



Legal Protection for Human Rights *Defenders* in Indonesia

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Abstract: Legal protection of human rights defenders in Indonesia is crucial for the state to fulfil, promote and develop human rights. This research focuses on the reformulation of legal obscurity in regulations that have not legitimized the protection of human rights defenders. Various forms of vulnerability of human rights defenders in fact lead to human rights violations such as Criminalization, Victimization, Anti-SLAPP (Strategic Lawsuit Against Public Participation), Cyber Attacks and physical attacks intended for human rights defenders which reinforce Impunity. The facts show that the activities of human rights defenders are very vulnerable, it is appropriate to require legal protection in each of their activities. The vulnerability of the activities carried out by human rights defenders, which basically aims to contribute to the quality of State administration in promoting human rights, shows that protection for human rights defenders is important to be reformulated. By considering several important issues that are the focus of the research, the protection of Human Rights Defenders consists of, for instance, legal protection, which is not only related to the establishment of laws and regulations that guarantee the protection of Human Rights Defenders, but also to the elimination of laws that have the potential to threaten, restriction and violate Human Rights Defenders, guarantees and support for the activities of Human Rights Defenders, including the effectiveness of Human Rights Defenders in the process of advocacy, such as the right to information, communication with both government and non-government organizations, and recognition of Human Rights Defenders' advocacy. This also covers the guarantee of defenders' right to immunity for their advocacy activities.

Keywords: Fiduciary collateral; Transfer; Creditor; Legal protection; Breach of contract



INTRODUCTION

The essence of human rights is an effort to maintain the safety of human existence as a whole through balancing the interests of individuals with the public interest. Similarly, efforts to respect, protect and uphold human rights become a shared obligation and responsibility between individuals and individuals. While the position of the State in the structure of Indonesian Constitutional Governance is as ¹*a Duty-Holder* or *Duty Bearer*. ²In upholding Human Rights, every citizen is obliged to pay attention to, respect and respect the human rights possessed by others, Awareness of Human Rights, self-respect, dignity of his humanity that has existed since human life was concluded and is a natural right inherent in human beings.³ Efforts to protect and promote human rights in Indonesia are very strategic so that they require attention from all citizens and stakeholders.

Human Rights Defenders are individuals and groups that have long been committed to the government in their efforts to ensure that the government takes the necessary measures for the fulfillment and protection of human rights of citizens, especially the enforcement of human rights for vulnerable groups in an equitable. But in fact, there are various critical effort of Human Rights Defenders that are not in line with government policy, which leads to the occurrence of relations *vis a vis*. This can be seen in the economic, social and cultural rights sector, there is a relationship between human rights violations, especially violations of the collective rights of the community when the government accelerates the development of national strategic projects. Excessive use of force that leads to violence and criminalization as well as intimidation attacks against environmental activists and citizens who defend their living space It still happens to establish development projects that injure the collective rights of the community.⁴ Respect and protection of civil and political rights in Indonesia during December 2021-December 2022 is in a state of concern with the strengthening of violations of deprivation of fundamental rights Through the practice of *extra judicial killing*, the practice of violence and

¹ A.Bazar Harapan Nawangsih Sutardi, *Rights Basic Human and Legal*,(CV. Yani's, Jakarta, 2006.) P33

² Rhona K.M, at. Al.--- *Law Human rights*, (Yogyakarta : Study Center Human rights Universitas Islam Indonesia, 2010), p. 34

³ *Ibid* p.21

⁴ Kontras, *Human Rights Report 2022 : Human Rights deep entanglement arbitrariness authority*, 2022, p. 2.



torture is still often carried out by the state apparatus and the narrowing of democratic space through repression of Freedom of expression is carried out under the reason of maintaining security and order, and not infrequently the victims are human rights defenders.

The vulnerability of human rights defenders' activities can be seen by the existence of activities that have wide space to generate ideas, ideas and publish critical findings that are considered important for changes in the government system that are more equitable for the public interest. Human rights defenders also supervise or monitoring the government within the framework of democratic society control to organize information, assistance victims of human rights violations in advocacy, encourage responsive government policies, help for implementation human rights instruments, encourage civil society to supervise-monitoring the government, and encourage human rights education.

Human rights defenders activities are valued to have a vital role in preventing and anticipating the escalation of state violence against civil society that has the potential to violate human rights and improve the promotion and fulfillment of human rights.⁵ Various strategies carried out by human rights defenders are aimed at various forms of activities such as investigating, documenting and disseminating human rights violations and holding the government accountable in terms of law enforcement and assisting victims of human rights violations in facilitating recovery (Remedy) by the state.⁶ In Indonesia, the Protection of Human Rights Defenders has been regulated through Standard Norms and Regulations (SNR) on Human Rights Defenders by the National Commission on Human Rights in 2021. These Standard Norms and Regulations were formed as an effort to promote and develop Human Rights, and respond to the situation of the absence of Operational Implementative Human Rights Norms Standards in the context of protection, respect for the rights of⁷ human rights defenders. With the establishment of SNP Human Rights Defenders, National Commission of

⁵ Human Rights Support Facilities (HRSF), *Prospects Protection Human Rights Defender*, TIFA Foundation, (Jakarta:2009), p.8

⁶ OHCHR, *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*. Can Accessed at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

⁷National Commission of Human Rights, *Standard Norms and Regulations Human Rights Defender*, 2021



Human Rights issued Regulation Number 5 of 2015 concerning Procedures for Protection of Human Rights Defenders and National Commission of Human Rights Regulation Number 04 of 2021 concerning the ratification of SNR Human Rights Defenders. The purpose of this regulation is to improve NCHR's services and protection of human rights defenders, especially in emergency situations. The regulation stipulates procedures for protecting human rights defenders, starting from complaints to the implementation of protection of human rights defenders.

RESULT AND DISCUSSION

The Urgency of Legal Protection of Human Rights Defenders within the framework of Indonesian Laws and Regulations

In international law, the promotion and enforcement of human rights is affirmed by the 1998 UN Declaration of Human Rights Defenders which is a form of recognition of international law for every individual, group, carrying out activities or work in the context of promoting and upholding human rights human.⁸ The Declaration of Human Rights contains a general statement on the recognition and rights of human rights defenders but does not formulate standards and mechanisms for ratifying such instruments in legislation of the state party. The 1998 Human Rights Defenders Declaration is a soft law, which means, it is not legally binding, but morally binding.

Human rights defenders in their activities to promote and uphold human rights have binding rights and obligations. Basically the State must be responsive in ensuring the protection of the rights of human rights defenders. That with the recognition and protection of human rights defenders, it can minimize various threatening, intimidation, repressive actions that are often experienced by human rights defenders in their defense activities. According to Hina Jilani in Rahayu as stated in UN *Factsheet*

⁸ United Nations General Assembly, "Declaration Defenders Human rights", <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declarationBahasa.pdf>

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number 29, human rights defenders have main activities that are divided into several characteristics, namely: ⁹

- (1) All human rights for all;
- (2) Human Rights everywhere;
- (3) Local, national, regional and international action;
- (4) Collecting and disseminating information on violations;
- (5) Supporting victims of human rights violations, Action to secure accountability and to end impunity;
- (6) Supporting better governance and government policy;
- (7) Contributing to the implementation of human rights treaties;
- (8) Human Rights education and training.

According to Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights by the United, there is a minimum r mark to determine the classification of individuals or groups classified as human rights defenders, namely: ¹⁰

- (1) Accepting the universality of human rights:

Human rights defenders must accept the universality of human rights as defined in the Universal Declaration of Human Rights. A person cannot deny some human rights and yet claim to be a human rights defender because he or she is an advocate for others. For example, it would not be acceptable to defend the human rights of men but to deny that women have equal rights. That a person can be called a human rights defender if he accepts the universality of human rights stipulated in the Universal Declaration of Human Rights, in the sense, a person cannot be said to be a human rights defender if he fights for one aspect of human rights but rejects several other aspects of human rights in the universal declaration of human rights.

- (2) Who is right and who is wrong – does it make a difference? A second

⁹ R "Urgency Protection Law for Defenders Human rights (*Human Rights Defender*) at Indonesian *Problem Problem Law* Vol. 39 no.2 (2010)

¹⁰ United Nations "Human Rights Defenders: Protecting the Right to Defend Human Rights", <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>, p.9



important issue concerns the validity of the arguments being presented. It is not essential for a human rights defender to be correct in his or her arguments in order to be a genuine defender. The critical test is whether or not the person is defending a human right. For example, a group of defenders may advocate for the right of a rural community to own the land they have lived on and farmed for several generations. They may conduct protests against private economic interests that claim to own all of the land in the area. They may or may not be correct about who owns the land. However, whether or not they are **legally correct** is not relevant in determining whether they are genuine human rights defenders. The key issue is whether or not their concerns fall within the scope of human rights. This is a very important issue because, in many countries, human rights defenders are often perceived by the State, or even the public, as *being in the wrong* because they are seen as supporting one side of an argument. They are then told that they are not "real" human rights defenders. Similarly, defenders who act in defence of the rights of political prisoners or persons from armed opposition groups are often described by State authorities as being supporters of such parties or groups, simply because they defend the rights of the people concerned. This is incorrect. Human rights defenders must be defined and accepted according to the rights they are defending and according to their own right to do so. That, a human rights defender regardless of the dichotomy of right or wrong according to law in human rights defense activities as long as the scope of such defense is within the scope of human rights, regardless of what is defended is something wrong or right, that person is still referred to as a human rights defender; and

- (3) Finally, the actions taken by human rights defenders must be peaceful in order to comply with the Declaration on human rights defenders. All defence activities undertaken by human rights defenders shall be conducted in a peaceful manner in accordance with the Declaration of Human Rights Defenders.



Based on *UN Fact Sheet No.29*, it can be concluded that the minimum standard as a human rights defender is that a person must accept human rights universally without prejudice to other aspects of human rights, regardless of the wrong or right of a case, most importantly is the activity they do is an activity in advancing human rights, and it is carried out peacefully. As explained above, the one who has the main responsibility in upholding and promoting human rights is the state, in its relevance to the implementation of the declaration of human rights defenders by the author takes the example of countries in the European Union. The European Union has responded to the enactment of the Declaration of Human Rights Defenders which is a soft law. The European Union not only accepted the 1998 Declaration of Human Rights Defenders morally, but also actually made specific regulations on Human Rights Defenders, namely the European Union of Declaration on Human Rights Defenders in 2004.

Implementation of the Declaration on Human Rights in terms of the establishment and reform of law has been implemented in the European Union. The European Union adopted and developed the Declaration of Human Rights Defenders with the adoption of the 2004 EU Guidelines on Human Rights Defenders. The Guidelines state unequivocally that the EU supports the principles contained in the Universal Declaration of Defenders of Human Rights. Although the primary responsibility for promoting and protecting human rights rests with States¹¹ parties, the EU recognizes that individuals, groups and bodies of society all has an important role in supporting human rights issues. The guide also classifies the work carried out by human rights defenders. Furthermore, the EU Guidelines on human rights defenders also contain the implementation rules of this guide. The implementation rules show that the EU not only accepts the normative Declaration of Human Rights Defenders but also that there is a legitimate commitment to effectively implement the principles set out in the Declaration of Human Rights Defenders.

¹¹ Al Araf, M.Ali Syafaat, Peongky Indarti, 2005, *Protection Human Rights Defenders*, Jakarta:IMPARSIAL, p.4



Base on the laws and regulations in Indonesia, there is no specific and specific regulation regarding the recognition and protection of human rights defenders. Indonesia as a UN member state has ratified several international legal instrument such as the International Covenant on Civil and Political Rights, which was ratified in Act of the Republic of Indonesia Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. With regard to human rights defenders, the ratification of the International Covenant on Civil and Political Rights has not been accommodated and is still in the form of general rules. Seeing this fact, it confirms that Indonesia has not fully implemented the mandate of the Declaration of Human Rights Defenders which requires the state to protect human rights defenders effectively. In international law, the right to freedom of expression, the right to active participation in government and public affairs, the right to legal remedies and protections, and the right to the promotion and enforcement of human rights are enshrined in the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and ot her human rights instruments. The Declaration of Human Rights Defenders is a special concept of the human rights defense mechanism. Therefore, it is important to implement the principles of the Declaration of Human Rights Defenders with the legitimacy of national laws and regulations. The implication of the absence of legislation that legitimizes and ratifies the principles in the Declaration of Human Rights Defenders is that it has the effect of ensuring less recognition and protection against activities carried out by human rights defenders who often experience intimidation, repression, threats, and so on.

The fact shows that the activities of human rights defenders are very vulnerable, the author considers that it is appropriate to have recognition and guarantee of legal protection in every activity. Furthermore, as



described in UN Fact Sheet Number 29 Human Rights Defenders provides an overview of the protection of human rights defenders which includes:¹²

- (a) The legislative basis for the work of human rights defenders and their protection, including the rights to freedom of expression and association;
- (b) Protection by the law and courts in practice;
- (c) Access to training and information;
- (d) The role of nation and local authorities and of the United Nations, and the influential force of the private sector;
- (e) Monitoring and dissemination of information on the situation of human rights defenders through the media and informal network of civil society;
- (f) Protection and support for human rights defenders abroad;
- (g) The responsibilities and high standard required of human rights defenders.

Seeing the level of concern with human rights defenders with the activities carried out, the international community then responds by carrying out forms of monitoring and disseminating some information. International monitoring is carried out such as the Special Procedures of the Human Rights Commission and UN Treaty Bodies which often assess the condition of human rights activities at the National and Regional levels. Both the UN Secretary General and the UN High Commissioner for Human Rights (OHCHR) have affirmed their support and highest recognition for the work of human rights defenders.

It is clear that the criteria used to define and limit human rights defenders are based on the activities carried out, not on the status or profession of a person or a person. organization. In describing the activities carried out by human rights defenders, the Special Representative of

¹² OHCHR, Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights. Can Accessed at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.



Secretary General on Human Rights Defenders outlined nine main forms of activity of human rights defenders, including as follows:¹³

- a) Human rights for all
- b) To become a human rights defender, a person can carry out human rights activities both individually and in groups. Human rights defenders fight for the promotion and protection of both civil-political rights as well as economic, social and cultural rights. The commitment of human rights defenders can be realized through various problems such as murder, torture, arbitrary detention, violence against women, discrimination against minority groups, structural impoverishment of labor, enforced disappearances, access to health and environmental pollution.
- c) Human rights everywhere
Human rights defenders are active in all parts of the world, both in non-democratic countries and in democracies, both in developing and economically developed countries. The aim is to promote and protect human rights with various forms of challenges and obstacles.
- d) Local, national, regional and international action
The majority of human rights defenders work at local and national levels to promote respect for human rights in their own communities and countries. In local and national situations, local authorities are responsible for ensuring respect for human rights in a region or country. But there are human rights defenders working at regional and international levels. They can carry out activities such as monitoring the human rights situation in the regional and global scope and include it in human rights mechanisms at the regional and international levels. The trend shows that there is an incorporation of the work of human rights defenders from the scope of work to ensure efforts to support the promotion of human rights in each region or country.
- e) Collection and dissemination of infringement information
Human rights defenders investigate and collect information on human rights violations. They can then make strategic efforts to bring the report

¹³ *Ibid*



to the attention of the public and political officials and law enforcement agencies to ensure that human rights violations and investigations What is done gets attention to be followed up. In general, such work is carried out by human rights organizations that periodically publish reports of their findings.

f) Helping victims of human rights violations.

A large part of human rights defenders is helping victims of human rights violations. Investigating and reporting human rights violations can help end on going violations, prevent recurrence, and help victims bring their cases to justice system. Some human rights defenders provide professional legal counsel to represent victims in legal proceedings. Other human rights defenders carry out restoration, counseling and rehabilitation of victims of human rights violations.

g) Demand accountability and end impunity.

Some human rights defenders work to bring about law enforcement accountability, respect for human rights. Broadly, this includes lobbying stakeholders and encouraging extra ordinary efforts by States in implementing their existing international human rights obligations ratified. In certain cases, this can be done by giving testimony both to the public and before the court about human rights violations that have occurred. Human rights defenders uphold justice on behalf of victims of human rights violations and break down impunity to prevent future human rights violations. Some human rights defenders have focused specifically on ending impunity. Other human rights defenders can make efforts that lead to strengthening the state's capacity to prosecute human rights violators, for example by providing human rights training for law enforcement such as Police, Prosecutors and Judges.

h) Encourage for better government policies

Some human rights defenders focus on the government as a whole in order to fulfill its human rights obligations. This can be done by publishing records of the implementation of human rights standards by the government and monitoring the progress made. Some human rights



defenders focus on *Good Governance*, promoting democratic processes, againsts corruption and abuse of power and providing political and electoral education towards society.

i) Contribution to the implementation of human rights treaties

The main contribution of human rights defenders, especially as organizations, is the implementation of human rights instruments at the national and international levels. Various Non-Governmental Organizations and international organizations that help with housing, health and income improvement projects for marginalized poor people. They provide essential training and skills and provide the necessary infrastructure.

j) Human rights education and training.

The usual activities of human rights defenders are human rights training and education. Education can take the form of training in the implementation of human rights standards in a profession such as judges, prosecutors and police or in the form of dissemination of information about human rights standards to community

Indonesia's national legal regulations that ruling about human rights defenders can only be found in Regulation Number 5 of 2015 concerning Protection Procedures for Human Rights Defenders and National Commission of Human Rights Regulation Number 04 of 2021 concerning the ratification of Standard of Norm and Regulations about Human rights defenders. The protection of human rights defenders has been regulated through the Standard Norms and Regulations (SNR) on Human Rights by the National Human Rights Commission in 2021. These Norms and Regulatory Standards were¹⁴formed as an effort to promote and develop Human Rights, and respond to the situation of the absence of Human Rights Norm Standards that are rational in the context of protection, respect for the rights of human rights defenders. With the establishment of SNR Human Rights Defenders.

¹⁴ Indonesia National Commission of Human Rights, Standard Norms and Settings Defenders Rights Basic Human, 2021



Article 1 paragraph (2) of National Commission of Human Rights Regulation Number 5 of 2015 states that the rights of human rights defenders are a series of human rights regulated in national and international law regarding human rights that have been accepted by the State of the Republic of Indonesia to support the work of promoting and protecting human rights human.¹⁵ Basically, according to the author, there must be a distinction between human rights and the right to defend human rights. The right to human rights defense is used to support the fulfillment of human rights. The Human Rights Defenders Declaration recognizes that there is a right and responsibility of individuals, groups and associations to promote respect for and strengthen knowledge of human rights and fundamental freedoms at national and international levels.¹⁷

Article 1 paragraph (4) of Regulation INCHR states that protection is a series of actions carried out by INCHR, with or without cooperation with other agencies, with the intention of providing protection to human rights defenders whose rights are violated, whether by individuals, community groups, private institutions or the state. If the rights of human rights defenders are¹⁶ not stipulated firmly, clearly, and specifically, then there is no benchmark in terms of how the rights of human rights defenders are violated, so the protection of human rights defenders becomes ambiguous.

Furthermore, regarding the qualifications of human rights defenders, Article 5 of the National Commission of Human Rights Regulation states that National Commission of Human Rights provides protection to human rights defenders who meet the following qualifications:¹⁷

- a) Proven to carry out work of promotion and protection of human rights by peaceful means;
- b) Have vulnerability to attacks or rights violations resulting from human

¹⁵ Article 1 verse (2) Regulation Commission National Rights Basic Human Number 5 Year 2015

¹⁶ Article 4 Regulation Indonesia National Commission of Human Rights Number 5 Year 2015

¹⁷ Article 5 Regulation Indonesia National Commission of Human Rights Number 5 Year 2015



- rights promotion and protection work; and
c) Accept the universality of human rights.

Based on the above, the author can conclude that the qualification of human rights defenders is in accordance with UN Fact Sheet No.29 which confirms that the minimum standard of human rights defenders is that human rights defenders It does so by accepting all existing universalities of human rights without denying other human rights. However, based on UN Fact Sheet No.29, there is one minimum standard point that is not regulated in National Commission of Human Rights Regulation No.5 of 2015, namely regarding freedom from the dichotomy of right or wrong, which means as long as the scope of defense is within the scope of human rights defense, regardless of whether what is being defended is something wrong or right, the person is still called a human rights defender.

The National Commission of Human Rights regulation regulates the operational mechanism of Komnas HAM, not concrete recognition of the existence of human rights defenders. The regulation does not recognize and regulate the rights and activities of human rights defenders. It will be more effective if there is a higher law or legislation, which regulates clearly and clearly the protection of human rights defenders.

As stated above, the lack of regulation in the Laws and Regulations in Indonesia regarding respect, recognition and protection of human rights defenders in carrying out their activities has an impact on the work of human rights defenders at the level of execution. Unlawful attacks on human rights defenders are considered crucial in providing protection to the activities of human rights defenders as well as international provisions and standards on the rights and obligations of human rights defenders. As affirmed in article 28 D paragraph (1) of the 1945 Indonesia's Constitution¹⁸ affirms that everyone has the right to recognition, guarantees of protection and fair legal certainty and equal treatment before the law, it is appropriate that legal protection for human rights defenders in Indonesia becomes a constitutional

¹⁸ Article 28D verse (1) Indonesia's Constitution 1945
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necessity in terms of legal certainty to develop, promote and uphold human rights.

Based on the Declaration of Human Rights Defenders and the 1945 Indonesia's Constitution, legitimate recognition has an impact on the legitimacy of respect for humanity, human rights and other fundamental freedoms for human rights defenders. Therefore, parties that have a correlation with the work of human rights defenders must respect their rights and freedoms and in accordance with the provisions of national laws and regulations; and international by adjusting to the code of ethics and professional conduct of human rights defenders.

One of the legal protections for human rights defenders is the concept of Anti-SLAPP (*Strategic Lawsuit Against Public Participation*), a concept that guarantees legal protection for the community to not be prosecuted both criminally and civilly in fighting for the right to a good and healthy environment.¹⁹ Anti-SLAPP is a concept that is closely related to the community's right to a good and healthy environment contained in Article 28H paragraph (1) of the 1945 Indonesia's Constitution. In obtaining these rights, the community or civil society also has procedural rights that have been regulated in various laws and regulations and are also the basic principles for good environmental management. These procedural rights are the rights of access to participation, information and justice. Especially for participation access rights, it is closely related to Anti-SLAPP, because Anti-SLAPP is a protection for the community in carrying out public participation.

Violations of the right to participate and attacks on human rights defenders on the environment were initially carried out in the formal realm, namely through civil lawsuits or criminal reporting to human rights defenders on the environment as retaliatory measures from the defendant / reported which had the effect of silencing the community. This phenomenon then develops not only attacks through the realm of law, but also physical, psychic, and digital attacks. Thus, the term SLAPP has developed into Strategic Litigation against Public Participation or Strategic Legal Action against Public Participation.²⁰ The formulation of Anti-SLAPP in Article 66 of Act 32/2009 is also based on the protection of public participation, namely:²¹

¹⁹ ICEL, Policy Brief: Urgency Settings Anti SLAPP in Indonesia. Jakarta, 2021. p.13

²⁰ Ibid.

²¹ Council Representative People Republic Indonesia (DPR-RI), "Treatise BILL About Management environment", RDPD Date 13 July 2009, (Jakarta: Dewan Perwakilan Rakyat Republik Indonesia, 2009), p. 20.



- (1) Frequent silencing of communities fighting for environmental interests by the government or other authorities; and
- (2) There are frequent counter-reports on the grounds of defamation to people who report environmental cases to the authorities.

So that in its regulation, article 66 of Act Number 32 of 2009 concerning Environmental Protection and Management affirms that everyone who fights for the right to a good and healthy environment cannot be criminally prosecuted or sued civilly.²² In its procedural implementation, Anti-SLAPP is contained in the Decree of the Chief Justice of the Supreme Court Number 36 of 2013 concerning the Implementation of Environmental Case Guidelines. Given that the Decision of the Chief Justice of the Supreme Court is a²³ *Beshikking* arrangement, the Supreme Court has issued Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases contained in article 48 paragraphs (1) and (2) affirming legal protection for environmental fighters, among others, as follows:²⁴

- (a) Right to obtain a good and healthy quality environment as part of human rights;
- (b) Right to get access to information, access to participation and access to justice in fulfilling the principles of a good and healthy environment;
- (c) Right to submit proposals and/or objections to business plans and/or activities that are expected to have a negative impact on the environment;
- (d) Right to participate a role in environmental protection and management in accordance with the provisions of laws and regulations;
- (e) Right to complaints due to alleged pollution and/or destruction of the environment; and
- (f) Right to an active participation role in environmental management in the form of social supervision, providing suggestions, opinions, proposals, objections, complaints, submitting information, and/or reports.

There is one Jurisprudence regarding the application of the Anti-SLAPP principle, namely in the Bangka Belitung High Court Decision Number 21/P id/2021/PT.Bbl., the Appellate Judges who in their consideration adopted and

²² Article 66 Act Number 32 Year 2009 About Protection and Management Milieu Live

²³ Decision Head Court Agung Number:36/KMA/II/2023 About Enforcement Guidelines Case againts Enviroment

²⁴ Regulation Supreme Court of Republic Indonesian Number 1 Year 2023 About Guidelines adjudicate case againts Enviroment



applied the Anti-SLAPP principle, among others:²⁵

- (a) Explain the relationship between Article 66 of act 32/2009 and Article 28H paragraph 1 of the 1945 Indonesia’s Constitution (especially the relation between the right to community participation and the right to a good and healthy environment);
- (b) explained that SLAPPs are violations of public participation so they must be stopped as early as possible; and
- (c) This includes the rehabilitation of community rights to SLAPPs they receive.

So far, the provisions of laws and regulations in Indonesia have not recognized specifically the protection, respect and recognition of human rights defenders. However, in the laws and regulations in Indonesia there are various arrangements regarding the protection, respect and fulfillment of human rights that can be used as material to reformulate regulations legislation that accommodates the protection of human rights defenders. The laws and regulations as referred to include the following table: ²⁶

No	Legal Rules	Article
1	Constitution of the Republic of Indonesia Year 1945	Article 28D paragraph (1): <i>"Everyone has the right to recognition, assurance, protection and fair legal certainty and equal treatment before the law."</i>
2	Act Number 39 of 1999 concerning Human Rights ²⁷	Article 100: <i>"Every person, group, political organization, community organization, non-governmental organization, or other community institution, has the right to participate on protection, enforcement, and development of human rights."</i>

²⁵ Copy Verdict Court Bangka Belitung High Number: 21/Pid/2021/PT BBI Accessed at https://putusan3.mahkamahagung.go.id/direktori/download_file/c2c389b8b25450e173242975560f8a21/pdf/zaebbe9d884f5a5cbdf8313034323137

²⁶ Human Rights Support Facilities (HRSF), *Prospects Protection Human Rights Defender*, TIFA Founndation, (Jakarta:2009), p.195

²⁷ Act Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886)



		<p>Article 101: <i>"Every person, group, political organization, community organization, non-governmental organization, or other community institution, has the right to submit reports on human rights violations to Komnas HAM or other authorized institutions in the context of protection, enforcement, and promotion of human rights."</i></p> <p>Article 102: <i>"Every person, group, political organization, community organization, non-governmental organization, or other community institution, has the right to submit proposals regarding the formulation and policies related to human rights to Komnas HAM and or other institutions."</i></p>
3	Act Number 40 of 1999 concerning the Press ²⁸	<p>Article 6: <i>"The national press performs its following roles:</i></p> <ul style="list-style-type: none"> <i>a. fulfil the community's right to know;</i> <i>b. uphold basic democratic values, promote the realization of the rule of law, and human rights, and respect diversity;</i> <i>c. develop a public opinion based on precise, accurate and correct information;</i> <ul style="list-style-type: none"> <i>a. Supervise, criticize, correct, and suggest on matters of public interest; and</i> <i>b. Fighting for justice and truth"</i> <p>Article 8: <i>"In carrying out their profession, journalists receive legal protection"</i></p>
4	Act Number 18 of 2003 concerning Advocates ²⁹	<p>Article 5 paragraph (1): <i>"Advocates have the status of law enforcers, free and independent guaranteed by laws and</i></p>

²⁸ Act Number 40 of 1999 concerning the Press (State Gazette of the Republic of Indonesia of 1999 Number 166, Supplement to the State Gazette of the Republic of Indonesia Number 3887)

²⁹ Act Number 18 of 2003 concerning Advocates (State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4228)



		regulations" Article 16: <i>"Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in good faith for the benefit of Klinn's defense in court hearings"</i>
5	Act Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights ³⁰	Article 26: <i>"All persons are equal before the law and are entitled to equal protection of the law without any discrimination."</i>
6	Act Number 32 of 2009 concerning Environmental Management and Protection ³¹	Article 66: <i>"Everyone who fights for the right to a good and healthy environment cannot be criminally prosecuted or sued civilly."</i>
7	Act Number 16 of 2011 concerning Legal Aid ³²	Article 9 letter g: <i>"Legal Aid Providers are entitled to guarantees of legal protection, security and safety while carrying out the provision of legal assistance."</i>
8	Act Number 12 of 2022 concerning Sexual Violence ³³	Article 28: <i>"Companions are entitled to legal protection while accompanying Victims and Witnesses at every level of examination."</i> Article 29:

³⁰ Act Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (State Gazette of the Republic of Indonesia of 2005 Number 119, Supplement to the State Gazette of the Republic of Indonesia Number 4558)

³¹ Act Number 32 of 2009 concerning Environmental Management and Protection (State Gazette of the Republic of Indonesia of 2009 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 5059)

³² Act Number 16 of 2011 concerning Legal Aid (State Gazette of the Republic of Indonesia of 2011 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 5248)

³³ Act Number 12 of 2022 concerning Criminal Acts of Sexual Violence (State Gazette of the Republic of Indonesia of 2022 Number 120, Supplement to the State Gazette of the Republic of Indonesia Number 6792)



		<i>"Companions referred to in Article 26 who are handling victims cannot be prosecuted in law, either criminal or civil for their assistance or services, unless the assistance or service is provided not in good faith."</i>
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As explained in the table above, that some related laws and regulations basically provide opportunities in future legal reforms (*ius constituendum*) for recognition, respect and legal protection for human rights defenders. Moreover, the constitutional need for legal certainty to guarantee the protection of citizens (including human rights defenders) is the obligation and responsibility of the state. In each rule of law made by the legislator, then there is a number of foundations or principles underlying the publication of such laws.³⁴ The basis of the law is not a concrete law, but rather a common and abstract fundamental mind, or a concrete regulatory background found in and behind every legal system that is enshrined into the rule of law and court rulings that are positive laws and can be discovered by looking for common attributes or characteristics in the regulation of the concrete. Refers to the Model Law for the Recognition and Protection of Human Rights Defender in formulating legal protection for HAM defenders among others as follows:³⁵

- (1) Form groups, associations and organizations. The terms group, association, and organization include formal and informal meanings, which include community groups, minority groups, indigenous associations, or people who unite to defend or fight for human rights. Organizing includes the right to assemble or associate, whether registered or unregistered. Everyone is free to carry out legitimate activities such as holding and participating in peaceful meetings. People holding peaceful demonstrations or gatherings cannot be subject to criminal sanctions. Human rights defenders have the right to form, join, or participate in domestic or foreign-standing organizations;
- (2) Request, receive and utilize resources derived from domestic and international sources, governmental, intergovernmental, persons or philanthropic and private institutions with a view to promoting the protection and realization of human rights and fundamental freedoms;

³⁴Abdoel Djamali, *Introduction to Indonesian Law*, Raja Grafindo, Jakarta, 2006, p. 3.

³⁵ Komnas HAM, *Human Rights Defender Norms and Regulatory Standards (SNP)*, 2021, Paragraph 139, pp. 37-39.



- (3) Know, seek, access, obtain, receive and store information about human rights and fundamental freedoms. This right includes legislative, judicial, and administrative measures in the exercise of human rights and fundamental freedoms. The right to information from state companies/institutions is necessary to exercise or protect or assist in the exercise or protection of human rights or fundamental freedoms and the right to study, discuss, argue about the observance of the law and the implementation of human rights and fundamental freedoms. The right to information can be used orally, in writing, in print in the form of artwork or through other media both online and offline;
- (4) Develop, discuss and fight for new ideas and principles related to human rights and fundamental freedoms. New ideas and principles are related to the development of international human rights law issues, especially regarding minority groups including groups of sexual orientation and diverse gender identities;
- (5) Communicate freely with non-governmental organizations, governments and governments of other countries, including subsidiaries, mechanisms or experts of mandates relevant to human rights and fundamental freedoms and with diplomatic missions of other countries;
- (6) Access, communicate, work together and use mechanisms available in regional and international human rights law systems;
- (7) Participate effectively in the implementation of human rights and fundamental freedoms through the state system. This includes the right to criticize public officials in protecting and respecting human rights, to remind public officials of acts or omissions on the part of the public or private that involve or contribute to violations of human rights or fundamental freedoms and to publish information containing criticism and recommendations for the actions of public officials to the public;
- (8) Meet, assemble and participate in peaceful activities related to human rights and fundamental freedoms. The right to be free from arbitrary interference by public officials and private actors in peaceful activities must be protected. Peaceful activities include demonstrations, protests, seminars and meetings in both public and private places;
- (9) Assist, represent or act on behalf of persons, groups of persons and organizations to promote the protection and exercise of human rights and

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fundamental freedoms at the local, national, regional and international levels. This includes the right to file complaints and petition for human rights violations by public officials, engage in policy and regulatory processes, speak at judicial proceedings, provide legal assistance and advice, attend public hearings and disseminate ideas or information about human rights violations and fundamental freedoms that occur;

- (10) Freedom to move, choose a place of residence and carry out human rights activities as a whole in the territory of a country. No one shall be expelled in any way from his territory for his actions, in part or in whole as a defender of human rights. No person shall be deprived of the right to enter or leave his territory on the basis of or in connection with his status, activity or employment as a human rights defender;
- (11) Get protection of the right to privacy. Human rights defenders have the right to be free from interference, harassment and threats to family, home environment, workplace, property, online and offline correspondence. This interference includes any form of surveillance, wiretapping, recording, search and seizure in connection with his legitimate activities or work as a human rights defender. Human rights defenders deserve personal data protection and digital security. Hacking personal data and digital data of human rights defenders is a crime;
- (12) Free from "malicious intention"³⁶ related to his activities as a human rights defender. Intimidation or retaliation can occur against family members of human rights defenders, spouses, representatives or associates and groups, associations or organizations that show human rights defenders are located. Protection of human rights defenders includes protection of relatives and loved ones. Human rights defenders have the right to be anonymous when making reports or complaints about human rights violations;
- (13) Free from the target of defamation, stigma or other violence in any form, whether online or offline committed by public or private officials. This right is necessary to protect public trust in human rights defenders;

³⁶ The term "*Malicious Intention*" refers to the definition of malicious intent with the intention to hinder human rights defenders from doing their work or stop human rights defense work.



- (14) Obtain protection of cultural rights. Human rights defenders have the right to develop personality, individually or in social association and free from obstacles or restrictions in developing personality freely and fully. The freedom to criticize and change customs and traditions that violate human rights and fundamental freedoms, must be protected. These rights include freely participating or not participating in the cultural life of communities, developing various cultural identities, accessing cultural heritage, maintaining and using traditional languages and cultural institutions, tanag, sites and goods, contributing to the creation of cultural criticism and development, and exchanging cultural traditions and practices with people of other cultures. Special safeguards should be developed for personality development in marginalized groups including women, children, the elderly, persons with disabilities, ethnic and religious/religious minorities, migrant workers, indigenous peoples and the poor;
- (15) Obtaining effective remedies and full reparations in the event of a violation of his rights. Human rights defenders whose rights are violated or harmed have the right to file a lawsuit with the competent court or tribunal for effective remedies and full reparations, or through non-judicial mechanisms such as mediasim Those who can file a lawsuit in court or out-of-court (non-judicial) mechanisms are human rights defenders, human rights defenders' associates, legal counsel or other representatives of human rights defenders appointed to conduct affairs or act on behalf of defenders Human rights, family members of human rights defenders or groups, associations or organizations that human rights defenders participate in become members or administrators;
- (16) Human rights defenders have the right freely and responsibly to access both private and public sources of funding, both domestic and foreign, including international bodies and organizations. Unlawful barriers and barriers to access to funds for human rights defenders should be removed;
- (17) Human rights defenders have the right to physical, social, economic and psychological health, physical and psychological recovery, well-being and the opportunity to have good social relations with their families, peers and environment. The guarantee is given by taking into account the conditions



and capabilities of the organization or institution where human rights defenders are members and work;

- (18) Human rights defenders have the right to increase self-protection capacity which includes awareness of protection knowledge and skills, improvement of facilities and infrastructure that support self-protection, self-protection protocols and expansion of self-protection networks. Human rights defenders can get support from organizations, communities and private parties including assistance from abroad; and
- (19) Human rights defenders are entitled to special protection in emergencies. The state of emergency in question includes threats and/or attacks that are quite high and conflict situations and potential conflicts that cause large-scale and wide-ranging casualties.³⁷

Therefore, the researcher analyzed that as long as there is no standard mechanism on protection for human rights defenders by the State, measures to protect human rights defenders must be formulated and fought for by civil society organizations in accordance with the forms of threats and violence that have occurred so far. In addition, in accordance with the scope of its activities, the pressure points Legal protection measures for human rights defenders needed are related to the role of the state itself including the following steps:³⁸

- (1) Make the declaration of human rights defenders an instrument of national law and conform to national laws and regulations with the substance of the declaration of human rights defenders. This is done by reforming laws and regulations to adopt principles and mechanisms for legal protection of human rights defenders and making changes to various laws and regulations that have the potential to criminalize, restrict, threaten violence and impunity;
- (2) Implement the declaration of human rights defenders and legal provisions for the protection of human rights defenders by providing education and

³⁷ Article 8 of Komnas HAM Regulation No. 5 of 2015 concerning Procedures for Protection of Human Rights Defenders.

³⁸ Al Araf, M.Ali Syafaat, Peongky Indarti, Protection of Human Rights Defenders, IMPARSIAL, Jakarta, 2005, p. 94



- training to state officials, especially the police, tantara and other security units on human rights and protection of human rights defenders;
- (3) Disseminate declarations of human rights defenders and other human rights instruments to state officials and the public at large and organize various counseling and training for the community;
 - (4) Ensure that there are robust, independent and easily accessible mechanisms such as affirming the existence, integrity and independence of national human rights commissions that can receive information from human rights defenders about violence experienced in their activities or violence that threatens themselves and their families;
 - (5) Take steps to provide legal protection by the courts to human rights defenders such as mechanisms for the protection of witnesses, victims and whistleblowers;
 - (6) Ensure that perpetrators of human rights violations are carried out appropriate and thorough investigations and punished in accordance with the provisions of applicable laws and regulations;
 - (7) The implementation of protection of human rights defenders must be carried out at the national and regional levels. The process of decentralization of state authority must be understood that the responsibility of human rights protection is also part of the obligations of local governments; and
 - (8) Cooperate with the Special Representative on Human Rights Defenders of the United Nations and other regional and international organization.

CONCLUSION

Legal protection for human rights defenders in Indonesia has not been legitimized by various laws and regulations that accommodate the recognition and guarantee of protection of the rights and obligations of human rights defenders. The lack of recognition and protection for human rights defenders in laws and regulations is shown by only the regulation of standard norms and regulations (SNR) for human rights defenders through National Commission of Human Rights Regulation Number 4 of 2021 and National Commission of Human Rights Regulation Number 5 of 2015. The UN Human Rights Defenders Declaration is basically needed to reformulate the reform of laws and regulations in Indonesia responsively as a form of state obligations in terms of



the promotion, development, fulfillment and protection of human rights. The UN human rights defenders' declaration is considered crucial for ratification in Indonesian legislation. Based on the provisions of article 28D paragraph (1) of the Constitution of the Republic of Indonesia 1945, there is a constitutional necessity to provide recognition, guarantee, protection and fair legal certainty, especially for legal certainty for the recognition and protection of human rights defenders

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