisms intended to protect reputation and public order can be transformed into instruments that impose disproportionate costs on individuals exercising legitimate forms of public participation.

The possibility that legal proceedings may be deployed strategically against public participation is commonly conceptualized through the notion of Strategic Lawsuits Against Public Participation (SLAPP). Although SLAPP scholarship initially developed in the context of litigation brought against citizens and organizations participating in public decision-making, the concept has become particularly important in environmental conflicts because environmental defenders frequently confront actors with greater financial, political, or institutional resources (Pring and Canan 1996; Shapiro 2010; Vanhala 2022). A critical feature of SLAPP is that its restrictive effect does not necessarily depend upon the eventual success of the claimant. The legal process itself may generate substantial costs through investigation, arrest, detention, legal representation, reputational damage, psychological pressure, and prolonged uncertainty. Di Ronco's (2025) study of the NoTAP environmental movement demonstrates that criminalization can affect activists through several stages and may generate chilling effects that extend beyond the immediate individual subjected to criminal proceedings. The consequence is therefore collective: activists who observe the legal vulnerability of their colleagues may reassess the risks of participating in environmental campaigns themselves. This transforms law from an instrument for adjudicating an existing dispute into a mechanism capable of shaping the future behavior of civil society. Such an effect is particularly problematic where the underlying activity concerns matters of significant public interest. Environmental pollution, land conversion, mining, infrastructure development, and ecological degradation can affect communities far beyond the individuals directly involved in a legal dispute. Restricting the ability of environmental defenders to communicate information or criticize powerful actors can consequently diminish the informational conditions necessary for democratic environmental governance. The relevant harm is thus not limited to the defendant; it may extend to communities and the public whose access to environmental information depends upon the ability of activists to speak without disproportionate legal retaliation.

Indonesia provides an important context in which to examine this problem because the legal system formally recognizes both environmental participation and

protections against legal retaliation, yet the coexistence of these protections with defamation-based proceedings creates a significant question concerning the effectiveness of the legal framework. Article 66 of Law No. 32 of 2009 on Environmental Protection and Management establishes protection for persons who exercise the right to participate in environmental protection and management, including protection from criminal prosecution and civil litigation in circumstances covered by the provision. Indonesian scholarship has identified the phenomenon of SLAPP as a continuing problem despite this statutory protection, attributing part of the difficulty to inconsistent understanding and implementation of Anti-SLAPP principles among legal institutions (Handayani, Achmadi, and Apsari 2022). The problem becomes particularly complex when environmental advocacy takes place through digital media. Online platforms allow activists to disseminate photographs, videos, allegations, criticism, and environmental information rapidly to large audiences, but the same communicative practices can become the basis for complaints under laws regulating electronic information and defamation. The result is a regulatory intersection in which environmental law protects public participation while criminal law and information-technology regulation may expose that participation to legal challenge. This contradiction cannot be resolved simply by identifying which statute takes precedence. It requires examination of how legal institutions interpret competing norms and how apparently neutral legal categories are applied within unequal relationships of power. From a Critical Legal Studies perspective, the existence of a protective legal provision is therefore insufficient evidence that the legal system protects environmental defenders in practice. The more important question is whether the institutional operation of law prevents powerful actors from converting legal processes into mechanisms of intimidation, resource exhaustion, or political silencing. Indonesian studies have increasingly identified precisely this gap between formal Anti-SLAPP protection and its practical enforcement.

The controversy surrounding Daniel Frits Maurits Tangkilisan provides a particularly significant illustration of these tensions. Tangkilisan, an environmental activist in Karimunjawa, used social media to communicate concerns regarding environmental conditions, including a video concerning pollution in the Karimunjawa area. The legal consequences of his online expression eventually became the subject of constitutional litigation concerning the interpretation of the Electronic Information and Transactions Law. During the constitutional proceedings, the legal challenge focused on the application and meaning of provisions concerning defamation through electronic media, including the relationship between Article 27A and Article 45(4) of Law No. 1 of 2024 amending the ITE Law. The Constitutional Court ultimately partially granted Tangkilisan's petition in Decision No. 105/PUU-XXII/2024. Among other things, the Court conditionally limited the meaning of "other person" so that government institutions, corporations, institutions, professions, positions, and other specified collective entities could not be treated as victims under the relevant defamation provision in the same manner as an individual. The Court also emphasized that criticism directed toward public institutions, public officials, or corporations may constitute oversight, correction, or advice concerning matters of public interest and should not automatically be transformed into criminal defamation.

This development is analytically important because it demonstrates that the problem of criminalization is not exhausted by the wording of a statutory provision. The same legal norm can produce substantially different consequences depending on who invokes it, against whom it is invoked, what institutional interests are involved, and how law-enforcement authorities interpret the boundaries between criticism and defamation. The Tangkilisan case therefore offers more than an individual dispute. It provides an institutional setting through which to examine how legal categories can mediate conflicts between environmental advocacy and economically or politically powerful interests.

The central concern of this article is accordingly the potential transformation of defamation law from a legitimate mechanism for protecting individual reputation into an instrument of legal pressure against environmental activism. This argument does not imply that environmental activists possess immunity from generally applicable criminal law. Democratic participation does not eliminate legal responsibility for genuinely defamatory statements, threats, fraud, or other unlawful conduct. The critical issue is instead one of legal selectivity, proportionality, and institutional power. A formally general rule may have unequal consequences when the parties to a dispute possess markedly unequal resources and when one party can mobilize the coercive machinery of the state against the other. Critical Legal Studies is particularly useful for examining this problem because it challenges the assumption that law operates as a politically neutral mechanism for resolving disputes. The critical tradition has long questioned the separation between legal reasoning and political power, emphasizing that legal doctrines and institutional decisions may reproduce existing hierarchies even when legal rules are expressed in formally universal terms (Kennedy 1979; Hutchinson and Monahan 1984; Sciaraffa 1999).

Applied to environmental criminalization, this perspective shifts the analytical focus from the narrow question of whether an activist technically violated a defamation provision toward a broader inquiry into the social function of legal intervention. Who possesses the capacity to invoke criminal law? Whose speech is treated as harmful? Which forms of criticism are transformed into legally cognizable injury? Whose institutional interests receive protection through enforcement? And what happens to democratic participation when the cost of environmental advocacy includes the possibility of criminal investigation or civil litigation? These questions are essential because the neutrality of legal language does not necessarily guarantee neutrality in legal operation. The problem of criminalization therefore lies partly in the capacity of law to transform a political conflict over environmental governance into an individualized legal dispute in which the activist becomes the object of legal scrutiny rather than the environmental harm becoming the central subject of public accountability.

This article argues that the criminalization of environmental activists through defamation claims should be understood not merely as an isolated problem of freedom of expression, but as a manifestation of unequal legal power within environmental governance. The strategic use, or potentially strategic use, of legal proceedings can produce a chilling effect even when the underlying complaint ultimately fails, because the process itself imposes material and psychological costs on activists and signals to broader civil society that environmental criticism may carry significant legal risks (Di Ronco 2025). The argument further develops the

proposition that Anti-SLAPP protection should not be conceptualized as a narrow procedural exception but as a structural safeguard for democratic participation. Shapiro (2010) argues that effective Anti-SLAPP regimes should focus on whether a case concerns protected public participation rather than making protection dependent upon proving the subjective intention of the claimant. This insight is especially relevant to Indonesia because proving that a complainant subjectively intended to silence an activist may be difficult, whereas identifying whether a legal action arises from protected participation in a matter of public interest may be institutionally more workable.

Indonesian scholarship likewise indicates that the existence of Article 66 of the Environmental Protection and Management Law has not prevented SLAPP practices because the protective norm has not always been translated into effective procedural safeguards (Handayani, Achmadi, and Apsari 2022). The article consequently examines criminalization as a problem located at the intersection of substantive law, procedural law, institutional discretion, and unequal social power. Its principal contribution is to develop a Critical Legal Studies account of environmental criminalization in which the decisive question is not simply whether law protects or restricts activists, but how legal institutions distribute the costs of environmental contestation between actors with unequal political, economic, and institutional resources.

Against this background, the article addresses three interconnected questions. First, how have defamation provisions and related legal mechanisms been applied or interpreted in disputes involving environmental activists in Indonesia? Second, under what conditions can the invocation of these provisions operate as a form of criminalization or SLAPP against legitimate environmental participation? Third, what does the Indonesian experience reveal about the capacity of law to reproduce or challenge existing power relations within environmental governance? The study adopts a normative-critical methodology combining statutory, conceptual, and case-oriented analysis. It examines the legal framework governing defamation, environmental participation, Anti-SLAPP protection, and freedom of expression, while placing Indonesian developments within the broader scholarship on environmental legal mobilization, SLAPP, criminalization, and Critical Legal Studies.

The article does not assume that every defamation complaint against an environmental activist constitutes a SLAPP. Such an assumption would weaken rather than strengthen the analysis because it would replace legal examination with a predetermined conclusion. Instead, the article develops criteria for identifying when legal proceedings acquire characteristics of abusive or disproportionate legal mobilization: the public-interest character of the underlying speech, the asymmetry between the parties, the relationship between the speech and environmental decision-making, the availability of less restrictive remedies, the procedural burdens imposed upon the activist, and the potential chilling effect on wider public participation. This approach allows the analysis to preserve the legitimacy of reputation protection while simultaneously scrutinizing circumstances in which defamation law may be converted into a mechanism for suppressing democratic environmental contestation. The ultimate objective is therefore not to place environmental activists beyond the law, but to ensure that the law does not become

a means through which powerful actors can transform legitimate public participation into a source of criminal vulnerability.

II. METHOD

A. Normative-Critical Legal Approach

This study employs a normative-critical legal research methodology to examine the criminalization of environmental activists through defamation law in Indonesia. The normative dimension of the research focuses on the interpretation and relationship of legal norms governing environmental participation, freedom of expression, defamation, and protection against Strategic Lawsuits Against Public Participation (SLAPP). The critical dimension moves beyond formal doctrinal analysis by examining how these legal norms operate within unequal relations of social, economic, and institutional power. This methodological combination is necessary because the central problem examined in this article is not merely whether a particular prosecution satisfies the formal elements of a criminal offense, but whether the application of formally valid legal provisions can produce structurally unequal consequences for actors participating in environmental disputes. Critical legal inquiry is therefore used to interrogate the assumption that legal rules operate neutrally when applied to parties possessing substantially different resources and institutional access. The research treats law simultaneously as a normative system and as a site of political and social contestation.

This approach is consistent with the broader Critical Legal Studies tradition, which emphasizes the indeterminacy of legal reasoning and the relationship between legal institutions and social power (Kennedy 1979; Hutchinson and Monahan 1984). The methodology consequently distinguishes between formal legality and substantive legal effect: a legal action may satisfy formal procedural requirements while nevertheless generating consequences that undermine protected democratic participation. This distinction is particularly important in environmental disputes because Article 66 of Law No. 32 of 2009 expressly establishes protection for persons exercising environmental rights against criminal and civil proceedings under specified circumstances, yet Indonesian scholarship continues to identify difficulties in translating this protection into effective procedural safeguards (Indrawati 2022; Handayani, Achmadi, and Apsari 2022). The research therefore evaluates legal rules not only according to their textual meaning but also according to their capacity to protect meaningful participation in environmental governance.

B. Legal Materials and Case Selection

The research relies primarily on three categories of legal materials: primary legal materials, secondary legal materials, and scholarly literature. Primary materials include the Constitution of the Republic of Indonesia, Law No. 32 of 2009 on Environmental Protection and Management, the Electronic Information and Transactions legislation and its amendments, relevant provisions of Indonesian criminal law, Supreme Court Regulation No. 1 of 2023 concerning environmental cases, and decisions of Indonesian courts relevant to environmental activism and

defamation. Particular attention is given to Constitutional Court Decision No. 105/PUU-XXII/2024 concerning Daniel Frits Maurits Tangkilisan because the decision directly addresses the relationship between electronic defamation provisions, public criticism, and the institutional protection of environmental activists. The Court's 2025 ruling conditionally restricted the interpretation of the relevant ITE Law provision, including by excluding government institutions, corporations, professions, positions, and certain collective entities from the category of victims entitled to initiate defamation complaints under the provision at issue. The case is selected not because every environmental prosecution constitutes a SLAPP, but because it provides an analytically significant example of how defamation law can intersect with environmental participation and freedom of expression. Recent Indonesian scholarship specifically identifies divergent judicial approaches in the Tangkilisan litigation, with lower-court reasoning characterized as more formalistic and subsequent appellate and constitutional developments reflecting stronger consideration of constitutional rights and environmental participation.

Secondary materials include peer-reviewed legal scholarship concerning SLAPP, environmental defenders, freedom of expression, criminalization, and environmental governance. These materials are used to situate the Indonesian legal developments within broader international debates rather than to substitute foreign legal models for Indonesian law. The selection of materials therefore follows a doctrinal-critical logic: primary law establishes the applicable normative framework, judicial decisions reveal how that framework is interpreted, and scholarly literature provides the theoretical concepts necessary to assess the distribution of legal power.

C. Analytical Framework

The analysis proceeds through four interconnected stages. First, the study identifies the formal legal basis of defamation claims against environmental activists and distinguishes legitimate reputation protection from restrictions on speech concerning matters of public interest. Second, it examines the relationship between the challenged expression and environmental participation, asking whether the relevant conduct constitutes criticism, reporting, advocacy, or another form of participation in environmental governance rather than merely a private dispute over reputation. Third, the analysis applies a power-sensitive framework derived from Critical Legal Studies and SLAPP scholarship to examine the institutional relationship between the parties, the availability of legal and economic resources, the procedural burdens imposed upon the activist, and the potential consequences of legal proceedings for broader public participation. Fourth, the study evaluates whether existing Anti-SLAPP protections provide an effective institutional response to these risks.

This framework is important because identifying a SLAPP cannot depend exclusively upon proving the subjective intention of the claimant to silence an activist. The social effect of legal action may be restrictive even where the claimant formally presents the case as an ordinary defamation dispute. Shapiro (2010) accordingly emphasizes the importance of designing Anti-SLAPP mechanisms around the protected nature of public participation rather than relying solely on

proof of improper subjective motivation. The Indonesian literature similarly identifies weaknesses in the existing framework, particularly the absence of sufficiently clear procedural mechanisms capable of screening potentially abusive proceedings at an early stage (Indrawati 2022; Alfarissa 2024). Recent research on the Tangkilisan case further identifies a divergence between judicial approaches and argues that existing environmental protections have been weakened by procedural gaps within the criminal justice system. The present study therefore treats public interest, legal asymmetry, procedural burden, chilling effect, and institutional accountability as interconnected analytical dimensions. The objective is not to determine automatically that a prosecution is illegitimate whenever an environmental activist is involved, but to establish a principled basis for distinguishing ordinary legal accountability from the abusive or disproportionate use of law against protected public participation.

D. Scope and Limitations of the Analysis

The study is deliberately limited to criminalization associated primarily with defamation and related restrictions on expression in environmental advocacy. It does not attempt to provide a comprehensive empirical inventory of all forms of repression experienced by environmental defenders in Indonesia, including violence, administrative harassment, land disputes, or physical attacks, except where such issues are necessary to contextualize the legal relationship under examination. This limitation enables the article to focus more precisely on the operation of law as a potential mechanism of power. The principal case of Daniel Frits Maurits Tangkilisan functions as an analytical case rather than as evidence that all environmental disputes in Indonesia follow the same pattern. Other cases and scholarly materials are incorporated comparatively to identify recurring legal and institutional issues.

This approach is especially important because the concept of SLAPP should not be applied mechanically. A legal claim may be unsuccessful without necessarily being a SLAPP, while a successful claim may still raise concerns about disproportionate restrictions on public participation. The analysis therefore avoids equating acquittal with proof of abuse or prosecution with proof of illegitimacy. Instead, it examines the interaction between the nature of the expression, the public interest involved, the relative position of the parties, the legal basis invoked, and the procedural consequences of the litigation or prosecution. This limitation also reflects the distinction between normative-critical legal research and empirical socio-legal research: the present study evaluates legal structures and institutional consequences through legal interpretation and established scholarly findings rather than through interviews, surveys, or statistical measurement of all environmental criminalization cases. Recent evidence nevertheless indicates that the problem is not merely hypothetical. Human Rights Watch's 2026 documentation identifies more than 50 cases involving environmentalists and Indigenous leaders between 2015 and 2025 and reports recurring use of criminal law, including defamation provisions, against individuals challenging environmental and land-related practices. Such evidence is used cautiously as contextual support rather than as the primary methodological foundation of the study.

III. THEORETICAL FRAMEWORK: CRITICAL LEGAL STUDIES, CRIMINALIZATION, AND SLAPP

A. Critical Legal Studies and Law as an Instrument of Power

Critical Legal Studies (CLS) provides the principal theoretical framework for examining the criminalization of environmental activism in Indonesia. At its core, CLS challenges the conventional proposition that law operates as an autonomous, neutral, and objective mechanism for resolving social conflicts. Rather, critical legal scholars emphasize the ways in which legal rules, institutions, and modes of legal reasoning are embedded within broader structures of political, economic, and social power. Duncan Kennedy's critique of legal formalism is particularly significant in this regard because it demonstrates that legal reasoning frequently involves choices among competing social values even when judicial reasoning presents those choices as the mechanical application of pre-existing rules (Kennedy 1976).

The apparent neutrality of legal doctrine can therefore conceal distributive consequences: decisions concerning which interests deserve protection, which harms are legally recognizable, and which remedies are available may systematically benefit some groups over others. Hutchinson and Monahan similarly argue that CLS challenges the assumption that legal doctrine can be separated from the social and political structures within which law operates (Hutchinson and Monahan 1984). This theoretical proposition is particularly relevant to environmental disputes because such disputes commonly involve unequal parties. Environmental activists and affected communities may confront corporations, government agencies, or other actors possessing superior financial resources, institutional access, legal expertise, and political influence. When disputes are translated into legal proceedings, these inequalities do not necessarily disappear. Instead, they can be reproduced through the distribution of procedural resources and through the authority of institutions capable of initiating investigation, prosecution, or litigation. From this perspective, the critical question is not simply whether a defamation provision is facially neutral, but whether its operation produces structurally unequal consequences when deployed against participants in environmental controversies. A law may formally apply to everyone while nevertheless functioning differently depending upon the social position of the person invoking it and the person subjected to it. The relevance of CLS therefore lies in its capacity to expose the distinction between formal legal equality and substantive equality of legal power. This distinction allows the present study to examine criminalization not merely as an accidental misuse of an otherwise neutral legal system, but as a phenomenon that may emerge from institutional structures in which legal authority and material resources are unevenly distributed.

The CLS perspective also directs attention to the indeterminacy of legal categories. Concepts such as “defamation,” “public interest,” “criticism,” “harm,” and “legitimate participation” may appear sufficiently determinate in statutory language, yet their application frequently requires institutional interpretation. Such interpretive spaces matter because environmental activism often involves

statements directed toward conduct that is simultaneously private and public. A corporation may be a private legal entity, for example, but its environmental activities may affect public health, ecological resources, local communities, and governmental policy. Likewise, criticism of a government official may concern not the official's private reputation but the manner in which public authority is exercised. The legal characterization of such expression therefore has consequences extending beyond the immediate parties. Kennedy's analysis of legal reasoning suggests that apparently technical legal distinctions can embody underlying political judgments about competing interests (Kennedy 1976).

In the environmental context, the choice between characterizing an activist's statement as protected public participation or unlawful reputational harm can determine whether the activist remains a participant in public debate or becomes the subject of criminal proceedings. This does not mean that every allegation made by an environmental activist should be immune from legal scrutiny. A critical approach must preserve the distinction between legitimate criticism and genuinely unlawful conduct. Its purpose is instead to question why and under what circumstances particular forms of environmental expression become prioritized for legal sanction. The issue is particularly acute when the legal system gives powerful actors access to procedures capable of imposing substantial costs before the substantive merits of the environmental dispute are fully examined. Consequently, the procedural dimension of law becomes central to the analysis. The coercive effect of legal proceedings may arise from investigation, summonses, detention, legal expenses, reputational consequences, and uncertainty even before a final judgment is delivered. Law can thus exercise power not only through final judgments but through the institutional process itself. A CLS analysis consequently treats legal procedure as part of the substantive distribution of power rather than as a neutral pathway through which disputes simply pass.

B. Criminalization as a Process of Governing Dissent

The concept of criminalization provides a second theoretical dimension of the study. Criminalization should not be understood exclusively as the enactment of a criminal prohibition. It also concerns the process through which particular forms of conduct, identity, or political activity become constructed as appropriate objects of criminal-law intervention. Critical scholarship on criminalization emphasizes that criminal law does not simply respond to pre-existing social harm; it participates in defining which behaviors are regarded as threatening, deviant, or deserving of punishment. This is particularly significant for environmental activism because environmental conflict frequently involves competing understandings of legitimate development, property, public order, and social justice. When activists challenge mining operations, plantation expansion, infrastructure projects, pollution, or government decisions, their activities may be represented by opposing actors not as participation in democratic governance but as disruption, reputational harm, misinformation, or threats to economic order. The legal system then becomes a site in which competing political narratives are translated into legally actionable categories.

The concept of criminalization therefore shifts the analytical question from "Did the activist violate the law?" toward "How did this political or environmental

conflict become constructed as a criminal-law problem?” This distinction is important because the same conduct may be understood differently depending on the institutional context in which it is evaluated. Public criticism concerning an environmental project may be treated as an essential contribution to public deliberation when understood from the perspective of environmental democracy, but as defamatory conduct when understood primarily through the protection of reputation. The legal characterization determines which interests become visible and which are marginalized. In this respect, criminalization can operate as a mechanism of boundary-setting: it defines the limits of permissible dissent and thereby shapes the practical space available for civil society participation. Research on environmental defenders has repeatedly documented the vulnerability of activists who confront powerful economic and political interests, suggesting that legal pressure can become part of broader patterns of repression rather than isolated disputes over individual conduct (Handayani, Achmadi, and Apsari 2022). The Indonesian Anti-SLAPP literature is particularly relevant because it demonstrates that environmental defenders may experience criminal or civil proceedings despite the existence of Article 66 of Law No. 32 of 2009, which was designed to protect those exercising environmental rights.

Criminalization also produces effects that extend beyond the individual defendant. A person who is investigated or prosecuted may experience direct consequences, but other activists and community members may observe the proceedings and adjust their own behavior in response. The result is a form of indirect regulation in which the state does not need to prosecute every participant to influence collective behavior. The possibility of prosecution can be sufficient to increase the perceived costs of participation. This dynamic is closely related to the concept of the chilling effect, which has been extensively discussed in scholarship concerning surveillance, censorship, protest, and freedom of expression. The chilling effect describes a situation in which individuals refrain from exercising legally protected rights because they anticipate negative consequences, even when their conduct is not itself unlawful.

In environmental conflicts, this can have particularly serious consequences because environmental harms are often difficult to document and contest without sustained participation by local communities, journalists, activists, and civil society organizations. If those actors anticipate that criticism may generate criminal complaints, they may reduce public communication, avoid naming responsible actors, refrain from organizing demonstrations, or withdraw from environmental campaigns altogether. The legal system consequently affects not only the outcome of a particular case but also the conditions under which future participation occurs. This is why criminalization should be assessed according to both its direct legal effect and its constitutive social effect. The first concerns the formal consequences imposed upon an accused activist; the second concerns how legal intervention reshapes expectations about what forms of participation are safe or dangerous. Such an approach is consistent with research demonstrating that legal threats and surveillance can produce self-censorship even where individuals retain formal freedom of expression (Stoycheff 2016; Stoycheff et al. 2019). In the environmental context, the consequence is especially problematic because democratic environmental governance depends upon the availability of critical

information and the willingness of citizens to challenge decisions that may affect collective ecological interests.

C. SLAPP and the Strategic Use of Legal Processes

The concept of Strategic Lawsuits Against Public Participation (SLAPP) provides a more specific framework for understanding how legal proceedings may be used to burden or discourage environmental advocacy. The term was developed to describe lawsuits brought against individuals or organizations because of their participation in matters of public concern, particularly where litigation functions less as a mechanism for obtaining substantive relief than as a means of imposing costs upon political opponents (Pring and Canan 1996). Although SLAPP scholarship originated primarily in relation to civil litigation, its analytical logic extends to criminal complaints and other legal mechanisms when those mechanisms are strategically mobilized against public participation.

Environmental disputes are particularly susceptible to SLAPP because environmental activism frequently challenges projects involving substantial financial investments and politically significant development interests. Environmental defenders may therefore face legal claims from actors whose resources greatly exceed those available to individual activists or community organizations. The asymmetry is important because the effectiveness of a SLAPP does not depend entirely on whether the claimant ultimately prevails. The legal process itself may impose financial costs, consume time, disrupt employment, generate reputational damage, and create psychological pressure. Shapiro (2010) therefore emphasizes that Anti-SLAPP mechanisms should focus on protecting participation in public affairs rather than requiring courts to determine at an early stage whether the claimant's subjective motivation was definitively malicious.

This approach recognizes that the structural effect of litigation may be suppressive regardless of whether improper motive can be conclusively established. The Indonesian context demonstrates the importance of this perspective. Article 66 of Law No. 32 of 2009 expressly seeks to protect environmental defenders from criminal prosecution and civil litigation for exercising environmental rights, yet Indonesian scholarship has documented continuing SLAPP practices and identified weaknesses in the understanding and implementation of Anti-SLAPP protections among law-enforcement institutions (Indrawati 2022; Handayani, Achmadi, and Apsari 2022). More recent scholarship has similarly argued that Indonesian Anti-SLAPP regulation requires procedural strengthening because substantive recognition of protection is insufficient if law-enforcement institutions lack an effective mechanism for identifying potentially retaliatory proceedings at an early stage (Kamal et al. 2025).

The SLAPP framework, however, should not be applied mechanically to every unsuccessful prosecution or lawsuit involving an environmental activist. Doing so would undermine the legitimacy of laws protecting reputation and could create an equally problematic assumption that activists are categorically immune from legal responsibility. The analytical value of SLAPP lies instead in identifying structural indicators of abusive legal mobilization. These indicators include the public-interest character of the underlying expression, the relationship between the expression and participation in environmental decision-making, substantial

asymmetry between the parties, the use of burdensome legal procedures, the availability of less restrictive alternatives, and the potential impact of the proceeding on broader participation.

The public-interest dimension is particularly important. Environmental expression frequently concerns matters that affect persons beyond the immediate participants in the dispute. A statement concerning pollution, coastal degradation, forest destruction, mining activity, or government approval of an environmentally controversial project can therefore have a communicative function extending beyond the reputation of a particular actor. Treating such speech exclusively as an interpersonal dispute may obscure its democratic significance. The same point applies to corporate actors. Corporations possess legitimate interests in protecting their reputation, but allowing corporations to invoke criminal defamation mechanisms against criticism concerning matters of public environmental concern can create a significant imbalance in the communicative environment.

This concern became particularly visible in the constitutional litigation involving Daniel Frits Maurits Tangkilisan. In April 2025, the Indonesian Constitutional Court partially granted Tangkilisan's petition and restricted the interpretation of the relevant ITE Law defamation provision so that government institutions, corporations, and certain collective entities could not invoke the provision as victims in the same way as individuals. The Court's reasoning emphasized the distinction between criticism directed at public institutions and personal attacks against an individual, thereby strengthening the constitutional space for public oversight. The significance of this development extends beyond the individual case because it demonstrates how constitutional adjudication can intervene in the structural conditions under which public-interest speech is regulated.

D. Chilling Effect, Environmental Democracy, and the Protection of Public Participation

The final conceptual element is the relationship between legal pressure and democratic environmental participation. Environmental democracy depends upon more than formal rights to participate in administrative procedures. It requires an environment in which individuals and organizations can obtain information, criticize governmental and corporate decisions, mobilize communities, and challenge environmentally harmful practices without disproportionate retaliation. The Aarhus Convention literature and broader environmental governance scholarship have conceptualized participation, access to information, and access to justice as interconnected dimensions of environmental democracy. While Indonesia's legal framework does not simply replicate European environmental-rights regimes, the underlying principle remains relevant: meaningful environmental participation requires institutional conditions that permit criticism and contestation. This is where the chilling-effect dimension of SLAPP becomes particularly significant. If legal proceedings create a credible expectation that environmental advocacy may result in criminal investigation or litigation, individuals may rationally choose silence over participation. Such self-restraint may not be visible in conventional judicial statistics because the people most

effectively deterred by a legal threat are precisely those who never undertake the contested activity.

The absence of subsequent protest, criticism, or litigation may therefore be misinterpreted as social consensus when it may instead reflect legal deterrence. Research on chilling effects demonstrates that perceived surveillance and legal risk can influence individuals' willingness to express political opinions and engage in public discourse (Stoycheff 2016; Stoycheff et al. 2019). Environmental activism magnifies this problem because the relevant harms are often diffuse and long-term, while legal retaliation can be immediate and individualized. The activist who reports environmental degradation bears the immediate legal risk, whereas the benefits of successful environmental advocacy are distributed across communities and future generations. This asymmetry can make public participation particularly vulnerable to strategic legal pressure.

From this perspective, Anti-SLAPP protection should be understood as an institutional mechanism for preserving democratic capacity rather than as a special privilege granted to activists. The purpose of such protection is to ensure that legal institutions do not inadvertently distort the conditions of public deliberation by imposing disproportionate costs on one side of an environmental controversy. Indonesian scholarship has identified precisely this concern in relation to Article 66 of the Environmental Protection and Management Law. Although the provision establishes substantive protection, its effectiveness is weakened when there is no sufficiently clear and accessible procedural mechanism through which courts or law-enforcement authorities can identify and terminate proceedings that arise from protected environmental participation (Indrawati 2022; Handayani, Achmadi, and Apsari 2022).

Recent Indonesian research has reinforced this point by identifying a procedural gap in the implementation of Anti-SLAPP protection, particularly where sectoral criminal provisions can be invoked before the protective function of environmental law becomes operational. The theoretical implication is significant: rights are not adequately protected merely because they are formally recognized in legislation. Their effectiveness depends upon institutional procedures capable of preventing conflicting legal powers from neutralizing those rights. This proposition brings the analysis back to Critical Legal Studies. The question is ultimately one of institutional design and power distribution. If environmental participation is formally protected but activists remain exposed to lengthy criminal processes before courts determine whether their conduct falls within protected participation, the formal right may exist while its practical value remains limited.

A critical legal analysis must therefore examine not only the substantive scope of Article 66, freedom of expression, and defamation provisions, but also the procedural architecture through which these norms interact. The central theoretical proposition of this article is consequently that the protection of environmental activism depends less on the abstract existence of rights than on whether legal institutions are structured to prevent unequal actors from converting legal process into a mechanism of deterrence. This proposition will guide the subsequent analysis of Indonesia's legal framework and the Tangkilisan case.

IV. LEGAL FRAMEWORK FOR ENVIRONMENTAL PARTICIPATION AND DEFAMATION IN INDONESIA

A. Constitutional Protection of Environmental Participation and Freedom of Expression

The legal protection of environmental activism in Indonesia derives from the intersection of constitutional rights, environmental legislation, and guarantees of freedom of expression. The 1945 Constitution recognizes the right to a good and healthy environment as a fundamental right and simultaneously protects freedom of association, assembly, and expression. These provisions establish an important constitutional premise: environmental participation is not merely an administrative privilege granted by statute but is connected to broader constitutional guarantees concerning citizenship, public participation, and human dignity. Article 28H(1) of the Constitution recognizes the right of every person to live in physical and spiritual prosperity, to have a home, and to enjoy a good and healthy environment, while Article 28E(3) guarantees freedom of association, assembly, and expression.

These rights should be interpreted in conjunction with Article 28F, which guarantees the right to communicate and obtain information for the development of one's personal and social environment. The constitutional architecture therefore creates a normative relationship between environmental protection, information, and participation: individuals must be able to access and communicate information concerning environmental conditions if the constitutional right to environmental protection is to have substantive meaning. At the same time, constitutional rights are not absolute. Article 28J permits restrictions established by law for purposes including respect for the rights of others, morality, religious values, security, and public order in a democratic society. The constitutional problem is consequently not whether restrictions on environmental expression are categorically prohibited, but whether restrictions satisfy the requirements of legality, legitimate purpose, necessity, proportionality, and democratic justification.

This distinction is particularly important in defamation disputes. Reputation is itself a legally protected interest, and environmental activists cannot automatically disregard the rights of individuals whose conduct they criticize. Yet constitutional balancing requires attention to the nature of the expression, the identity of the person or entity criticized, the public importance of the subject matter, and the potential effect of legal sanctions on democratic participation. Indonesian constitutional scholarship has emphasized that freedom of expression in the digital environment must be reconciled with the state's responsibility to prevent unlawful harm without allowing regulation to become an instrument for suppressing legitimate public criticism (Fernando et al. 2022; Indriasari 2023). The constitutional framework therefore establishes a dual obligation: the state must protect reputation and other legitimate interests while simultaneously ensuring that legal restrictions do not destroy the communicative conditions necessary for democratic and environmental accountability.

The relationship between environmental rights and freedom of expression is particularly significant because environmental participation depends heavily upon information produced outside formal state institutions. Environmental activists

frequently act as intermediaries between affected communities, scientific information, public authorities, journalists, and broader civil society. Their communications may include allegations concerning pollution, environmental degradation, corporate practices, regulatory decisions, or failures of government oversight. Such communication may be contentious precisely because it challenges official or commercially dominant narratives. The constitutional protection of expression should therefore be understood not only as protection of abstract individual autonomy but also as protection of public deliberation.

This approach is consistent with broader theories of democratic speech, under which public criticism enables citizens to scrutinize the exercise of public and economic power. Where the subject of speech concerns environmental governance, the democratic value of the expression may be especially high because environmental decisions can affect communities that lack direct access to decision-making institutions. Restricting the communicative capacity of activists can consequently have effects beyond the immediate speaker. It may diminish the ability of communities to identify environmental harm, coordinate collective responses, and demand governmental accountability. This broader perspective is relevant to the interpretation of Article 66 of Law No. 32 of 2009 because the provision protects persons who participate in environmental protection not merely for their personal benefit but in connection with the exercise of environmental rights. The constitutional framework thus provides the normative foundation for interpreting environmental participation broadly enough to encompass legitimate public criticism while preserving appropriate remedies for genuinely unlawful speech.

B. Article 66 of the Environmental Protection and Management Law

Law No. 32 of 2009 on Environmental Protection and Management represents the principal statutory basis for protecting environmental participation in Indonesia. Its significance for the present analysis lies particularly in Article 66, which provides protection for persons fighting for the right to a good and healthy environment from criminal prosecution and civil lawsuits. The provision reflects an explicit legislative recognition that environmental advocacy can expose individuals to retaliatory legal action and that ordinary legal mechanisms may therefore require limitation when they are used against protected environmental participation. In doctrinal terms, Article 66 can be understood as an Anti-SLAPP provision because it establishes a legal shield against certain forms of criminal and civil proceedings connected with environmental advocacy. Indonesian legal scholarship has repeatedly emphasized the importance of this provision in preventing the legal system from becoming a mechanism of repression against environmental defenders (Handayani, Achmadi, and Apsari 2022). Nevertheless, the effectiveness of Article 66 depends upon how its scope is interpreted and operationalized by courts and law-enforcement authorities.

The provision establishes substantive protection, but questions remain concerning the procedural mechanism through which an activist can invoke that protection before criminal proceedings impose significant burdens. This distinction between substantive recognition and procedural enforceability is central to the

Anti-SLAPP problem in Indonesia. A right that can only be recognized after lengthy investigation or trial may provide inadequate protection if the process itself produces the chilling effect that the right was designed to prevent. Indonesian scholarship has therefore identified procedural uncertainty and institutional inconsistency as important weaknesses in the implementation of environmental Anti-SLAPP protection (Indrawati 2022; Alfarissa 2024). The existence of Article 66 should consequently not be treated as conclusive evidence that environmental defenders are adequately protected. Instead, the provision must be evaluated according to whether it effectively prevents or terminates legal processes that are initiated because of protected environmental participation.

Article 66 also raises a significant question concerning the relationship between environmental law and general criminal law. Environmental activists may be exposed to legal provisions outside the environmental statute, including defamation provisions contained in the ITE Law. The protective purpose of Article 66 could be undermined if an activist's participation is characterized under another statutory regime without first determining whether the conduct falls within the protected category established by environmental law. This creates what may be described as a cross-statutory protection gap. Environmental law may recognize the legitimacy of participation, while another legal regime may provide a basis for sanctioning the communicative form through which that participation occurs.

The problem becomes particularly acute where digital communication is involved because online statements can be rapidly distributed, permanently recorded, and interpreted through criminal provisions governing electronic information. If Article 66 is interpreted narrowly as applying only to formal environmental litigation or administrative participation, its protective capacity may fail to encompass the increasingly important digital forms of environmental advocacy. Such an interpretation would be difficult to reconcile with the contemporary reality of environmental participation, where social media, digital campaigns, online petitions, and citizen-generated environmental documentation have become significant mechanisms of public engagement. The statutory protection should therefore be understood in light of its underlying purpose: preventing legal processes from being used to punish legitimate participation in environmental protection. A purposive interpretation does not mean granting unrestricted immunity to activists; rather, it requires legal institutions to distinguish between protected environmental participation and conduct that independently satisfies the elements of a legitimate offense. This distinction becomes especially important when the alleged harm concerns reputation because reputation-based claims can overlap with criticism concerning matters of substantial public interest.

C. Defamation under the Electronic Information and Transactions Law

The regulation of defamation in Indonesia has undergone significant development through amendments to the Electronic Information and Transactions Law. The digital context creates particular legal difficulties because online expression combines the characteristics of interpersonal communication, mass communication, political advocacy, and public documentation. Article 27A of Law No. 1 of 2024 concerning the Second Amendment to the ITE Law addresses attacks

against the honor or good name of another person through electronic systems, while Article 45(4) establishes criminal sanctions for the relevant conduct. The 2024 amendment represented an attempt to refine the regulatory framework surrounding digital defamation and to respond to longstanding criticism concerning the use of the ITE Law against online expression.

Nevertheless, the existence of a specific digital defamation provision creates an important question concerning its application to public-interest criticism. Environmental activists frequently use digital media precisely because conventional institutional channels may be inaccessible or insufficiently responsive. Their statements may therefore concern corporations, government officials, institutions, or other actors whose activities affect public interests. Treating every negative or accusatory statement concerning such actors as a private reputational dispute risks disregarding the democratic function of the expression. The Constitutional Court's subsequent interpretation of Article 27A in Decision No. 105/PUU-XXII/2024 is therefore particularly significant. In April 2025, the Court partially granted the constitutional challenge brought by Daniel Frits Maurits Tangkilisan and interpreted the provision conditionally, including by restricting the category of potential victims in a manner that excluded government institutions, corporations, and other collective entities from the relevant offense. The Court further distinguished between criticism directed toward public institutions and attacks against the personal honor of individuals. This interpretation is important because it places public-interest criticism within a constitutional framework rather than treating defamation solely as a matter of interpersonal injury.

The Court's intervention also demonstrates the limits of statutory interpretation when criminal provisions intersect with constitutional freedom of expression. The problem was not simply that Article 27A existed, but that the breadth of its language could permit legal claims by institutional actors whose interests are materially different from those of natural persons whose personal reputation is directly affected. The distinction is constitutionally significant. A government institution or corporation may have legitimate interests in correcting false information, but allowing such entities to invoke criminal defamation in the same manner as individual persons may produce a substantial chilling effect because institutional actors possess greater capacity to initiate legal proceedings and mobilize organizational resources. The Court's interpretation consequently narrows the possibility of transforming institutional criticism into criminal liability. This development is consistent with a broader democratic principle: criticism concerning the conduct of public institutions should ordinarily receive stronger protection because such criticism performs an accountability function.

Indonesian scholarship on digital freedom of expression has identified persistent tensions between the ITE Law and constitutional protection of expression, particularly where broadly interpreted provisions permit criminal proceedings arising from online criticism (Fernando et al. 2022; Indriasari 2023; Imanuel, Warjio, and Fauzan 2023). The constitutional development represented by Decision No. 105/PUU-XXII/2024 should therefore be viewed as part of a broader process of recalibrating the relationship between reputation protection and democratic speech. Its significance for environmental activism lies in the possibility that environmental criticism can be recognized as public-interest expression rather than automatically characterized as unlawful reputational attack.

D. The Relationship between Article 66 and Defamation Law

The interaction between Article 66 of the Environmental Protection and Management Law and the defamation provisions of the ITE Law creates the central doctrinal tension examined in this article. On one side, environmental law recognizes the need to protect persons who participate in environmental protection from retaliatory legal proceedings. On the other, defamation law protects reputation and establishes sanctions against unlawful attacks through electronic communication. Neither objective is inherently illegitimate. The legal difficulty arises when the same conduct can simultaneously be characterized as environmental participation and unlawful defamation. This creates a conflict of legal framing rather than necessarily a direct textual conflict between statutes. The activist may understand a statement as environmental criticism; the complainant may characterize it as an attack upon reputation; law-enforcement authorities must then determine which legal characterization governs. The result is significant because the initial characterization can determine whether Article 66 protection is activated or whether the activist is instead treated primarily as a criminal suspect.

A formalistic approach that begins exclusively with the alleged defamatory statement risks reversing the protective purpose of environmental law. It treats the environmental context as incidental rather than as a factor relevant to determining the legal character of the conduct. A rights-sensitive approach should instead examine the statement in its full context, including the environmental issue being discussed, the target of the criticism, the factual basis for the statement, the manner in which it was communicated, and the relationship between the expression and public participation. Such contextual interpretation is consistent with the broader principle that restrictions on expression must be evaluated in relation to their purpose and effects rather than solely according to the literal content of the challenged statement.

The doctrinal problem also reveals the importance of procedural sequencing. If an environmental activist can invoke Article 66 only after a full criminal process has occurred, the protection may arrive too late. The threat of investigation, questioning, detention, prosecution, legal expenses, and reputational damage can itself constitute the principal burden. An effective Anti-SLAPP framework therefore requires legal institutions to consider the protective status of environmental participation at an early procedural stage. The issue is not merely whether the activist will eventually be acquitted but whether the state should permit a potentially retaliatory prosecution to proceed through the full criminal process in the first place. Indonesian scholarship has identified this procedural weakness as one of the central difficulties in implementing environmental Anti-SLAPP protections (Indrawati 2022; Alfariisa 2024). The Supreme Court's development of environmental case procedures, including Supreme Court Regulation No. 1 of 2023, may contribute to strengthening environmental judicial protection, but procedural protection must remain capable of addressing the distinct problem of retaliatory proceedings based on speech. The broader implication is that Anti-SLAPP protection cannot be fully effective if it operates only as a defense after prosecution has already imposed substantial burdens. It must function as a mechanism for allocating institutional risk: where an allegation arises directly from

protected environmental participation, the party seeking legal intervention should face meaningful scrutiny concerning the public-interest character of the dispute and the proportionality of the legal remedy.

E. The Emerging Constitutional Standard after Decision No. 105/PUU-XXII/2024

The Constitutional Court's decision in the Tangkilisan case provides an important point of transition from statutory analysis to case-specific critical analysis. The Court's interpretation of Article 27A establishes that criticism directed toward government institutions, corporations, institutions, professions, or positions cannot simply be equated with an attack upon the personal honor of an individual. The Court emphasized that criticism may constitute an exercise of public oversight, correction, or advice concerning matters of public interest. This distinction creates an important constitutional threshold for evaluating defamation claims arising from environmental advocacy. Where expression concerns environmental conditions, corporate conduct, or governmental decisions, the communicative context may indicate that the statement is part of public participation rather than an exclusively private attack. The Court's approach consequently strengthens the constitutional status of public-interest criticism and reduces the risk that institutional actors can use criminal defamation provisions to suppress scrutiny.

At the same time, the decision does not eliminate the legal protection of individual reputation. It therefore provides a basis for a more differentiated approach in which the identity of the complainant, the content and context of the statement, and the public-interest character of the subject matter become central to legal evaluation. Such differentiation is consistent with the constitutional requirement that restrictions on expression remain proportionate and do not extinguish the democratic function of speech.

The significance of this constitutional development extends beyond the interpretation of one provision. It demonstrates how constitutional adjudication can correct structural imbalances created by broad statutory language. From a Critical Legal Studies perspective, however, judicial intervention should not be treated as the final solution to the problem of criminalization. The practical effectiveness of constitutional standards depends upon their internalization by police, prosecutors, and lower courts. A constitutional judgment may narrow the formal scope of criminal liability while institutional practices continue to expose activists to investigation or prosecution through alternative legal provisions.

The effectiveness of the protection therefore depends upon the broader legal ecosystem in which constitutional norms operate. This observation reinforces the central proposition of the article: the critical issue is not simply the content of individual legal rules but the distribution of institutional power through which those rules are activated. The Tangkilisan decision creates a stronger doctrinal foundation for protecting public-interest environmental criticism, but its long-term significance will depend on whether law-enforcement institutions consistently distinguish legitimate public participation from unlawful personal attacks.

V. CRITICAL ANALYSIS OF CRIMINALIZATION: THE DANIEL FRITS MAURITS TANGKILISAN CASE

A. From Environmental Advocacy to Criminal Proceedings

The case of Daniel Frits Maurits Tangkilisan provides a particularly important illustration of how environmental advocacy can become transformed into a criminal-law dispute through the regulation of digital expression. Tangkilisan is an environmental activist associated with the Koalisi Kawal Indonesia Lestari (Kawali) who had participated in environmental activities in Karimunjawa and used social media as a platform for communicating environmental concerns. According to materials submitted in the constitutional proceedings, his environmental activities included community education, opposition to shrimp-farming activities considered environmentally harmful, and participation in the #savekarimunjawa movement. On 12 November 2022, Tangkilisan posted environmental content on Facebook concerning the condition of Cemara Beach and opened a public discussion concerning alleged pollution associated with shrimp farming. The dispute subsequently escalated, and Tangkilisan was subjected to criminal proceedings under provisions of the ITE Law.

The significance of this trajectory lies in the transformation of the underlying controversy. What initially concerned an environmental condition and the legitimacy of activities affecting Karimunjawa's ecological resources became framed through criminal-law categories concerning electronic communication. This transformation is precisely what a critical legal analysis must examine. The relevant question is not simply whether the communication contained words capable of causing reputational injury, but how and why an environmental dispute was translated into a criminal proceeding against the person communicating about the environmental issue. The shift from environmental governance to criminal adjudication potentially changes the position of the participants: the activist who initially sought to scrutinize environmental conditions becomes the person subjected to institutional investigation, while the environmental issue that generated the communication risks becoming secondary to the question of the activist's alleged criminal liability. From the perspective of Critical Legal Studies, this transformation is significant because legal categorization determines which interests become institutionally visible. Once the dispute is framed principally as an offense under the ITE Law, the environmental context may become legally peripheral even though it provides the substantive reason why the expression was made in the first place.

The criminal proceedings also demonstrate that the coercive capacity of criminal law can operate independently of the eventual outcome of the case. The District Court of Jepara, in Decision No. 14/Pid.Sus/2024/PN Jpa dated 4 April 2024, found Tangkilisan criminally liable and imposed a sentence of seven months' imprisonment and a fine of Rp5 million for an offense under the ITE Law concerning the dissemination of information intended to generate hatred against a particular group based on SARA. The prosecution therefore involved more than a private disagreement over reputation; it resulted in the application of criminal law and deprivation of liberty. Yet the subsequent appellate decision fundamentally altered the legal characterization of the case. On 21 May 2024, the Semarang High

Court annulled the District Court's judgment and held that although the defendant had committed the conduct alleged by the prosecution, he qualified as a person fighting for the right to a good and healthy environment. The High Court consequently released him from all legal demands (*onslag van rechtsvervolging*) and ordered restoration of his rights, dignity, and status. The contrast between the two decisions is analytically important. It demonstrates that the legal meaning of the same conduct was not self-evident. The first-instance court approached the matter principally through the criminal provision, whereas the appellate court incorporated the defendant's status as an environmental defender into its legal reasoning. The divergence illustrates the interpretive space within which legal power operates. If the meaning and consequences of the conduct depend substantially upon whether an institution sees the defendant primarily as a criminal offender or as a participant in environmental protection, then the problem cannot be reduced to the literal wording of the statute. It concerns the institutional framing of the dispute. This is consistent with the Critical Legal Studies proposition that legal outcomes are shaped not solely by formally articulated rules but also by interpretive choices concerning which social context is legally relevant.

B. The Importance of Article 66: Recognition Without Immediate Protection

The Tangkilisan litigation exposes a fundamental tension between the formal recognition of environmental defender protection and the timing of its application. Article 66 of Law No. 32 of 2009 was designed to prevent criminal and civil proceedings against persons who fight for the right to a good and healthy environment in circumstances covered by the provision. In the Tangkilisan case, the Semarang High Court ultimately recognized the defendant as an environmental rights defender and released him from legal demands. This development is significant because it confirms that environmental activism is not legally irrelevant to criminal proceedings. The environmental context can determine the legal consequences of conduct that might otherwise be assessed exclusively under general or sectoral criminal provisions. However, the timing of the protection reveals a structural weakness.

Tangkilisan had already experienced criminal proceedings, detention, conviction at first instance, and the associated costs before the appellate court recognized the protective dimension of his conduct. The case therefore raises an important distinction between *ex post* protection and preventive protection. *Ex post* protection allows a court eventually to recognize that an activist was protected; preventive protection seeks to prevent the criminal process from imposing those burdens in the first place. From an Anti-SLAPP perspective, the latter is crucial because the harm produced by a potentially abusive legal proceeding is not necessarily eliminated by an eventual acquittal. Legal fees, detention, uncertainty, reputational consequences, emotional pressure, and disruption of activism occur during the process itself. A legal system that protects activists only after the conclusion of substantial criminal proceedings may therefore formally recognize the right while failing to protect its practical exercise. This problem supports the broader critical proposition that rights must be evaluated institutionally rather than merely textually. The existence of Article 66 is normatively important, but its

effectiveness depends upon whether police, prosecutors, and courts are equipped and willing to identify protected environmental participation before criminal sanctions are imposed.

The appellate decision nevertheless represents an important corrective to a purely formalistic approach. By characterizing Tangkilisan as a person fighting for the right to a good and healthy environment, the Semarang High Court effectively recognized that the defendant's conduct could not be evaluated independently of the environmental context in which it occurred. This reasoning gives Article 66 substantive relevance because it places environmental participation within the legal characterization of the defendant's conduct rather than treating it as an external moral consideration. The decision can therefore be interpreted as moving toward a contextual model of legal adjudication. Under such a model, the court asks not merely whether an electronic statement satisfies the formal elements of an offense but also whether the statement forms part of protected participation in environmental governance.

This approach is particularly important in disputes concerning digital communication because social media posts often combine factual claims, political criticism, personal observations, mobilization, and emotional responses. A rigid separation between “environmental activism” and “electronic speech” may consequently be artificial. The environmental purpose of the communication can be central to determining its legal character. Yet the fact that the High Court eventually adopted this contextual approach also demonstrates the weakness of relying exclusively upon appellate correction. Critical Legal Studies directs attention to precisely this institutional problem: if different judicial levels can construct substantially different legal meanings from the same facts, then the distribution of institutional authority becomes an important component of substantive rights protection. The activist's legal security depends not merely upon what the law says but upon which institutional interpretation prevails at each stage of the criminal process.

C. Defamation, Public Interest, and the Problem of Legal Recharacterization

The constitutional proceedings initiated by Tangkilisan provide a second layer of analysis because they demonstrate that the dispute extended beyond the individual prosecution toward the structural meaning of digital defamation law. In Case No. 105/PUU-XXII/2024, Tangkilisan challenged provisions of Law No. 1 of 2024 concerning the Second Amendment to the ITE Law, including Article 27A and Article 45(4), arguing that their application could threaten constitutional rights to equality, freedom of expression, privacy, and other constitutional guarantees. The Constitutional Court partially granted the petition on 29 April 2025. It conditionally declared the phrase “another person” in Article 27A and Article 45(4) unconstitutional and required that it be understood as excluding, among others, government institutions, groups of persons with specific identities, institutions, corporations, professions, or positions. The Court also conditionally interpreted the phrase concerning “a matter” so that it referred to conduct that demeans the honor or reputation of an individual. This ruling is highly significant for environmental advocacy because it places a constitutional limit on the capacity of institutional

actors to invoke criminal defamation against public criticism. The Court expressly distinguished criticism, which may constitute supervision, correction, and advice concerning matters of public interest, from attacks directed against the personal honor or reputation of an individual. The distinction addresses one of the central risks identified in the present article: when criticism of corporate or governmental conduct is transformed into an individualized reputational offense, the legal system can convert a matter of public accountability into a private criminal dispute.

From a critical perspective, the significance of the Constitutional Court's ruling lies not merely in narrowing the scope of Article 27A but in correcting an asymmetry embedded in the potential use of criminal law. Corporations and government institutions possess organizational resources that ordinary activists typically do not possess. They may have access to legal counsel, administrative networks, communications departments, and institutional authority. If such entities could invoke criminal defamation provisions against criticism in the same manner as individuals, the threat of criminal proceedings could significantly alter the balance of public discourse. The Court's interpretation reduces this possibility by emphasizing that the offense is directed toward the honor or reputation of an individual rather than the institutional reputation of a corporation or government body.

The ruling therefore has implications beyond doctrinal interpretation: it reallocates the legal capacity to mobilize criminal law. This is precisely the kind of institutional distribution that Critical Legal Studies seeks to expose. Legal rules do not merely prohibit conduct; they allocate opportunities to invoke state coercion. A provision that enables an institution to transform criticism into criminal liability gives that institution a form of power over public discourse. Conversely, restricting the availability of that mechanism can strengthen the communicative position of citizens. The Court's ruling can therefore be understood as a partial redistribution of legal power in favor of public-interest expression. Nevertheless, the ruling does not resolve every risk associated with the criminalization of environmental activism. Individual actors connected to corporations or government institutions may still possess the capacity to initiate complaints where they claim that their personal reputation has been attacked. The critical question consequently remains whether law-enforcement institutions distinguish genuine individual reputational injury from criticism of institutional conduct. Without such contextual differentiation, formal compliance with the Court's ruling could still leave room for indirect legal pressure.

D. The Power Asymmetry Behind Environmental Criminalization

The Tangkilisan case is particularly useful for developing a Critical Legal Studies account because it reveals how environmental disputes occur within relationships of unequal power. Environmental activists typically seek to influence decisions concerning resources that are economically valuable and politically significant. The actors affected by environmental criticism may include corporations, business operators, local authorities, or other actors possessing considerably greater organizational capacity. This asymmetry matters because access to law is itself a resource. A legal system may formally provide the same rules to every party, yet parties do not necessarily possess the same capacity to mobilize those rules. The

ability to initiate a criminal complaint, retain lawyers, respond to public criticism, produce institutional narratives, and sustain lengthy legal proceedings is unevenly distributed. The result is that formally neutral law can produce unequal practical effects. This does not establish, by itself, that every prosecution involving an environmental activist is abusive. Rather, it establishes why the structural position of the parties must be included in evaluating whether legal intervention is proportionate. SLAPP scholarship has emphasized that the strategic burden of litigation lies partly in the unequal capacity of parties to absorb legal costs and procedural pressure (Pring and Canan 1996; Shapiro 2010). The environmental context intensifies this concern because the activist may be challenging conduct supported by substantial economic interests. In such circumstances, even a legally uncertain complaint can be effective as a deterrent. The strategic value of legal proceedings may therefore arise from their capacity to redistribute the costs of participation: the institution or economically powerful actor can shift the financial and psychological costs of environmental controversy onto the activist. The legal system then becomes part of the conflict's power structure rather than merely an external mechanism for resolving it.

This asymmetry also explains why the concept of “abuse” cannot depend exclusively upon proving subjective malicious intent. A complainant may sincerely believe that an activist's statement is harmful, yet the resulting legal proceeding may still have a disproportionate effect on public participation. The relevant issue is therefore not only what the complainant intended but what institutional power the legal mechanism creates and how that power affects democratic participation. Shapiro's (2010) approach to Anti-SLAPP law is instructive because it focuses on protecting participation in matters of public concern rather than requiring an exhaustive inquiry into the claimant's subjective motives.

The Tangkilisan litigation demonstrates the value of such an approach. The environmental subject matter, the activist's prior involvement in environmental advocacy, the use of social media to discuss environmental conditions, and the eventual judicial recognition of his status as an environmental defender indicate that the expression was connected to a broader public-interest controversy. The appropriate legal inquiry should therefore include the relationship between the speech and environmental participation. If a statement emerges directly from a campaign concerning environmental degradation, the public-interest dimension should receive significant weight before criminal law is activated. Otherwise, the law risks incentivizing a shift in advocacy strategy: activists may avoid naming actors, publishing evidence, or communicating environmental concerns because doing so exposes them to personal legal liability. The resulting silence would not necessarily indicate that environmental conflicts have been resolved. It may instead demonstrate that the costs of contestation have become too high.

E. The Chilling Effect as a Form of Legal Power

The most significant consequence of the Tangkilisan case is therefore not limited to the criminal liability imposed or ultimately removed from one individual. It lies in the potential chilling effect generated by the experience of criminal prosecution. The chronology is instructive: an environmental activist communicated concerns through social media; the communication became the basis of criminal

proceedings; the first-instance court imposed imprisonment; the appellate court subsequently recognized the environmental-protection dimension and released him from legal demands; and the dispute eventually reached the Constitutional Court, which substantially narrowed the interpretation of the relevant digital defamation provisions. The institutional journey itself demonstrates how costly legal uncertainty can become for an individual participating in environmental advocacy. A person observing the case from outside does not need to know whether a future prosecution will ultimately succeed. The existence of a credible possibility of criminal investigation, detention, prosecution, and appeal may be sufficient to influence behavior. This is the essence of the chilling effect. It operates prospectively: the legal consequences of one case can shape the decisions of people who are not themselves prosecuted. In environmental governance, the effect may be particularly damaging because information concerning ecological harm frequently depends upon citizen observation, community reporting, and activist documentation. If potential speakers anticipate criminal consequences, they may limit their communications, avoid identifying suspected environmental offenders, or withdraw from campaigns. The legal process thus regulates conduct beyond the formal defendant. It creates a boundary around permissible participation by altering the perceived risks associated with speaking.

The chilling effect also reveals why the conventional distinction between “successful” and “unsuccessful” prosecution is insufficient for evaluating Anti-SLAPP protection. From a narrow criminal-law perspective, the eventual release of Tangkilisan might suggest that the legal system ultimately corrected itself. From a rights-protection perspective, however, the more difficult question is whether the correction came sufficiently early to prevent the burdens that the protective framework was intended to avoid. The High Court's decision was an important judicial safeguard, but it followed a conviction and imprisonment at first instance.

The constitutional ruling was even later. Thus, the legal system demonstrated both its capacity for correction and its capacity to expose a protected participant to substantial legal burdens before that correction occurred. This duality is central to the critical analysis. Law should not be viewed simply as an oppressive or emancipatory institution. It can reproduce power at one institutional stage and constrain it at another. Critical Legal Studies is valuable precisely because it allows these contradictory functions to be examined simultaneously. The Tangkilisan case demonstrates that appellate and constitutional institutions can become sites of resistance against excessive criminalization, while the earlier stages of the criminal process can nevertheless produce significant restrictions upon the activist's practical freedom. The institutional challenge is therefore to move protection forward in time. Anti-SLAPP principles must become operational at the earliest stage at which legal intervention threatens protected participation. Otherwise, the legal system risks creating a paradox in which activists possess a right to environmental participation in theory but must endure criminal proceedings to establish that the participation was protected in practice.

F. The Case as Evidence of Institutional Contestation Rather Than Simple Judicial Failure

The Tangkilisan litigation should therefore not be interpreted simply as evidence that Indonesian courts uniformly suppress environmental activism. Such a conclusion would overlook the significant corrective role played by the Semarang High Court and the Constitutional Court. The more analytically defensible conclusion is that the case demonstrates institutional contestation over the meaning and limits of environmental participation. The District Court treated the defendant through the framework of criminal liability under the ITE Law; the High Court introduced the protective dimension of environmental rights; and the Constitutional Court subsequently addressed the structural scope of digital defamation provisions.

These different institutional responses illustrate the indeterminacy of legal meaning emphasized by Critical Legal Studies. The law did not provide one automatic answer that all institutions simply applied. Rather, the relevant norms acquired different practical consequences depending upon interpretation and institutional context. This does not mean that judicial reasoning is arbitrary. It means that legal outcomes are produced through institutional processes in which competing values—including reputation, environmental protection, freedom of expression, public participation, and criminal-law enforcement—must be reconciled. The critical task is therefore to identify which interests are privileged at each stage and why. The Tangkilisan case suggests that an approach centered exclusively on the criminal character of digital speech can marginalize the environmental and democratic context of the communication. Conversely, an approach that recognizes environmental participation as a relevant constitutional and statutory interest can produce a different legal outcome. The case consequently illustrates how legal interpretation can either reproduce or challenge existing power asymmetries.

The broader implication is that Indonesian Anti-SLAPP protection requires a shift from a predominantly reactive model toward a preventive institutional model. A reactive model allows an environmental defender to raise Article 66 or related constitutional arguments after criminal proceedings have already advanced. A preventive model would require law-enforcement authorities and courts to conduct an early assessment of whether the challenged conduct constitutes protected environmental participation and whether the legal proceeding is proportionate to the alleged harm. Such assessment should include the public-interest character of the expression, the identity and institutional status of the complainant, the environmental context, the availability of non-criminal remedies, and the potential chilling effect upon broader participation. The Constitutional Court's interpretation of Article 27A strengthens this approach by narrowing the provision's application and distinguishing criticism from personal defamation.

Yet constitutional interpretation alone cannot guarantee institutional compliance. The practical effectiveness of environmental defender protection depends upon prosecutors, police, and courts treating Article 66 as an operative legal safeguard rather than as a principle that becomes relevant only at the final stage of litigation. The Tangkilisan case therefore reveals both the vulnerability and resilience of the Indonesian legal order: vulnerability because an environmental activist could be subjected to criminal proceedings arising from public-interest expression, and resilience because appellate and constitutional institutions ultimately imposed meaningful limits on that process. From a Critical Legal Studies perspective, the central lesson is that the protection of environmental

activism depends upon controlling the conditions under which state coercion can be mobilized. The issue is not whether law should protect activists from all legal consequences, but whether the legal system can distinguish legitimate accountability from the strategic or disproportionate deployment of legal power against democratic environmental participation.

VI. DISCUSSION ON LAW, POWER, AND THE CHILLING EFFECT

A. From Legal Neutrality to the Politics of Legal Mobilization

The Tangkilisan case demonstrates that the critical problem of criminalization cannot be adequately explained by examining statutory validity alone. The relevant provisions of Indonesian criminal and information-technology law are formally general: they are not expressly designed to target environmental activists, nor do they establish a legal category under which environmental advocacy is inherently criminal. Yet formal neutrality does not necessarily produce substantively neutral consequences. Critical Legal Studies provides a useful framework for understanding this distinction because it directs attention toward the social consequences of legal rules and the institutional conditions under which those rules are invoked. Legal mobilization is never simply a mechanical process in which a pre-existing violation automatically produces state intervention. Someone must identify conduct as legally actionable, initiate a complaint or report, persuade law-enforcement authorities that the complaint merits investigation, and sustain the legal process through institutions possessing coercive authority. These steps involve choices about which conflicts become legal problems and which remain political, social, or administrative disputes. In environmental controversies, that process of legal mobilization can be especially consequential because the underlying conflicts often involve competing claims concerning development, ecological protection, property, community welfare, and economic interests.

The invocation of criminal law can therefore change the terms of the dispute. Instead of asking whether an environmental activity is harmful, lawful, or consistent with environmental obligations, institutional attention may shift toward whether the activist's communication satisfies the elements of a criminal offense. The dispute becomes individualized and juridified. The activist becomes the object of investigation, while the environmental claim that generated the expression risks becoming secondary. This process illustrates what critical legal analysis identifies as the constitutive function of law: law does not merely resolve conflicts that already exist but helps determine the form in which those conflicts are understood. The Tangkilisan litigation is particularly illustrative because the same underlying conduct was interpreted differently across judicial levels, with the Jepara District Court emphasizing criminal liability and the Semarang High Court recognizing the defendant's environmental-rights status. Recent scholarship similarly identifies divergent judicial paradigms in the case, describing the first-instance approach as more formalistic and the appellate approach as more constitutional and participatory. The divergence suggests that the legal meaning of activism is not self-executing. It is constructed through institutional interpretation, and those interpretations can either reinforce or constrain existing relations of power.

This observation also complicates the conventional distinction between “law” and “politics.” In formal legal discourse, criminal defamation may appear to be a technical matter concerning whether a statement harmed reputation or satisfied statutory elements. Yet when the statement concerns environmental governance, the decision to invoke criminal law has distributive consequences. It determines who bears the costs of public controversy and who receives the institutional protection of state coercion. If an economically or institutionally powerful actor can initiate criminal proceedings against a comparatively weak activist, the legal process itself becomes a resource that can be mobilized in a conflict over public policy. The formal neutrality of the law therefore coexists with unequal capacities to use the law. This is consistent with the broader CLS argument that legal institutions can reproduce social hierarchies even when legal rules are expressed in universal terms (Kennedy 1976; Hutchinson and Monahan 1984). The critical question is consequently not whether the complainant possesses a formally recognized legal interest but whether the deployment of that interest through criminal law is proportionate to the social function of the expression. A private individual whose reputation has been falsely attacked may legitimately require legal protection.

However, the same logic cannot automatically be transferred to criticism of a corporation, government institution, or other collective actor concerning conduct affecting the public. The Constitutional Court's 2025 decision in the Tangkilisan litigation is important precisely because it recognized this distinction and limited the operation of Article 27A of the ITE Law so that institutional actors could not be treated as victims in the same manner as individuals. The Court characterized criticism of public institutions and other entities as potentially serving functions of supervision, correction, and public advice rather than constituting personal defamation. The decision thus illustrates how constitutional adjudication can interrupt a potential imbalance in legal mobilization. Nevertheless, from a critical perspective, the need for constitutional correction also reveals that statutory neutrality alone is insufficient. The distribution of legal power must be examined at the point where law is activated, interpreted, and enforced.

B. The Transformation of Environmental Conflict into an Individualized Criminal Dispute

A second structural consequence of criminalization is the transformation of collective environmental conflict into individualized legal liability. Environmental disputes generally concern conditions that extend beyond the relationship between two individuals. Pollution, coastal degradation, illegal land conversion, deforestation, mining, waste disposal, and other ecological harms may affect entire communities and future generations. Environmental activism consequently has a collective dimension even when it is expressed through an individual activist's social-media account. When criminal law focuses on the activist's allegedly unlawful expression, however, the collective dimension of the environmental dispute can disappear from the legal frame. The dispute is reformulated as a relationship between an accused individual and the state, or between an alleged victim and an alleged offender. This legal reframing has significant consequences. First, it shifts the burden of attention away from the environmental claim that

prompted the communication. Second, it places the activist in a defensive position in which personal criminal liability becomes the immediate concern. Third, it can deprive affected communities of a prominent public voice capable of articulating environmental grievances. The phenomenon can therefore be understood as a form of individualization of collective dissent. The political conflict remains collective in substance, but the legal response isolates one person as the object of sanction. Such individualization may make the underlying environmental dispute less visible within institutional decision-making while increasing the perceived risks of activism among other participants.

The legal individualization of environmental dissent is particularly significant in digital environments. Social media has altered the organizational structure of environmental activism by reducing the cost of communication and enabling individual activists to reach audiences without relying upon traditional media organizations. A single post, photograph, video, or statement can document an environmental condition and mobilize public attention within a short period. This communicative capacity democratizes environmental advocacy but also makes individual speakers more legally exposed. Traditional forms of collective organization may distribute responsibility across institutions, whereas digital activism can place the communicative act directly under the name and identity of an individual user. The result is a structural paradox: digital platforms increase the capacity of individual citizens to participate in environmental governance while simultaneously increasing the visibility and traceability of their communications. Research on digital activism has shown that online political participation can be exposed to various forms of counter-mobilization, surveillance, information manipulation, and other forms of pressure (Danaditya 2021).

The legal vulnerability of individual activists must therefore be understood within this broader transformation of participation. The Tangkilisan case illustrates the point because an environmental dispute that developed through social-media communication eventually became a criminal proceeding directed against an identifiable individual. The public environmental issue remained relevant, but the immediate legal object became the speaker. This dynamic can produce a chilling effect even without a formal prohibition on environmental advocacy. Individuals observing such proceedings may conclude that the safest way to avoid legal exposure is to refrain from publicizing environmental concerns under their own names. In this sense, criminalization can reduce the plurality of environmental voices without requiring the state to prohibit environmental activism as such.

The problem also raises a question of legal proportionality. If the underlying dispute concerns environmental conditions of substantial public significance, criminal prosecution of an individual speaker should be regarded as a particularly serious intervention because criminal law is the most coercive instrument available to the state. Less restrictive mechanisms may exist for correcting factual inaccuracies, responding to criticism, or protecting reputation, including requests for clarification, civil remedies, right-of-reply mechanisms, or public rebuttal. The availability of such alternatives is relevant to determining whether criminalization is necessary and proportionate. A legal system that immediately converts contested public criticism into criminal liability risks creating an imbalance between the social value of public participation and the severity of state intervention. The Constitutional Court's narrowing of the ITE Law's defamation provision can be

understood as an attempt to restore this balance by distinguishing personal reputational injury from criticism of institutional conduct. The significance of this distinction extends beyond the Tangkilisan case because it establishes a legal principle capable of protecting public-interest communication more broadly. Nevertheless, proportionality must also operate at the enforcement stage. Even where a criminal provision remains formally available, law-enforcement authorities should assess whether criminal intervention is genuinely necessary in light of the public-interest context and the availability of less restrictive alternatives. Without such an approach, formal statutory reform may leave intact the institutional dynamics that produce criminalization.

C. The Chilling Effect and the Regulation of Democratic Participation

The chilling effect represents perhaps the most important bridge between individual criminal proceedings and broader democratic consequences. A legal system can restrict public participation without formally prohibiting it. It can do so by making participation sufficiently costly or uncertain that individuals voluntarily withdraw. This form of indirect regulation is particularly important in environmental advocacy because the state does not need to prosecute every activist to produce widespread deterrence. A small number of highly visible prosecutions may communicate a much broader message: public criticism can generate legal consequences. The resulting behavioral adjustment may occur before any formal legal prohibition is enacted. Individuals may censor their language, avoid identifying corporations or officials, refrain from publishing environmental evidence, abandon demonstrations, or choose not to participate in campaigns. The resulting silence is difficult to measure because the people deterred by legal risk do not appear in official records. This makes chilling effects particularly important for legal scholarship: the absence of visible repression does not necessarily indicate the absence of restrictive power. Research on surveillance and political communication has similarly demonstrated that perceived risks can produce self-censorship and reduce willingness to express controversial opinions (Stoycheff 2016; Stoycheff et al. 2019). In environmental governance, the consequences can be more severe because the suppression of critical expression may reduce the availability of information concerning environmental harm. The chilling effect thus affects not only freedom of expression as an individual right but also the informational infrastructure of environmental accountability.

The concept of chilling effect also reveals why an Anti-SLAPP framework must be preventive rather than exclusively remedial. If protection becomes available only after a court determines that an activist is entitled to it, the legal process may already have produced the deterrent effect. Tangkilisan's litigation illustrates this temporal problem. The Semarang High Court ultimately recognized the environmental-rights dimension of his conduct and released him from legal demands, but this correction followed a first-instance conviction and imprisonment. The legal system therefore demonstrated the capacity to correct itself while simultaneously demonstrating that correction can arrive after substantial burdens have already been imposed. Recent Indonesian scholarship identifies the absence of effective procedural mechanisms within the criminal

justice system as a central weakness in existing environmental Anti-SLAPP protection.

This procedural gap is theoretically significant because it changes the function of the right. Article 66 of the Environmental Protection and Management Law may formally prohibit retaliatory proceedings, but if the determination of whether a proceeding is retaliatory occurs only after extensive criminal litigation, the protection operates primarily as a defense rather than as a shield. The distinction is not semantic. A shield prevents coercive intervention; a defense responds to intervention after it has occurred. From the perspective of civil liberties, the former is considerably more valuable because it prevents the state from imposing the very burdens that the protected right is intended to avoid.

The chilling effect also creates an intergenerational dimension of legal harm. Environmental activism often concerns ecological conditions whose consequences extend over decades. If legal pressure discourages current participation, communities may lose opportunities to challenge environmentally harmful decisions before those decisions become irreversible. The legal harm therefore extends beyond the activist's immediate loss of liberty or reputation. It can affect the capacity of communities to produce environmental knowledge, contest regulatory decisions, and influence development trajectories. Environmental democracy depends upon contestability: citizens must be able to challenge decisions before the costs become irreversible. A legal regime that makes such contestation risky can create a structural preference for administrative or economic continuity over ecological accountability. This is particularly important in Indonesia, where environmental governance frequently involves conflicts over land, coastal resources, extractive activities, plantations, and development projects. The protection of activists should therefore not be understood merely as a human-rights issue concerning individual speakers. It is also an institutional condition for effective environmental governance. When critical voices are deterred, decision-makers may receive less information about environmental consequences and community opposition. The result can be a degradation of the deliberative quality of environmental decision-making itself.

D. Legal Asymmetry and the Unequal Capacity to Mobilize State Power

The critical significance of criminalization becomes clearer when legal power is understood as a resource that is distributed unevenly across society. Formal equality before the law presupposes that individuals are equally situated in their ability to use and respond to legal institutions. In practice, however, legal capacity is influenced by financial resources, access to lawyers, organizational support, institutional connections, knowledge of legal procedures, and the ability to withstand prolonged litigation. Environmental activists frequently operate under conditions that are structurally different from those of corporations or state institutions. Even where activists receive support from civil society organizations, their capacity to absorb legal costs may remain substantially lower. This asymmetry changes the practical meaning of a legal complaint. A corporation may regard a legal proceeding as one component of a broader reputational or regulatory strategy, while an individual activist may experience the same proceeding as a

threat to employment, family stability, personal safety, and freedom. The legal system therefore operates within a pre-existing distribution of social resources. CLS directs attention toward this material dimension because the effectiveness of legal rights depends partly upon the resources available to exercise them (Kennedy 1976; Hutchinson and Monahan 1984). The question is consequently not whether both parties possess nominally equal access to legal remedies, but whether the consequences of activating those remedies are distributed equally.

SLAPP scholarship provides a useful bridge between this critical account of legal power and the practical operation of litigation. The strategic value of a lawsuit or criminal complaint can lie precisely in the disparity between the parties' capacity to bear procedural burdens. The complainant may not need to win the case if the proceeding succeeds in making activism more expensive, uncertain, or psychologically difficult. Shapiro (2010) therefore argues for legal mechanisms that identify and address cases involving protected public participation at an early stage. This approach is particularly relevant to Indonesia because existing environmental protection provisions have not always produced consistent institutional outcomes. Indonesian research has identified continuing difficulties in the interpretation and implementation of Anti-SLAPP protection and has called for clearer mechanisms to prevent environmental defenders from being subjected to inappropriate legal proceedings. The recent scholarship on Tangkilisan similarly argues that procedural reform and early screening are necessary because substantive rights alone cannot adequately prevent criminalization. The critical implication is that legal equality requires more than equal access to legal remedies. It requires institutional mechanisms capable of preventing the stronger party's superior capacity to mobilize legal coercion from determining the practical outcome of a public-interest dispute.

This perspective also changes how the legitimacy of defamation law should be evaluated. The critical argument is not that reputation lacks legal value or that activists should be free to make knowingly false allegations. Rather, the legitimacy of defamation law depends upon whether it distinguishes between genuine personal injury and criticism that forms part of democratic oversight. The distinction is especially important where the complainant is a corporation or public institution. The Constitutional Court's 2025 ruling substantially strengthened this distinction by limiting Article 27A to protect individual reputation rather than institutional reputation in the same manner. The decision can therefore be understood as reducing one mechanism through which institutional power could potentially be converted into criminal control over public criticism. Yet the broader structural problem remains. Even when institutional entities cannot directly invoke the provision, individuals associated with powerful organizations may potentially invoke other legal mechanisms. The solution therefore cannot consist solely of excluding certain categories of complainants. It must also involve a broader proportionality and public-interest analysis capable of identifying indirect forms of legal retaliation.

E. Law as a Site of Resistance as Well as Domination

A critical account of law should avoid reducing legal institutions to instruments of repression. The Tangkilisan case demonstrates precisely why such reductionism

would be analytically inadequate. The same legal system that permitted criminal proceedings also contained institutional mechanisms capable of correcting them. The Semarang High Court recognized Tangkilisan's environmental-rights status, and the Constitutional Court subsequently narrowed the scope of digital defamation law. Law therefore operates ambivalently. It can reproduce existing power relations by enabling coercive intervention, but it can also provide activists with resources for challenging those relations. This dual character is central to contemporary critical legal scholarship. Legal rights are not simply gifts from the state; they can become resources mobilized by marginalized groups to contest institutional authority. Environmental litigation itself demonstrates this ambivalence. Environmental defenders may use courts, constitutional petitions, administrative procedures, and statutory protections to challenge powerful actors, while those same actors may attempt to use legal institutions against the defenders. The legal field is therefore a site of struggle over the meaning and distribution of power.

The significance of this ambivalence is that reform should not seek to remove law from environmental conflicts. Instead, it should restructure legal institutions so that the coercive capacity of the state is less vulnerable to strategic mobilization against protected participation. This requires treating Article 66 and related Anti-SLAPP principles as institutional safeguards rather than symbolic declarations. The goal is not to create an activist exemption from ordinary law but to ensure that criminal law is not activated disproportionately where the underlying conduct forms part of protected public participation. The 2025 Constitutional Court decision provides an important foundation by narrowing the scope of institutional defamation claims and reinforcing the distinction between personal attacks and public criticism. However, the decision should be integrated into a broader institutional framework involving police, prosecutors, and courts. Without such integration, constitutional protection may remain dependent upon activists possessing the resources and persistence necessary to litigate their rights through multiple levels of adjudication. That would reproduce the very inequality that Anti-SLAPP protection seeks to overcome.

The theoretical conclusion emerging from this discussion is therefore more nuanced than the proposition that “law criminalizes environmental activism.” Law does not possess a single political function. Rather, different legal provisions and institutions can operate in contradictory ways. Defamation law may protect legitimate personal interests while simultaneously creating opportunities for excessive restriction of public criticism. Environmental law may recognize activist protection while failing to provide an immediate procedural mechanism for enforcing that protection. Courts may initially adopt formalistic reasoning while appellate or constitutional courts later develop stronger rights-protective interpretations. The critical problem is consequently one of institutional configuration. The question is how the legal system distributes the authority to initiate coercive action, how quickly protective rights become operational, and which institutional actors bear the burden of preventing disproportionate interference with public participation. This formulation allows the analysis to move beyond a simple opposition between “state” and “activist.” It instead identifies the legal system itself as a contested institutional field in which competing conceptions of reputation, environmental protection, public participation, and state authority are negotiated.

F. Implications for Environmental Democracy in Indonesia

The broader implication of the analysis is that the protection of environmental activists should be understood as part of the institutional architecture of environmental democracy. Environmental democracy requires more than formal environmental standards or administrative participation procedures. It requires the ability of citizens and civil society organizations to question environmental decisions, communicate information, expose potential violations, and mobilize collective responses. If those activities generate disproportionate criminal risks, formal participation rights may become largely symbolic. The problem is particularly acute where environmental decision-making involves actors with superior economic and institutional resources. Without independent and protected channels for criticism, environmental governance can become structurally biased toward actors already possessing access to decision-making institutions. Criminalization then operates not simply as punishment but as a mechanism that alters who can participate in the production of environmental knowledge and political pressure.

The Indonesian experience therefore suggests that environmental defender protection should be evaluated according to three dimensions: substantive recognition, procedural accessibility, and institutional enforcement. Substantively, Indonesian law already contains important protections, most notably Article 66 of Law No. 32 of 2009 and constitutional guarantees of expression and environmental rights. Procedurally, however, the protection remains vulnerable if activists must undergo extensive criminal proceedings before courts determine whether their conduct falls within the protected sphere. Recent scholarship explicitly identifies this procedural weakness and proposes earlier screening mechanisms for cases involving environmental participation. Institutionally, the effectiveness of protection depends upon whether police, prosecutors, and judges consistently recognize public-interest expression and apply constitutional limitations to criminal defamation. The Tangkilisan litigation demonstrates both the problem and the possibility: the case revealed the vulnerability of environmental defenders to criminalization, but it also generated judicial developments that strengthened constitutional protection. The challenge for Indonesian environmental law is therefore to institutionalize the corrective principles that emerged through litigation so that future activists do not need to endure comparable legal burdens merely to establish that their participation was protected.

Ultimately, the critical issue is not whether Indonesia should abolish defamation law or provide absolute immunity to environmental activists. Such approaches would inadequately reconcile the legitimate protection of reputation with the need for democratic accountability. The more defensible approach is to establish a legal framework in which public-interest environmental expression receives heightened protection, criminal law remains a measure of last resort, and potentially retaliatory proceedings are screened at an early stage. Such a framework would recognize that environmental criticism occupies a special democratic position because it frequently concerns the exercise of public authority, corporate conduct, ecological resources, and the rights of affected communities. The Constitutional Court's intervention in the Tangkilisan case represents an important

step in this direction, but its principles need to be translated into routine institutional practice. From the perspective of Critical Legal Studies, the objective is not to eliminate the political character of law but to make its exercise more transparent, contestable, and responsive to unequal distributions of power. The protection of environmental activists is consequently not a peripheral concern within Indonesian environmental law. It is a test of whether the legal system can accommodate dissent without converting dissent into criminal vulnerability. Where citizens can criticize powerful actors without disproportionate legal retaliation, environmental law can function as an instrument of democratic accountability. Where legal processes systematically raise the costs of such criticism, the formal existence of environmental rights may coexist with a substantive erosion of environmental democracy.

VII. TOWARD AN EFFECTIVE ANTI-SLAPP FRAMEWORK FOR ENVIRONMENTAL ACTIVISTS IN INDONESIA

A. From Substantive Recognition to Effective Procedural Protection

The preceding analysis demonstrates that Indonesia already possesses important substantive foundations for protecting environmental defenders, particularly through Article 66 of Law No. 32 of 2009 on Environmental Protection and Management and constitutional guarantees of environmental rights and freedom of expression. The central deficiency lies not necessarily in the complete absence of legal protection but in the distance between substantive recognition and procedural implementation. A statutory provision that protects environmental defenders from criminal prosecution and civil litigation has limited practical value if law-enforcement authorities and courts lack a mechanism for determining the protected character of conduct at the earliest stage of a proceeding. The experience of Daniel Frits Maurits Tangkilisan demonstrates this problem with particular clarity.

The Semarang High Court ultimately recognized his environmental-protection activities and released him from legal demands, but this recognition followed a first-instance conviction and imprisonment. The sequence illustrates a structural paradox: a person may possess a statutory right not to be subjected to criminal prosecution while simultaneously being required to endure criminal proceedings before a court recognizes that right. Recent Indonesian scholarship has identified this procedural gap as a major weakness in the implementation of environmental Anti-SLAPP protection and has emphasized the need for earlier judicial mechanisms capable of filtering cases involving environmental participation. The reform objective should therefore be to transform Article 66 from a predominantly defensive norm into a preventive procedural safeguard.

An effective Anti-SLAPP mechanism should permit an accused environmental defender to raise the protected character of the activity at the earliest practicable stage. Once the defendant demonstrates that the challenged conduct constitutes participation in environmental protection or public discussion concerning an environmental matter, the court should undertake an expedited

assessment of whether continuation of the proceeding is justified. Such a mechanism should not require the defendant to prove conclusively that the complainant acted with malicious intent. The central inquiry should instead concern the relationship between the challenged conduct and protected public participation, the nature of the alleged harm, the public interest involved, and the proportionality of the legal response. This approach is consistent with the logic of Anti-SLAPP legislation in other jurisdictions, where procedural mechanisms seek to identify weak or retaliatory claims before the costs of litigation become excessive.

The rationale is particularly strong in criminal proceedings because the coercive consequences of state prosecution are substantially more severe than ordinary civil litigation. Early screening would therefore serve two purposes simultaneously. First, it would protect the individual activist from unnecessary criminal burdens. Second, it would protect the judicial system from being used as a mechanism for resolving disputes that are fundamentally political, environmental, or public-interest controversies rather than legitimate criminal matters. Such a mechanism would not eliminate the complainant's right to seek legal protection. It would simply require the state to demonstrate that criminal intervention is justified despite the protected public-interest context. In this sense, Anti-SLAPP reform should be understood not as an activist privilege but as a procedural allocation of institutional responsibility: where criminal law threatens constitutionally significant participation, the state must justify why coercive intervention is necessary.

B. An Early-Stage Public-Interest and Proportionality Test

The proposed procedural mechanism should be accompanied by a structured legal test. A useful model would contain at least four elements: (1) protected participation, (2) public-interest connection, (3) *prima facie* legal merit, and (4) proportionality of the legal response. The first inquiry would ask whether the defendant's conduct constitutes participation in environmental protection, including public communication, community organizing, environmental reporting, advocacy, peaceful protest, dissemination of environmental information, or engagement with environmental decision-making.

The second inquiry would examine whether the subject matter concerns a matter of public interest. Environmental degradation, pollution, land use, coastal management, extractive activities, and governmental environmental decisions would ordinarily satisfy this threshold because their consequences extend beyond the immediate parties. The third inquiry would assess whether the complaint establishes a genuine legal basis rather than merely disagreement with the activist's position. This stage is important because Anti-SLAPP protection should not immunize knowingly unlawful conduct. Finally, the court should examine proportionality by asking whether criminal prosecution is necessary and appropriate in light of the nature of the alleged harm and the availability of less restrictive remedies. This structure would allow courts to distinguish legitimate claims concerning personal reputation from attempts to transform public criticism into criminal liability.

The proposed test should also incorporate the identity and institutional position of the complainant. The Constitutional Court's 2025 decision in Case No. 105/PUU-XXII/2024 provides an important constitutional foundation by conditionally restricting Article 27A of the ITE Law and excluding government institutions, corporations, professions, institutions, and other collective entities from being treated as “another person” for purposes of the offense. The Court further emphasized the distinction between criticism directed toward an institution and an attack upon an individual's personal honor. This distinction should be incorporated into Anti-SLAPP screening. Where criticism concerns the conduct of a corporation or public institution, courts should recognize the heightened public-interest character of the expression. Where an individual is the complainant, the court should still determine whether the allegedly defamatory statement concerns the person's private reputation or instead concerns their professional or public conduct in a matter of environmental significance. This distinction prevents public officials, corporate officers, or other influential individuals from circumventing constitutional safeguards merely by presenting institutional criticism as a personal reputational injury. The inquiry should remain contextual rather than formalistic. The mere fact that an individual files the complaint should not automatically convert a dispute over institutional conduct into a private criminal matter.

The proportionality component is equally important. Criminal law should be regarded as a measure of last resort where less restrictive responses are available. This principle follows from the seriousness of criminal sanctions and from the constitutional importance of freedom of expression. If an activist publishes an inaccurate statement concerning an environmental issue, possible remedies may include correction, clarification, right of reply, civil compensation, or other non-criminal mechanisms depending on the circumstances. Criminal prosecution should become appropriate only where the conduct produces sufficiently serious and legally cognizable harm and where less restrictive measures cannot adequately address that harm. This approach does not require the state to tolerate deliberate falsehoods or unlawful personal attacks. Rather, it recognizes that the public value of environmental discourse must be weighed against the severity of the restriction imposed upon the speaker. Such balancing is consistent with international freedom-of-expression principles, which distinguish between legitimate restrictions on reputation and disproportionate criminal sanctions that inhibit public debate. The United Nations Human Rights Committee has similarly emphasized the importance of necessity and proportionality when restrictions on expression are imposed, particularly in matters of public interest. The Indonesian framework would therefore benefit from explicitly integrating proportionality into the application of criminal defamation provisions where environmental participation is involved.

C. Reallocation of the Procedural Burden

A further reform concerns the allocation of the evidentiary and procedural burden. Under ordinary criminal procedure, the state carries the burden of proving the elements of the offense. This principle should remain intact. However, Anti-SLAPP proceedings involve a preliminary question that is conceptually distinct from criminal guilt: whether the proceeding itself concerns protected public participation. The defendant should be permitted to raise that issue through a

preliminary motion or objection supported by sufficient evidence of environmental participation. Once the defendant establishes a credible connection between the challenged conduct and protected environmental activity, the complainant or prosecution should be required to demonstrate why continuation of the proceeding is justified notwithstanding that connection. This does not reverse the criminal burden of proof. Rather, it creates a procedural threshold designed to prevent protected participation from being subjected to ordinary criminal litigation without preliminary scrutiny. Such a mechanism would be consistent with the logic of Anti-SLAPP law internationally, where defendants can seek early dismissal or termination when a claim arises from protected public participation (Pring and Canan 1996; Shapiro 2010).

The distinction between burden of proof and burden of justification is important. The prosecution should continue to bear the burden of establishing criminal guilt beyond the applicable standard. But once an environmental defender demonstrates that the prosecution arises from protected public participation, the state should bear a heightened burden of explaining why criminal intervention remains necessary. This distinction protects the presumption of innocence while simultaneously recognizing the special constitutional significance of environmental participation. It also discourages prosecutors from proceeding automatically on the basis of a formal complaint without examining the broader public-interest context. In practical terms, prosecutorial guidelines could require an assessment of several factors before an environmental activist is charged: the relationship between the alleged offense and environmental advocacy; the identity and institutional position of the complainant; the public-interest significance of the subject matter; the factual basis of the activist's statement; the availability of non-criminal remedies; and the potential chilling effect of prosecution. Such guidelines would make Anti-SLAPP protection operational before judicial review becomes necessary. They would also reduce the risk that the activist must rely upon appellate or constitutional litigation to obtain protection that should have been recognized at the investigative stage.

This approach would also strengthen institutional accountability. When prosecutors are required to document why a case involving environmental advocacy should proceed despite Article 66 protection, the exercise of prosecutorial discretion becomes more transparent and reviewable. The same principle could apply to police investigations. A complaint against an environmental activist should not automatically trigger coercive measures merely because the complainant alleges defamation or another electronic offense. Law-enforcement authorities should first determine whether the expression constitutes protected environmental participation and whether there is sufficient factual basis to justify criminal intervention. This would create a form of institutional “gatekeeping” that protects both the activist and the integrity of criminal justice. The purpose is not to prevent investigation but to ensure that investigation itself is not transformed into punishment. This distinction is particularly important in digital cases because electronic evidence can be preserved without immediate coercive intervention, making early proportionality assessment more feasible than in circumstances involving urgent physical threats.

D. Cost Shifting and Compensation for Abusive Proceedings

Procedural dismissal alone may not adequately address the consequences of abusive litigation. An activist who has been subjected to investigation, detention, prosecution, and public stigmatization may experience significant financial and professional losses even if the case is eventually dismissed. A comprehensive Anti-SLAPP framework should therefore consider mechanisms for recovering reasonable legal costs and compensating defendants where proceedings are found to have been abusive or manifestly disproportionate. Cost-shifting mechanisms are particularly important because they alter the economic incentives surrounding litigation. Without such mechanisms, a powerful complainant may have little financial reason to avoid initiating weak proceedings against a less-resourced activist. If the complainant risks bearing the defendant's reasonable legal costs when a court finds that the proceeding improperly targeted protected participation, the strategic value of litigation as a form of pressure is reduced.

Such a mechanism should, however, be designed carefully. Automatic compensation for every unsuccessful complaint would create an inappropriate deterrent against legitimate legal action. The relevant threshold should instead concern abuse, manifest disproportionality, bad faith, or a substantial absence of legitimate legal basis. The court could consider whether the proceeding was primarily directed at protected public participation, whether the complainant possessed credible evidence of unlawful conduct, whether less restrictive remedies were available, and whether the proceeding imposed disproportionate burdens relative to the alleged harm. This approach preserves legitimate access to justice while reducing incentives for strategic legal retaliation. It also recognizes that the costs of criminalization are not confined to formal punishment. Legal representation, lost income, reputational damage, psychological pressure, and disruption of civic activities may constitute significant consequences of an improperly initiated proceeding.

Compensation should also be understood as an institutional remedy rather than merely private restitution. Where the state has permitted an abusive proceeding to continue despite clear indicators that protected environmental participation was involved, mechanisms of accountability should address institutional responsibility. This could include disciplinary review, prosecutorial evaluation, judicial reasoning requirements, or reporting mechanisms concerning Anti-SLAPP cases. Such accountability would create incentives for state institutions to internalize the protective function of Article 66. Without institutional consequences, procedural reform may remain dependent upon individual judicial discretion. A durable Anti-SLAPP system requires institutional learning: repeated patterns of inappropriate prosecution should produce changes in prosecutorial practice, police guidance, and judicial interpretation.

E. Strengthening Judicial Oversight and Constitutional Adjudication

Judicial oversight is central to the proposed framework because environmental criminalization frequently involves competing constitutional interests. Courts must balance freedom of expression, environmental rights, reputation, public order, and the state's interest in enforcing criminal law. The Tangkilisan litigation illustrates

the importance of judicial hierarchy in this process. The Jepara District Court adopted a criminal-liability approach, while the Semarang High Court recognized the environmental-rights protection contained in Article 66. The Constitutional Court subsequently addressed the structural problem of Article 27A by narrowing its scope. These developments demonstrate that appellate and constitutional review can function as mechanisms for correcting overly expansive applications of criminal law. However, reliance upon appellate correction alone is inefficient and potentially harmful because it requires defendants to endure substantial burdens before obtaining relief. Judicial oversight should therefore be moved closer to the beginning of the proceedings.

Courts should be encouraged to provide explicit reasoning when rejecting an Article 66 claim or allowing a prosecution involving environmental participation to proceed. Such reasoning should identify the relationship between the challenged conduct and environmental advocacy, explain whether the expression concerns a matter of public interest, and address why criminal intervention remains proportionate. This requirement would improve consistency across courts and facilitate appellate review. It would also contribute to the development of a coherent body of Indonesian Anti-SLAPP jurisprudence. At present, the practical scope of environmental defender protection has developed through individual cases and judicial interpretation. A more systematic jurisprudence could establish clearer criteria concerning protected participation, public interest, retaliatory litigation, and the relationship between Article 66 and other criminal provisions.

Constitutional adjudication should continue to serve as a structural safeguard where statutory provisions threaten to interfere disproportionately with public-interest expression. The 2025 Constitutional Court ruling provides a significant precedent because it recognizes that criticism of institutions cannot automatically be treated as personal defamation and that public-interest oversight deserves constitutional protection. Future constitutional challenges may similarly address ambiguity in other provisions capable of affecting environmental participation. Nevertheless, constitutional adjudication should complement rather than replace ordinary institutional safeguards. A system in which every environmental defender must seek constitutional review to obtain effective protection would remain structurally inadequate. Constitutional standards must therefore be translated into ordinary policing, prosecution, and adjudication practices.

F. Institutionalizing Environmental Defender Protection

The final component of the proposed framework concerns institutionalization. Article 66 should be operationalized through coordinated guidance for police officers, prosecutors, and judges. Such guidance should establish that complaints arising from environmental advocacy require contextual assessment rather than automatic criminalization. Police and prosecutors should be trained to identify protected environmental participation, distinguish criticism from personal attacks, and recognize indicators of potentially retaliatory litigation. Courts should likewise develop consistent standards for applying Article 66 alongside constitutional protections of expression and environmental rights. Institutionalization is necessary because legal reform that exists only at the level of statutory text may not change everyday legal practice.

An institutional framework could include a specialized environmental-defense protocol containing five minimum safeguards. First, complaints against environmental defenders should be screened for their connection to environmental participation. Second, where such a connection exists, investigators should assess the public-interest dimension of the expression before undertaking coercive measures. Third, prosecutors should document why criminal prosecution is necessary and proportionate when less restrictive remedies are available. Fourth, courts should provide expedited review of Article 66 claims. Fifth, cases found to constitute abusive or retaliatory litigation should generate appropriate remedies and institutional review. These safeguards would transform Anti-SLAPP protection from an abstract legal principle into a functioning institutional mechanism. They would also strengthen legal certainty for both activists and complainants by clarifying when ordinary defamation remedies remain available and when public-interest protection becomes dominant.

The proposed model does not seek to place environmental activists above the law. Its purpose is to ensure that the law does not become a mechanism through which participation in environmental governance is rendered unnecessarily dangerous. Legitimate claims concerning personal reputation, privacy, or unlawful conduct should remain actionable. What requires heightened protection is the communicative and participatory activity through which citizens scrutinize environmental decisions and challenge powerful actors. The distinction is therefore between accountability and retaliation, not between activists and the law. A well-designed Anti-SLAPP system should preserve the former while reducing opportunities for the latter. This approach is consistent with the constitutional structure of Indonesia, in which environmental rights and freedom of expression coexist with legitimate limitations on rights. It also corresponds with the broader international understanding that environmental defenders require effective protection because their activities contribute to environmental governance, public participation, and accountability.

G. A Proposed Indonesian Anti-SLAPP Model

On the basis of the preceding analysis, this article proposes an Indonesian Anti-SLAPP model built around a Protected Environmental Participation and Proportionality Framework (PEPPF). The framework would not require the creation of an entirely separate judicial system. Instead, it would integrate existing constitutional, environmental, criminal-procedural, and judicial mechanisms into a coordinated screening process. The first stage would identify whether the defendant's conduct constitutes environmental participation. The second would determine whether the expression or conduct concerns a matter of public interest. The third would examine whether the claimant has established a *prima facie* legitimate legal interest. The fourth would assess whether the legal remedy pursued is proportionate. The fifth would provide for early dismissal or termination where the proceeding is primarily directed at protected participation and lacks sufficient legal justification. Finally, where abuse is established, the framework would permit appropriate cost recovery and institutional review. This model responds directly to the central problem identified in the Tangkilisan case: substantive protection is

insufficient if it operates only after criminal proceedings have generated significant burdens.

The PEPPF also offers a conceptual contribution to Anti-SLAPP theory by treating environmental participation as an institutional condition of democratic governance rather than merely as a private right of activists. Under this model, the protected interest is dual. The first interest belongs to the individual defender, who should not be exposed to disproportionate legal retaliation. The second belongs to society, which benefits from the availability of environmental information, criticism, and public oversight. This dual conception explains why ordinary defamation analysis may be insufficient. The social value of environmental expression cannot always be captured by measuring injury to the individual complainant's reputation. A statement may have significant public value because it informs communities about environmental risks or challenges the conduct of powerful institutions. The legal system should therefore evaluate not only whether the speaker caused individual harm but also what democratic function the speech performed. This approach provides a principled basis for heightened protection without creating absolute immunity.

The proposed framework ultimately seeks to rebalance the relationship between state coercive power and civil-society participation. The critical problem revealed by the Tangkilisan litigation is not simply that one activist was prosecuted and later released. It is that the legal system initially permitted a form of coercive intervention whose justification was later substantially reconsidered by higher courts. The lesson is therefore institutional: protection should occur before the costs of criminalization become irreversible. Article 66, constitutional guarantees, and the Constitutional Court's interpretation of Article 27A provide important normative foundations, but these foundations require procedural mechanisms, prosecutorial standards, judicial screening, and remedies to become effective. The proposed PEPPF provides one possible model for achieving that objective. Its central principle is straightforward: where legal proceedings arise from environmental participation concerning a matter of public interest, the state must demonstrate a compelling and proportionate justification before criminal coercion is allowed to proceed. Such a principle would strengthen environmental democracy while preserving legitimate protection for reputation and other legally recognized interests.

VIII. CONCLUSION

The criminalization of environmental activists in Indonesia reveals a structural tension between the formal neutrality of law and the unequal distribution of legal power within environmental conflicts. The analysis of the Daniel Frits Maurits Tangkilisan case demonstrates that criminal proceedings arising from environmental advocacy cannot be assessed solely through the formal elements of criminal provisions. The environmental context, public-interest character of the expression, institutional position of the complainant, and consequences of criminal prosecution are equally relevant to determining whether legal intervention is legitimate. The divergent approaches of the Jepara District Court and the Semarang High Court demonstrate that the same conduct may acquire substantially different legal meanings depending upon whether it is viewed primarily through the

framework of criminal liability or environmental participation. The subsequent Constitutional Court decision in Case No. 105/PUU-XXII/2024 further demonstrates the importance of constitutional limitations on digital defamation law by distinguishing personal reputational injury from criticism directed toward institutions and matters of public concern. These developments indicate that Indonesian law already contains important normative resources for protecting environmental defenders, but the existence of such protections does not automatically prevent criminalization. The central problem is therefore not simply the absence of legal rights but the institutional conditions under which those rights are recognized and enforced. Where environmental defenders must undergo investigation, prosecution, or imprisonment before their protected status is acknowledged, Anti-SLAPP protection operates primarily as a retrospective defense rather than an effective preventive safeguard.

Theoretically, this study contributes to Critical Legal Studies by demonstrating how criminal law can function as a mechanism through which existing power asymmetries are reproduced even when legal provisions appear facially neutral. The mobilization of defamation and other criminal provisions against environmental activists can transform a collective dispute concerning ecological governance into an individualized dispute concerning criminal responsibility. This transformation reallocates the costs of environmental contestation to the activist and may generate a chilling effect extending beyond the immediate defendant. The significance of the Tangkilisan case therefore lies not only in its eventual judicial outcome but in the institutional process through which environmental participation was first subjected to criminal liability and subsequently protected through appellate and constitutional intervention. Law consequently operates ambivalently: it can provide the coercive mechanisms through which powerful actors or state institutions constrain dissent, while simultaneously providing legal resources through which activists challenge those constraints. The study argues that this ambivalence should be understood through the distribution of institutional power rather than through a binary characterization of law as either oppressive or emancipatory. From this perspective, effective environmental rights require more than substantive recognition. They require procedural structures capable of preventing the coercive machinery of criminal law from being activated disproportionately against protected public participation. The chilling effect generated by criminal proceedings is particularly significant because it can suppress environmental information and civic participation even when no formal prohibition on activism exists.

Accordingly, Indonesia should move toward a preventive and institutionally integrated Anti-SLAPP framework that operationalizes Article 66 of Law No. 32 of 2009 alongside constitutional protections of environmental rights and freedom of expression. This study proposes a Protected Environmental Participation and Proportionality Framework under which courts and law-enforcement institutions would conduct early-stage screening of proceedings involving environmental defenders, assess the public-interest character of the challenged conduct, distinguish criticism from unlawful personal attacks, and require a heightened justification for the use of criminal sanctions. Such a framework should preserve legitimate protection for reputation while recognizing that criminal law must remain a measure of last resort where expression concerns matters of substantial

public interest. Procedural safeguards should be complemented by prosecutorial guidelines, judicial reasoning requirements, cost-shifting mechanisms for abusive proceedings, and institutional review where legal processes are found to have been improperly deployed against protected participation. The objective is not to establish immunity for environmental activists but to ensure that legitimate environmental advocacy cannot be converted into criminal vulnerability through disproportionate legal mobilization. Ultimately, the protection of environmental defenders should be regarded as a component of democratic environmental governance rather than as a narrow exception within criminal law. A legal system capable of protecting criticism, environmental information, and civic participation while preserving legitimate remedies for genuine reputational harm is better positioned to reconcile environmental protection, constitutional liberty, and the rule of law in Indonesia's evolving democratic order.

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