

Legal Analysis of the Criminal Act of Trading in Protected Animals Based on Law Number 5 of 1990 Concerning Conservation of Natural Resources and Ecosystems

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Abstract

The crime of trading protected animals is prohibited by law in Indonesia. Because it can threaten the existence of various animals that have spread throughout Indonesia. For that reason, Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems has formulated and threatened criminal penalties for various methods and consequences of actions that commit the crime of trading protected animals.

Keywords: Crime, Business, Protected Animals.

INTRODUCTION

The Indonesian nation is blessed by God Almighty with abundant natural resources, both on land, in the waters and in the air. Indonesia's natural resource wealth consists of biological or biotic natural resources and non-biological or abiotic natural resources. Biological natural resources are biological elements in nature consisting of plant natural resources (plants) and animal natural resources (animals) which together with the non-biological elements around them as a whole form their ecosystem. Indonesia's biological natural resources are very high in the world, including the diversity of animals/wildlife or fauna.

Fauna is grouped into three geographical regions, namely the fauna of West Indonesia, the fauna of Central Indonesia and the fauna of East Indonesia. The list of new species discovered in Indonesia will continue to grow, along with the intensity of research or exploration of nature. Because there are still many places in Indonesia such as Papua that have not been recorded completely in the list of animal and plant species.¹

Indonesia has been in the world spotlight due to its rapid rate of deforestation and forest degradation, which has also resulted in a high rate of loss of flora, fauna and microorganisms. Due to the high rate of loss of flora and fauna, Indonesia is known as a country with a long list of endangered wildlife. Currently, the number of endangered wildlife is 147 species of mammals, 144 species of birds, 28 species of reptiles, 29 species of fish and 28 species of invertebrates (IUCN). If there is no effort to save them, these species will be completely extinct from nature, just like the Bali tiger which has been completely extinct since the 1970s.²

Indonesia itself, the cause of the extinction of protected animals is at least two things, one of which is the trade in protected animals, both alive and dead. Trade in protected animals is a criminal act. Trade in protected animals is a serious threat to the sustainability

¹Happiness, Natural Rights and Environmental Law in Islam, Suka Press, Yogyakarta, 2013, p. 17.

²Ibid., p. 19.

of protected animals in Indonesia. Because of the high profits obtained and the small legal risks that must be faced by the perpetrators of the protected animal trade, the trade in protected animals has become a great attraction for the perpetrators to commit the crime. Moreover, more than 95% of animals sold in the market are caught from nature, not from captivity.³

Research on various types of protected and endangered animals is still traded freely in Indonesia. The government has issued laws and regulations to protect protected animals from all crimes that will cause extinction. This is marked by the issuance of Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Ecosystems and is supported by other regulations.

The above regulation regulates all types of animals protected by the state, both those in the wild and those owned by the community, because the protected animals are almost extinct in their natural habitat. In Law Number 5 of 1990 concerning the Conservation of Natural Biological Resources and their Ecosystems, it is clear that all forms of trade in protected animals are prohibited. Trade in protected animals is a criminal act that has criminal sanctions and fines as stated in Article 21 paragraph (2) in conjunction with Article 40 paragraphs (2) and (4) of Law Number 5 of 1990 concerning the Conservation of Natural Biological Resources and their Ecosystems.⁴

Article 21 paragraph (2) of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems, which states that everyone is prohibited from:

1. Capturing, injuring, killing, keeping, possessing, maintaining, transporting and trading protected animals alive.
2. Storing, owning, maintaining, transporting and trading in dead protected animals.
3. Removing protected animals from one place in Indonesia to another place within or outside Indonesia.
4. Trading, keeping or possessing the skin, body or other parts of protected animals or goods made from these parts or exporting them from one place in Indonesia to another place within or outside Indonesia.
5. Taking, destroying, destroying, trading in, keeping or possessing eggs or nests of protected animals.

Based on this, in order for all prohibitions stipulated in Article 21 paragraph (2) of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems to be obeyed by everyone, there needs to be sanctions. Article 40 paragraph (2) contains criminal sanctions to protect protected animals, with the provision that anyone who intentionally violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

³Muhammad Erwin, *Environmental Law: In the Environmental Development Policy System*, Refika Aditama, Bandung, 2014, p. 21.

⁴Koesnadj Hardja Soemantri, *Environmental Protection Law: Conservation of Biological Natural Resources and their Ecosystems*, Gadjah Mada University Press, Yogyakarta, 2013, p. 11.

Trade in protected animals is also threatened with a fine, namely as regulated in the provisions of Government Regulation Number 8 of 1999 concerning the Utilization of Wild Plant and Animal Species regulated in Article 56 which states that the acts referred to can immediately be punished with an administrative fine of a maximum of IDR 200,000,000.00 (two hundred million rupiah) and/or revocation of the relevant business license.

Based on the existing phenomenon, researchers see some irresponsible individuals trading in wildlife protected by law, every month there are wildlife captured and sold alive or dead. The hunted animals are traded around the community, such as deer and antelope, while pangolins and softshell turtles are sold at animal purchasing places, in terms of law enforcement until now there has been no clarity and no arrests of the perpetrators, due to the lack of attention from law enforcement officers to the actions of the community which cause great losses to the state.⁵ Law enforcement officials consider that capturing these animals is just a normal activity.

The reasons why many individuals sell protected wildlife here include the lack of control from policy makers and uncertain law enforcement.⁶ The government has enacted a law on the prohibition of hunting protected endangered animals. This is a reinforcement of the law on the prohibition of hunting endangered animals that have been protected by law. Starting from the problems above, as well as many forms of unlawful acts, especially for those who sell wild animals or those protected by the government.⁷

Based on this, we are interested in discussing this further in a study entitled: "Legal Analysis of Criminal Acts of Trading Protected Animals Based on Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems". The discussion in this research discusses related matters. legal regulations regarding trading in protected animals according to Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems and law enforcement against perpetrators who trade in protected animals according to Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems.

METHOD

This research is descriptive in nature, namely research conducted to describe the research object.⁸ This research uses a normative legal approach, the normative legal approach is carried out by reviewing and analyzing secondary data in the form of primary legal materials, secondary and tertiary legal materials.⁹ The data collection tools used are library research and documents. The data collected are secondary data obtained from written materials, both primary and secondary legal materials, and supported by documents grouped

⁵Happy, Op.Cit., p. 27.

⁶Putri Ariandi, Environmental Phenomena, and Wildlife, via <http://profauna.net/id/fakta-satwa-liar-di-indonesia#.WmLvzPmnHIU>, accessed on June 7, 2021.

⁷Bambang Pamulardi, Forestry Law and Forestry Sector Development, Raja Grafindo Persada, Jakarta, 2014, p. 32.

⁸Bambang Waluyo, Legal Research in Practice, Sinar Grafika, Jakarta, 2012, p. 8.

⁹Ibid., p. 13.

according to their importance. This library research includes an inventory of laws and regulations related to the problems to be discussed.¹⁰

RESULTS AND DISCUSSION

Legal Regulations Regarding Trading in Protected Animals According to Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems

Humans live in the world determining the environment or being determined by environment. Environmental changes are largely determined by human attitudes and protection of the environment. The physical nature can be utilized for human interests in seeking a better life or vice versa. The utilization of biological and non-biological natural resources greatly affects environmental conditions and can even overhaul the life system. Humans in utilizing these natural resources must pay attention to their goals and the effects (impacts) that will be caused so as not to disrupt the balance of nature, due to the extinction of one of the species.¹¹

The very important role of animals includes being a factor supporting human life in the balance of the ecosystem, then there needs to be legal regulations to protect the existence of these animals. In line with efforts to protect animals with small populations and approaching extinction, the government has made regulations related to animal protection. Based on the description in Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems, there are provisions that prohibit anyone from catching, injuring, killing, storing, owning, maintaining, transporting and trading protected animals in a living condition without the need for research, science and/or saving the type of animal concerned with government permission can be punished according to applicable laws.¹²

Animals in Indonesian can also be called animals, beasts and fauna. As explained in Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems, animals are all types of animal natural resources that live on land and/or in water and/or in the air. While wild animals are all animals that live on land and/or in water and/or in the air that still have wild characteristics, both those that live freely and those that are kept by humans.

Based on Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems has explained in Article 20 paragraph (2) the types of protected plants and animals which are classified as follows:

1. Plants and animals that are in danger of extinction
2. Plants and animals whose populations are rare.¹³

Regarding protected animal groups can be seen in the attachment to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.20/MENLHK/SETJEN/KUM.1/6/2018 concerning Protected Plant and Animal Species.

¹⁰Mestika Zed, Literature Research Methods, Yayasan Obor Indonesia, Jakarta, 2018, p. 11.

¹¹Aan Efendi, Environmental Law, Citra Aditya Bakti, Bandung, 2014, p. 34.

¹²Koesnandi Hardjasoemantri, Law on Conservation Protection of Natural Resources and their Ecosystems, First Edition, Gadjah Mada University Press, Yogyakarta, 2009, p. 31.

¹³*Ibid.*, p. 32.

Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems explains that criminal acts or prohibited acts are formulated in the following articles:

Article 19

1. Everyone is prohibited from carrying out activities that may result in changes to the integrity of natural reserve areas.
2. The provisions referred to in paragraph (1) do not include activities habitat development for the benefit of animals in wildlife sanctuaries.
3. Changes to the integrity of the nature reserve area as referred to in paragraph (1) includes reducing, eliminating the function and area of nature reserve areas, as well as adding other types of non-native plants and animals.

Article 21

1. Everyone is prohibited from:
 - a. Taking, cutting down, possessing, damaging, destroying, maintaining, transporting and trading protected plants or their parts alive or dead;
 - b. Removing protected plants or parts thereof in living or dead conditions from one place in Indonesia to another place within or outside Indonesia.
2. Everyone is prohibited from:
 - a. Capture, injure, kill, keep, possess, maintain, transporting and trading protected animals alive;
 - b. Storing, owning, maintaining, transporting and trading protected animals that are dead;
 - c. Removing protected animals from a place in Indonesia to other places within or outside Indonesia;
 - d. Trading, keeping or possessing the skin, body or other parts of protected animals or these goods or take it out from one place in Indonesia to another place in or outside Indonesia;
 - e. Take, damage, destroy, trade, store or have eggs and/or nests of protected animals.

Article 33

1. Everyone is prohibited from carrying out activities that may result in changes to the integrity of the core zone of the national park.
2. Changes to the integrity of the core zone of the national park as referred to in paragraph (1) includes reducing, eliminating the function and area of the core zone of the national park, as well as adding other types of plants and animals that are not native.
3. Everyone is prohibited from carrying out activities that are not in accordance with their function utilization zones and other zones of national parks, forest parks and nature tourism parks.

These articles are formulations regarding related criminal acts with criminal acts against animal protection which are directly regulated in Article 21 paragraph (2), where in this article there are 5 (five) forms of acts which are categorized as criminal acts against animals, including:

1. Capture, injure, kill, keep, possess, maintain, transporting and trading protected animals alive.

In Article 21 paragraph (2) letter a there are elements that consist offrom objective elements, namely:

- a. Capture, injure, kill, keep, possess, maintain, transport and trade.
- b. Protected animals in a living condition.

All these activities can be understood as an effort toobtaining animals from their habitat that can threaten animal populations in nature and can result in extinction. But not all catching activities are punishable, such as:

- a. An animal that is sick or injured and is captured solely fortreated and protected.
- b. Transporting injured animals with the intention of saving the animalthe.

In this case, the activities of catching and transporting cannot beblamed. The application of Article 21 paragraph (2) must take into account the exceptions regulated in Article 22, namely:

- a. Exceptions to the prohibition as referred to in Article 21 are onlycan be done for the purposes of research, science and/or saving the species of plants and animals concerned.
 - b. Included in the rescue referred to in paragraph (1) is: giving or exchanging plant and animal species to other parties outsidecountry with government permission.
 - c. Exceptions to the prohibition on catching, injuring and killing animals are:Protection can also be carried out in cases where for some reason the protected animal endangers human life.
 - d. Further provisions as referred to in paragraph (1), paragraph (2) andArticle (3) is regulated by government regulations.
2. Storing, owning, maintaining, transporting and tradingprotected animals are dead.

In Article 21 paragraph (2) letter b there are elements consisting of objective elements, namely:

- a. Storing, owning, maintaining, transporting and trading.
- b. Protected animals are dead.

Judging from the formulation of this article, there are 3 types of actions regulated inArticle 21 paragraph (2) letter a, is not regulated in the provisions of this article, namely catching, injuring and killing. This is because those who are dead can no longer carry out these actions, that is why it is an inappropriate formulation. The treatment of animals that have died is sufficient to be determined in 4 (four) actions only, namely storing, possessing, transporting and trading.

3. Removing protected animals from a place in Indonesia toother places within or outside Indonesia.

In Article 21 paragraph (2) letter c there are elements that consist offrom objective elements, namely:

- a. Removing protected animals
- b. From somewhere in Indonesia
- c. To another place in or outside Indonesia

This formulation is intended to maintain the habitat of these animals so that can still live and develop naturally. The word to issue in this formulation means to move from one place to another. The word to issue in this case can have two meanings, namely:

a. Transporting or moving the animal directly

In this case, it means that the perpetrator of the crime made physical contact directly to the animal by transporting and moving the animal. In general, perpetrators who move or transport animals abroad have the aim of trading the animal.

b. Without catching or transporting the animal directly

In this case, the word "issue" means the animal moving or leaving its place and going to another place by disturbing it without having to transport or catch it directly. Examples of disturbing activities include forest clearing activities.

4. Trading, keeping or possessing the skin, body or other parts of protected animals or goods made from parts of the animal or removing them from one place in Indonesia to another place within or outside Indonesia.

In Article 21 paragraph (2) letter d there are elements that consist of objective elements, namely:

a. Trading, storing or owning

b. Skin, body or other parts of protected animals

c. Items made from parts of these animals

d. Taking out from one place in Indonesia to another place within or outside Indonesia.

The acts in Article 21 paragraph (2) letter d often occur. This is due to the many items made from the skin or body parts of protected animals, such as making bags and clothes from snake and crocodile skin. There are also those who make them as decorations such as Sumatran elephant ivory, tiger heads and preserved turtle bodies. People who do these things can be subject to criminal sanctions.

5. Take, damage, destroy, trade, store or have eggs and/or nests of protected animals

In Article 21 paragraph (2) letter e there are elements that consist of objective elements, namely:

a. Take, damage, destroy, trade, store and have

b. Eggs and/or nests

c. Protected animals.

There are 6 types of acts mentioned in Article 21 paragraph (2) letter e, namely taking, damaging, destroying, trading, storing, and possessing. The act of taking and possessing protected animal eggs if called negligence is something that is difficult to accept rationally, but having a nest without controlling it is something that is possible, such as having a tree where protected animals are. In such cases, the owner of the tree cannot be blamed, but if the tree is cut down while the owner of the tree knows that protected animals are nesting or laying eggs on the tree, the owner of the tree can be blamed. So the efforts of people who look for maleo bird eggs or people who trade turtle eggs need to be prosecuted.

Law Enforcement on Trading in Protected Animals According to Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems

Law enforcement in various forms aims to ensure that laws and regulations in the field of conservation of natural resources and their ecosystems can be obeyed by all levels of society and that violators can be given strict sanctions to provide a deterrent effect so that it can minimize or even eliminate incidents of violations of the law and ultimately can support efforts to enforce Law Number 5 of 1990 concerning Conservation of Natural Resources and Their Ecosystems.¹⁴

There are many regulations governing the protection and preservation of nature including wildlife. Concern and awareness to preserve and protect especially protected species of animals are currently being intensively carried out by both the government and non-governmental organizations engaged in the field of animal preservation and protection. Protection is prioritized for animal species registered in Government Regulation Number 7 of 1999 concerning the Preservation of Plant and Animal Species. From government institutions, protection is mainly carried out by forestry officers who have been given the authority to carry out preservation and protection in accordance with their duties and responsibilities.

The elements of natural resources and their ecosystems are basically interdependent and influence each other so that damage and extinction of one element will result in disruption of the ecosystem. To ensure that the utilization of natural resources can take place in the best possible way, protection measures are needed by enforcing provisions that provide limitations on the utilization of elements in an ecosystem so that natural resources and their ecosystems are always maintained and able to realize balance.¹⁵

Apart from that, there are other causes that result in increasing the decreasing types of fauna is the increasing trade in animals, especially unique and rare species such as Sumatran tigers, orangutans, sun bears, pangolins and others. Many of these animals are smuggled out of the country, causing state losses and causing the extinction of these rare and unique animals. Another cause is the pleasure that almost everyone has in keeping animals, especially those that are rare and have certain uniqueness.

Handling a case really demands the expertise of investigators in opening and thoroughly investigating the case, how the crime was committed, who was involved and so on. The obstacles encountered in handling cases of protected wildlife trade are the difficulty of thoroughly tracking down the suspects and the people behind the case. The chain of protected wildlife trade is very closed and neat.¹⁶

Law enforcement against perpetrators of trading protected animals according to Law Number 5 of 1990 concerning Conservation of Natural Resources in Article 21 paragraph 2 point a: That everyone is prohibited from catching, injuring, killing, storing, owning,

¹⁴Suparman Diraputra, Harmonious Formulation of Law on Natural Resource Management, National Legal Development Agency, Jakarta, 2001, p. 22.

¹⁵Takdir Rahmadi, Environmental Law in Indonesia, Raja Grafindo Persada, Jakarta, 2013, p. 88.

¹⁶Syamsuharya Bethan, Application of Legal Principles of Environmental Preservation in National Industrial Activities, Alumni, Bandung, 2008, p. 45.

maintaining, transporting and trading protected animals. The threat of punishment for the violation is Article 40 paragraph 2 with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000, - (one hundred million rupiah).

As one component of the ecosystem, protected animal species, as individuals or groups, have a role in maintaining the balance of processes in nature. In general, some protected animal species are the first consumers in the food pyramid, while some other species are the second, third and so on consumers. Thus, the survival of animal life will depend on each other and a decrease in the population of one of them will have a negative impact on the sustainability of the food web and hinder the smooth flow and cycle of energy. It is clear that the absence of one of the animal species will trigger ecological problems.¹⁷

Article 5 of Law Number 5 of 1990, Conservation of Biological Natural Resources is carried out through activities including the following:

1. Protection of life support systems. Life support systems is a natural process of various living and non-living elements that ensure the survival of creatures. Protection of life support systems is aimed at maintaining ecological processes that support the continuity of life to improve community welfare and the quality of human life.
2. Preservation of the diversity of plant and animal species and their ecosystems Natural resources and their ecosystems consist of biological and non-biological elements that are closely related and influence each other. The extinction of one element cannot be replaced by another element. In order for each element to function and be ready at any time to be used for human welfare, conservation activities need to be carried out by preserving the diversity of plant and animal species and their ecosystems.
3. Sustainable utilization of natural resources and their ecosystems Sustainable utilization of natural resources is essentially a limitation or control in the utilization of natural resources or living things continuously while maintaining the balance of their ecosystems. Utilization of natural resources and their ecosystems can be carried out in the form of: assessment, research, and development, breeding, hunting, trade, demonstration, exchange, cultivation of medicinal plants and keeping for pleasure.¹⁸

It is very difficult to enforce the law against perpetrators of hunting and protected animals, both in terms of searching for and arresting suspects, sentencing and protecting animals. Efforts to preserve and protect can be done through seminars and workshops to reach agreements and the best solutions in handling protected animals that are currently on the verge of extinction. With the still less than optimal understanding of Law Number 5 of 1990, it will cause difficulties in handling a case of hunting protected animals. Knowledge of the law and the matters regulated therein will affect the accuracy and propriety in conducting examinations at the police level, prosecutions at the prosecutor's office level and sentencing at the court level.

¹⁷Budi Riyanto, Management of Nature Reserve Areas and Nature Conservation Areas, Forestry and Environmental Law Research Institute, Kencana, Jakarta, 2010, p. 90.

¹⁸Laden Marpaung, Criminal Acts Against Forest Products and Animals, Erlangga, Surabaya, 2013, p. 56.

Wide open access to reach forest areas or commonly called forest encroachment which causes the loss of natural habitat of wildlife. Wildlife that loses its natural habitat is forced to enter plantations or residential areas and is considered a pest that must be driven away, hunted and killed. Wildlife is often treated in sadistic ways such as being poisoned, shot, charged with high voltage electricity, trapped and burned. Dead wildlife can be traded in whole form or only body parts (offset). Kalimantan is an example of the killing of mother orangutans where baby orangutans are actually captured to be traded, Sumatra hunts elephants that are considered pests and 80% of elephants that are killed are found with ivory that is missing to be traded. The Ministry of Environment and Forestry (KLHK) in carrying out its main duties and functions, especially in dealing with cases of illegal wildlife trade is hampered by the obstacles faced.¹⁹The obstacles faced include:

1. Legal coverage

The Ministry of Environment and Forestry is currently trying to revise Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems. The Draft Law (RUU) drafting team involving various parties has produced a Bill on Biodiversity and Ecosystem Conservation which is currently in the process of public socialization. The bill will replace Law Number 5 of 1990, which previously had criminal threats and fines that were not maximal, replaced to be more maximal.

Government Regulation Number 7 of 1999 on the Preservation of Plant and Animal Species is considered weak and fails to protect species listed on Cites and other species that are the focus of conservation in Indonesia. The regulation only applies to nationally protected species and does not regulate trade in unprotected species or include provisions for species that are not native to Indonesia but are listed on Cites (including less protected marine species). The limited legal protection for protected species that are outside protected areas is a problem in this regulation.

2. Detection and reporting

Limited resources to detect crime, lack of knowledge/training for field staff and insufficient number of forest rangers, civil servant investigators and rapid response forest rangers are inhibiting factors. The vast area and limited legal authority are obstacles in overcoming illegal wildlife trade as well as limited follow-up on information related to wildlife trade and sanctions that are not severe if staff fail to carry out their duties properly.

3. Arrest and detention

Forestry civil servant investigators cannot arrest suspects of wildlife crimes unless they are caught in the act (arrests can only be made by the police). Inappropriate legal processes often occur after arrest or detention by the police, which can lead to the termination of early-stage cases.

Forestry civil servant investigators have limitations in conveying information to other investigators who do not have expertise in wildlife trade. The lack of technical knowledge of police investigators and prosecutors who follow the technicalities of arrests

¹⁹Ninie Suparni, Environmental law preservation and enforcement, Sinar Grafika, Jakarta, 2001, p. 62.

cannot be carried out without a warrant and cannot last more than 24 hours, except for criminal threats that can be subject to sanctions of more than five years in prison.

4. Case registration and claims

Light sentences do not provide a deterrent effect to perpetrators of illegal wildlife trade. The determination of state losses is used by the police or prosecutors as the basis for the extent of the charges against suspects of illegal wildlife trade, but it is difficult to determine the amount of the loss. Lack of collaboration and no standard procedures between the Natural Resources Conservation Agency and the police/military, forest rangers and civil servant investigators in some cases make it difficult to enforce the law on illegal wildlife trade. The Natural Resources Conservation Agency has limited collaboration and standard procedures with related authorities in prosecuting criminal acts against protected animals.

5. Implementation and enforcement

There is no legal protection for protected species outside protected areas. There is limited customary law and practice to regulate the use of natural resources and enforce restrictions on wildlife trade. Legal quotas allowed for harvesting of Cites-listed species are not based on sufficient scientific control data.²⁰

Illegal trade in protected animals has become the fastest growing illicit trade globally and is one of the largest transnational crimes in the world. In addition to being an organized crime at the local, national and international levels. Illegal trade in wildlife has a character that promises large profits with relatively low risks due to light sanctions and weak law enforcement. The variety of modes of trading protected animals makes it easy for perpetrators to obtain protected animals quickly. The development of increasingly advanced technology makes it easier for perpetrators to obtain animals using communication and information technology which makes the mode of illegal animal trade increasingly diverse and increasingly complex.²¹

The Ministry of Environment and Forestry is making efforts to stop illegal hunting and trade in protected animals. The Ministry of Environment and Forestry is strengthening networks involving various groups, namely the community, NGOs, academics and others to be more proactive in supporting the handling of illegal wildlife trade through cooperation in utilizing databases from various institutions and conducting scientific studies in eradicating illegal trade in protected animals. The cooperation carried out by the Ministry of Environment and Forestry is not only at the national level, but also internationally, especially with neighboring countries. Strengthening capacity relations with the authorities and cooperation with the police, prosecutors and other related ministries/institutions so that steps in eradicating illegal wildlife trade are fast, precise and strategic, synergized and compact.²²

²⁰Ibid., p. 64.

²¹Ibid., p. 243.

²²Masrudi Muchtar, et al., Environmental Health Law (Theoretical Study and Development of Thought), Pustaka Baru Press, Yogyakarta, 2016, p. 321.

The Ministry of Environment and Forestry in dealing with the rampant illegal trade in protected animals is trying to overcome and reduce the number of illegal trades in protected animals in several ways, namely:²³

1. Advocacy for regulations and legislation

Law enforcement efforts against illegal wildlife trade continue to be enforced as a preventive and repressive effort against perpetrators of illegal wildlife trade. The Ministry of Environment and Forestry together with other related parties is currently revising Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems. The Ministry of Environment and Forestry is trying to make Law Number 5 of 1990 have additional rules on types of protected wildlife that are not contained in Law Number 5 of 1990. The Ministry of Environment and Forestry is also optimizing law enforcement against perpetrators of illegal wildlife trade crimes that were previously contained in Law Number 5 of 1990, namely in the form of a maximum imprisonment of 10 years and a maximum fine of Rp. 200,000,000 (two hundred million rupiah) to a criminal threat of at least 1 year and a maximum of 6 years with a minimum fine of Rp. 500,000,000 (five hundred million rupiah) and a maximum of Rp. 10,000,000,000 (ten billion rupiah).

2. Improvement of Facilities and Infrastructure

The Ministry of Environment and Forestry is improving facilities and infrastructure as well as budget for law enforcement officers in improving law enforcement against illegal wildlife trade in Indonesia. Limited facilities and infrastructure in the process of enforcing the law against illegal wildlife trade requires funds to thoroughly investigate major cases that have many obstacles. The Ministry of Environment and Forestry has limitations in handling major cases due to the involvement of mafia on a large scale and international scope. Improving facilities and infrastructure includes the budget for law enforcement officers, which includes the budget for securing conservation areas and traffic routes or red points for illegal wildlife trade, which is currently still relatively minimal, such as at ports and airports.

3. Active involvement of the community and other parties

The community plays a major role in the involvement of illegal wildlife trade. Some communities have been quite active in law enforcement efforts. The Community Partner Program for Forest Police (MMP) is a program aimed at civil society to be involved in helping forest police to protect forests and wildlife, conduct patrols in forest areas and help campaign and educate about protected animals. The community in general still needs an understanding of the importance of the ecological role of wildlife for life together by providing campaigns and education programs about wildlife such as education about illegal wildlife trade, cites and the existing legal framework (punishment sanctions for perpetrators or illegal wildlife keepers). In addition to taking various approaches, one example is through the cultural and religious realm, such as fatwas,

²³Alikodra, Wildlife Management Volume 1, Department of Education and Culture, Directorate General of Higher Education, Inter-University Center for Life Sciences, Bogor Agricultural University, 2012, p. 56.

groups of veterinarians are also involved, especially in providing information on the risks of keeping wildlife, for example the transmission of diseases or viruses from wildlife to humans and vice versa. Approaches and coordination with the mass media in disseminating information and overseeing law enforcement (judicial process) and the private sector in reducing illegal wildlife trade, especially related to operational areas and the impact of company activities such as plantation or mining companies that are in direct contact with conservation areas or wildlife habitats.²⁴

The public can prevent illegal wildlife trade in the following ways:

- a. Do not buy protected wild animals either alive or in parts to be kept, consumed or used as decoration. If you want to keep animals, buy captive-bred animals with clear pedigree information and have proof/signs of captive-bred animals.
- b. Report to the authorities if you see protected animals being kept or traded, either alive or as body parts.
- c. The Ministry of Environment and Forestry launched the WildScan mobile application (www.wildscanapp.org) which is responsive and comprehensive in identifying wildlife species in order to combat illegal wildlife trade. In addition to facilitating the identification of wildlife that is captured, hunted or traded illegally.

Assisting NGOs that help the government combat wildlife crime. NGOs allow wildlife to live in their natural habitat so that they can carry out their ecological role in maintaining the balance of their habitat ecosystem to support human welfare.²⁵

The results of the study show that the Conservation Act Natural Resources and Ecosystems have not been effective in overcoming the crime of illegal trade in protected animals in Indonesia. The results of the study are based on the results of tests using the theory of legal effectiveness from Clarence J. Dias as an analytical tool. The arguments for the results are described as follows:²⁶

1. How easy or difficult it is to understand the meaning or content of legal rules

The legislation is incomplete and unclear. There is no complete and clear legislation. Law is only a certain stage in the process of forming law and that law must seek its complement in the regular legal practice of judges (jurisprudence), where the principles that are the basis of law are further elaborated and concretized, filled and refined with new principles.

In Indonesia, it's actually not that there aren't any rules related to illegal trade in protected animals, only the rules have not been properly socialized. It should be remembered that Indonesia has ratified CITES, namely through Presidential Decree Number 43 of 1978 concerning CITES and as a logical consequence of a ratification is a country that has ratified an international agreement is obliged to obey the rules in the convention. In cases of illegal trade or ownership of protected animals in Indonesia, animals protected by a country will be treated the same as animals protected in Indonesia.

²⁴Ibid., p. 57.

²⁵Butet Sihotang, Press Release Profauna: Pro Fauna Demand Stop for Illegal Wildlife Trade in Sumatra to Stop, *Jurnal Hukum*, Vol. III, No. 1, July 2006., page 12.

²⁶Syamsuharya Bethan, *Op.Cit.*, p. 33.

In other words, if there are foreign animals that are included in Appendix I, then in Indonesia they are also treated as Appendix I, so the law is clear. Although until now, protected animals in a dead state have not been listed in national laws and regulations.

Understanding of legal regulations, especially the Conservation Law Natural Resources and Ecosystems by law enforcers are still fixated on existing written laws and based on the articles therein. Law enforcers actually know that illegal trade in protected animals in Indonesia is a violation of the law in the field of conservation of natural resources and their ecosystems, but these law enforcers are also faced with laws and regulations that do not clearly regulate it (not yet written in the articles therein).²⁷

2. The extent to which groups in society know the contents of the rules law

Every law at the end always states the law-this law shall come into force on the date of its enactment. In order for everyone to know about it, it is ordered that this law be promulgated by placing it in the State Gazette of the Republic of Indonesia. Thus, since a law is enacted and recorded in the State Gazette, all citizens are deemed to have known and can be subject to the law if they violate it. The problem is to what extent each citizen has known about it, and whether all law enforcement officers related to the law have also known about it. In order for a legal rule to be known by the public and law enforcement officers, it needs to be socialized. That the factors that hinder the effectiveness of law enforcement do not only lie in the mental attitude of law enforcement officers (judges, prosecutors, police and legal counsel) but also lie in the legal socialization factor which is often ignored.

Not all individuals who deal with biodiversity aware of the existence of various regulations. This is due to the fact that each department and high institution in Indonesia has a bureau that specifically handles legal aspects. So that all problems related to law in a particular department will be resolved by the relevant bureau. The dissemination of regulations that have been enacted in Indonesia still requires serious attention. Without the continuous dissemination of these regulations, the general public will not know when someone violates them and to whom the request for permission needs to be submitted so that violations are avoided.²⁸

3. The efficiency and effectiveness of law enforcement officers

In accordance with Article 26 and Article 57 Government Regulation Number 8 of 1999 concerning the Utilization of Wild Animal Species. Article 26 of the government regulation states: Export, re-export or import of protected plant and animal species without documents or falsifying documents or deviating from the document requirements as referred to in Article 24 paragraph (2) is included in the definition of smuggling.

The question is how skilled the law enforcers are. and his insight into using legal rules in handling criminal cases against protected animals. On the other hand, coordination between law enforcers is also still felt to be less than optimal, the results of

²⁷Syahrul Machmud, *Enforcement of Indonesian Environmental Law*, Graha Ilmu, Jakarta, 2011, p. 81.

²⁸Rina Suliastini, *Comparison of Law No. 23 of 1997 and Law No. 32 of 2009 concerning Environmental Protection and Management*, Faculty of Law, Sebelas Maret University, Surakarta, 2009, p. 70.

direct observations in the field, the coordination time between agencies needed for a justice operation in the field is not fast.²⁹

Procedural steps are actually felt to be inhibiting rapid movement of a justice operation. The introduction of specimen types by customs officers is also not optimal, customs officers do not necessarily recognize specimens that are Appendix I cites, this could possibly happen and smuggled specimens could slip through. In general, new conventions are of concern to those involved in international negotiations. This means that not all sectors of government know the implications of the convention for their sectors. Moreover, the legal aspects of the convention that need to be considered by each country. In principle, law enforcement requires synergy between law enforcement agencies and support from other related agencies, from the results of observations and interviews, it is known that synergy in law enforcement between agencies has basically been established but is still incidental and territorial.³⁰

The problem of legal protection of protected animals in this system requires cooperation between forestry, customs and excise, and quarantine. Both agencies are the first entry point for specimens from abroad into the territory of the Republic of Indonesia, as well as between regions within Indonesia. The active role of the community and non-governmental organizations (NGOs/Non-Government Organizations) or NGOs is important in supporting the realization of law enforcement against crimes against protected wildlife.³¹

4. The existence of a clear and effective dispute resolution mechanism

Law on Conservation of Natural Resources and The ecosystem contains criminal provisions that can be imposed on violators or perpetrators of criminal acts in the field of conservation of natural resources and their ecosystems, namely in Article 40 concerning Criminal Provisions, related to criminal acts against protected wild animals, which are contained in paragraphs (2) and (4) as follows:

Article 40 Paragraph (2): Whoever intentionally commits Violations of the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).

Article 40 Paragraph (4): Whoever, due to his negligence, commits Violations of the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment for a maximum of 1 (one) year and a maximum fine of IDR 50,000,000.00 (fifty million rupiah).

The criminal provisions as per Article 40 are no longer appropriate with the current legal developments, especially now that legal settlements prioritize non-penal settlements. If we look at Article 40, conflict resolution is still very limited, as well as the provisions on criminal sanctions that have not included the minimum penalties and fines that can be imposed can lead to disparities in judges' decisions. The Law on Conservation

²⁹Ibid., p. 35.

³⁰Suparman Diraputra, Op.Cit., p. 42.

³¹Otto Soemarwoto, Environmental Impact Analysis, Gadjah Mada University, Yogyakarta, 2009, p. 77.

of Natural Resources and Ecosystems also does not include dispute resolution outside the courts, not always a legal dispute (criminal) must be resolved criminally, sometimes a dispute can be resolved outside the courts which is one form of alternative dispute resolution (Alternative Dispute Resolution/ADR) or known as penal mediation. Settlement of disputes outside the courts needs to be made clear rules about what things can and cannot be resolved outside the courts.³²

Some things that can be taken into consideration in resolving disputes, including the following:

- a. There is a dispute resolution option, namely resolving it outside the courts. court or through the court.
- b. Clear formulation of provisions regarding the rights and obligations of the defendant and the plaintiff.
- c. What legal matters or events can and cannot be settled out of court.
- d. Who has the right to be a mediator or arbitrator in the settlement out-of-court disputes.
- e. The right to sue is held by the government, society, non-governmental organizations the government must be clear and transparent.
- f. Clear criminal provisions by providing minimum and maximum limits maximum criminal penalties and/or fines that can be imposed.³³

Settlement of animal trafficking cases which are protected by criminal law until now can be said to stop in place, instead of the absence of legal regulations that regulate it, most of these animals are finally returned to their owners even though with the status of state deposits. Owners are required to make permits to maintain and report periodically, this has indirectly legalized illegal ownership of these wild animals. Although Indonesia has ratified CITES, in reality the rules in the convention cannot be applied directly to Indonesian law.³⁴

Awareness of environmental sustainability is a responsibility together between the government and society, both nationally and globally. This awareness arises as a result of development carried out in the past which has caused large-scale environmental damage and transnational impacts that can no longer be addressed by countries individually.

CONCLUSION

Legal regulations relating to the criminal act of trading in protected animals are contained in Article 21 paragraph (2) letter a and the threat of criminal sanctions for this crime is regulated in Article 40 paragraph (2) of Law Number 5 of 1990 concerning Biological Natural Resources and their Ecosystems. Law enforcement of trade in protected animals according to Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems based on the provisions of Article 40 paragraph (2): Anyone who

³²P. Joko Subagyo, *Environmental Law Problems and Their Solutions*, Rineka Cipta, Jakarta, 1999, p. 99.

³³*Ibid.*, p. 100.

³⁴Syamsuharya Bethan, *Op.Cit.*, p. 212.

intentionally violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah) and Article 40 paragraph (4): Anyone who due to negligence violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

Stakeholders should carry out educational activities for the community with the aim of increasing public understanding regarding the types of animals protected by law, forms of prohibited activities, and the impacts arising from trading in protected animals and on Law enforcement of criminal acts against protected animals must be carried out more optimally and in a focused manner, not only in terms of enforcement based on theory, namely the creation of a number of laws and regulations, but also in terms of enforcement that is realized in practice as a real effort to demonstrate the government's seriousness in preventing and eliminating such criminal acts.

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