



Law Enforcement Against Protected Live Life Trade Crimes

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Abstract

The lack of human awareness and concern for the environment in Indonesia makes it longer that all the natural resource wealth in Indonesia will be lost and exhausted, including one of the animals in Indonesia which will increasingly become extinct. There are so many people who deliberately own, kill, trade animals that are clearly protected only for the sake of the human self-interest itself. The diversity of biological natural resources in Indonesia is considered one of the easiest places to commit crimes against protected animals. With a diverse diversity of biological natural resources, Indonesia is also considered one of the most crime-prone to protected animals. Wildlife trafficking crime becomes the third largest crime in the world after drugs and firearms. The present study aims to examine law enforcement against the criminal act of trading protected living animals. The present research uses discourse analysis as method of the study in elaborating issues concerning criminal acts of protected animal commerce. Protected animal commerce is a form of criminal crime because it has been formulated in the applicable legislation. Enforcement of these criminal acts is carried out by state officials who have the authority to carry out investigations and executions of punishments for protected animal trade acts.

Keywords: *Criminal Law; Enactment; Endangered Animals*

Introduction

The lack of human awareness and concern for the environment in Indonesia makes it longer and longer that all the natural resource wealth in Indonesia will be lost and exhausted, including one of the animals in Indonesia which will increasingly become extinct. Humans are the main factor in the extinction of animals in the world. Nowadays people justify all means to obtain happiness and profit for themselves. There are so many people who deliberately own, kill, trade animals that are clearly protected only for the sake of human self-interest itself. The high commercial demand for illegal animal products ranging from skin, bones, fangs, and meat has encouraged the increase in poaching. This is what makes them catch and sell to a person who wants to own the animal or body parts of the protected animal that will provide a great benefit for him so that humans do not care what is done by him and do not care whether the animal is in extinction or not.

The diversity of biological natural resources in Indonesia is considered one of the easiest places to commit crimes against protected animals. With a diverse diversity of biological natural resources, Indonesia is also considered one of the most crime-prone to protected animals. Data shows that the rich

diversity of biological natural resources is counterproductive to the current state of Indonesia's biological natural resource diversity, especially for protected animals whose populations have become extinct. This condition is supported by the Red List of *the International Union for Conservation of Nature (IUCN)* which includes 185 species of mammals, 121 species of birds, 32 species of reptiles, 32 species of amphibians and 145 species of endangered fish. The loss or reduction of biodiversity caused by crimes against protected animals will have an impact on food security, risk of ecosystem damage, and human health.

Poaching wildlife for trade will allow humans to destroy habitats or shelters for wildlife in Indonesia. The reduction or destruction of the habitat or residence of these wildlife makes the loss of existing ecosystems and makes it difficult for them to breed and forage which ultimately leads to the extinction of these wildlife. This community behavior that can threaten the extinction of endangered animals where human ambitions want to have but do not care about their population in their original habitat (Ministry of Forestry, 2007).

Illegal wildlife trade poses a serious threat to wildlife conservation in Indonesia. Wildlife that is traded illegally based on various facts found in the field is mostly caught from nature, not from captivity. Protected and endangered wildlife species are also still traded freely in animal markets throughout Indonesia (Maturbongs, 2004).

The law has been regulated regarding the prohibition of either trading protected animals or keeping or possessing these protected endangered animals. Law No. 5 of 1990 on Conservation of Natural Resources and Their Ecosystems in Chapter V of the Preservation of Plant and Animal Species accommodates criminal snares for parties who trade wildlife in Article 21 paragraph (2) and Article 40 paragraph (2). However, the sanctions are not proportional to the benefits made by the perpetrator so that they do not cause a deterrent effect.

Article 21 paragraph (2) states:

"Everyone is forbidden to:

- a. Capture, injure, kill, store, possess, keep, transport and trade protected animals alive
- b. Storing, possessing, maintaining, transporting, and trading protected animals in a dead state
- c. Removing protected animals from somewhere in Indonesia to another inside or outside Indonesia
- d. Trading, storing, or possessing the skin, body or other parts of protected animals or goods made from such parts or removing them from a place in Indonesia to another place inside or outside Indonesia
- e. Take, damage, destroy, trade, store or possess eggs and or nests of protected animals."

Article 40 verse (2) states:

"Whoever intentionally violates the provisions as referred to in Article 21 paragraphs (1) and (2) and Article 33 paragraph (3) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (as well as millions of rupiah)".

Wildlife trafficking crimes are the third largest crime in the world after drugs and firearms. This data was obtained during a conference on Animals in Bangkok, Thailand in 2016.

Police officers of the East Java Regional Police Ditpolairud received information on the delivery of bird animals on Monday, September 27, 2021 at: 01.30 wib from South Kalimantan which was deposited in the truck, then the air intel team followed up the information and carried out prosecutions of truck vehicles coming out of the ship one by one, then the Intel air team got information about the hour: 02.00 wib there is a cargo transfer activity, namely bird animals from truck vehicles to Isuzu Phanter cars

on Jl. Kalianak Surabaya then the team moved to the location and obtained an Isuzu Phanter vehicle with the number L 1651 RI transporting several cardboard boxes containing birds of various types, after being interrogated by the owner of the Isuzu Phanter vehicle named Sudarsono addressed in Surabaya who was told by sdr. Andi to take the bird to be taken to Nganjuk, then by the sdr intelair team. Sudarsono was escorted to his house where the bird owner sdr. Andi was in Nganjuk and around 7:00 a.m. the Intel team managed to secure Andi's and Agus' while unloading several cardboard boxes containing birds in their homes and then the three of them (Andi, Agus, and Sudarsono) were taken to Mako Ditpolairud for further examination.

Perpetrators are suspected of committing criminal acts, everyone is prohibited from capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in living conditions as referred to in article 21 paragraph 2 letter a jo article 40 paragraph 2 of Law of the Republic of Indonesia Number: 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems jo article 55 of the Criminal Code.

With the evidence seized 75 (seventy-five) green lizard birds, 10 (ten) Magpie birds, 1020 (one thousand twenty) hummingbirds, 6 (six) Tledean birds and 31 (thirty-one) cotton birds.

Acts against the criminal act of Conservation of Biological Natural Resources and Their Ecosystems and the Criminal Code in the manner of which everyone is prohibited from capturing, injuring, killing, storing, possessing, maintaining, transporting and trading protected animals in a living state, as referred to in Article 21 paragraph (2) letter a with criminal threats contained in Article 40 paragraph (2) of Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems carried out by suspects.

A good legal system is needed to regulate the protection of these wildlife and provide severe sanctions for perpetrators of criminal acts against protected animals. Without adequate laws to prevent the extinction of biodiversity, biological natural resources, one of which is wildlife that is heading for extinction, will eliminate its potential value. An adequate legal system, including its effective implementation and enforcement in the field, is needed to save and ensure the long-term sustainability of biological natural resources for current and future generations.

Methods

The present study uses a normative legal research method that is conducted in finding solutions for legal matters (Isnaini & Utomo, 2019). The research approach used is the statute approach and conceptual approaches.

Discussion

Protected animals are animals that receive protection from the government. Of course, in this case, the public cannot take actions that violate the provisions set by the government against these animals. In essence, Indonesia is an archipelagic country that is famous for the diversity of endangered animals protected by the government and is also a habitat for endemic animals which means it has its own characteristics in each region and is not found in other areas (Hardjasoemantri, 2009). Although it has many endemic endangered animals that are protected by the government, this is directly proportional to the number of criminal acts of smuggling protected animals which are also very numerous in Indonesia. As in the case of smuggling 13 live cockatoos, 11 birds of paradise and one golden monkey in Tanjung Jabung Timur, Jambi which was smuggled through the Kuala Tungkal Jambi sea jaur to Malaysia, luckily the smuggling was thwarted by the Tanjung Jabung Timur Jambi Police. (Tribunnews, 2022).

Biological natural resources are elements in nature consisting of vegetable natural resources (plants) and biological natural resources (animals) which together with the surrounding non-living elements as a whole form an ecosystem. Biological natural resource ecosystems are reciprocal relationships between elements in nature, both biological and non-biological that influence each other. Biological natural resources broadly concern the interests of society, so efforts to conserve biological natural resources and their ecosystems are the responsibility of the government and society (Ahmad Redi; Yuwono Prianto; Tundjung Herning Sitabuana; Ade Idhari, 2017).

The life-centered theory of the environment said by Albert Schweitzer states, the appreciation that human beings must make is not only to oneself, but also to all forms of life. Meanwhile Paul Taylor states that, humans are one of the members of one community, just like other living beings. Man is not a member of a community that is seen as everything, because he has advantages and disadvantages. Therefore, the degree is the same as that of other creatures. Man is not superior to other living beings (Susilo, 2009).

Animals are divided into two types, namely protected animals, and unprotected animals. While the types of protected animals are classified as animals in danger of extinction and animals whose populations are rare, protected animals can be said to be endangered animals, because the population has a small number and needs to be protected. Another definition is a rare animal whose existence is almost extinct or whose existence is difficult to find.

There are several criteria's that determine an animal to be considered extinct, namely:

- a) If an animal is not found alive in the world, or there is no doubt that the last individual has died, then a species of animal is said to have become extinct. An example of an extinct animal is the Bali tiger.
- b) If the animal is no longer found in nature but can be found in a human rearing site or in a breeding center, or lives in nature because of re-release outside the original distribution area, then the animal is categorized as extinct in nature. An example of this type of animal is the Bali starling, which is increasingly difficult to find in nature, but there are still several tens of them in captivity in West Bali National Park.
- c) Some biologists say that a species is called ecologically extinct if the species has such a small number that it influences other species in a community and can be ignored, for example, the Sumatran tiger.

According to Johar Iskandar in his book entitled biological diversity of animal species, it is stated that protected animals are types of animals that because the population is very small and have a very slow level of development, both due to the influence of habitat and ecosystem. One of the efforts to protect animals and the threat of extinction is to designate certain types of animals as protected animals of Johar's opinion based on Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems (Iskandar, 2015).

The illegal trade in protected animals both domestically and internationally is a commodity business driven by various socioeconomic and cultural forces. Patterns and trends in the trade in protected animals are influenced by ordinary commercial factors: improved infrastructure and transportation development, especially in border areas; increased market access; and the acceleration of national and regional economic development. As law enforcement efforts against wildlife increase, the illegal trade moves clandestinely. It becomes more difficult to monitor activity, or determine the number, value, or number of species involved (Magda Lovei, 2015). Protected animal trafficking activities in terms of various regulations in force in Indonesia are criminal acts. Traffickers who are protected if proven to have carried out trafficking activities are threatened with criminal sanctions in accordance with the applicable criminal law in Indonesia.

The beginning of smuggling can be linked due to illegal trade. The illegal trade in protected animals both domestically and internationally is a commodity business driven by various socioeconomic and cultural forces. Patterns and trends in the trade in protected animals are influenced by ordinary commercial factors: improved infrastructure and transportation development, especially in border areas; increased market access; and the acceleration of national and regional economic development. The structure of trade and the relationship between collectors, intermediaries, traders, and wholesalers can be quite complicated, and the character of these relationships shifts with time and place (Isnaini & Wanda, 2017). Animal smuggling is not explicitly mentioned in Law No. 5 of 1990 concerning the Conservation of Natural Resources and their Ecosystems. Even so, the law stipulates a prohibition against capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals alive, removing protected animals from one place in Indonesia to another place inside or outside Indonesia. This is stated in Article 21 paragraph (2) of Law No. 5 of 1990.

Law enforcement on the act of trafficking in protected animals in Indonesia is based on two concepts, namely criminal law enforcement *in abstracto* and *in concreto*. Criminal law enforcement *in abstracto* is the stage of creation / formulation (Formulation Stage) has ended when a law is promulgated (Hatta Isnaini Wahyu Utomo, 2019). Law enforcement *in abstracto* is carried out through (legislative / formulation / lawmaking process) carried out through legislation / formulation / lawmaking. This legislative/formulation process is a very strategic beginning of the law enforcement process *in concreto* (Utomo, 2020). The current criminal law enforcement system is not integral *in abstracto* (*law making and law reform*) at the stage of the process of manufacturing statutory products. Because there is no close interconnectedness or a unified subsystem (component) of the integral criminal law norm/substance system including material criminal law, formal criminal law, and criminal implementation law which should be integrated legal system or integrated legal substance (Rasyid Ariman; Fahmi Raghil, 2016).

Criminal law enforcement *in concreto*, in essence, is a criminal conviction process or criminal proceedings. The sentencing process itself is a criminal law enforcement process to uphold truth and justice. Law enforcement is more or less an effort made to make the law, both in a narrow formal sense and a broad material meaning, as a guideline for behavior in every legal act, both by the subjects of the law concerned and by the law enforcement apparatus that is officially assigned the duty and authority by the law to ensure the functioning of legal norms that apply in social and state life (Abidin, 2007). Based on the foregoing, it can be said that the function of law enforcement is to actualize the rules of law to be in accordance with what the law itself aspires to, namely realizing human attitudes or behavior in accordance with the *framework* that has been established by a law or law (Hamzah, 2005). To enforce criminal law must go through several stages that are seen as an effort or rational process that is deliberately planned to achieve a certain goal which is a chain of activities that do not include derived from values and boil down to criminal and criminal convictions.

Conclusion

The increase in protected wildlife trafficking activities in Indonesia has resulted in the need for synergy from various government agencies that oversee the regulation of the trade in protected animals. Refer to the applicable rules on the trade of protected animals where the rules state that this trafficking activity is a criminal act. The statement mentioned above is a form of criminal law enforcement *in abstracto*. Further proceedings for the enforcement of criminal laws related to the trafficking of protected animals are the enforcement of criminal laws *in concreto*. Criminal law enforcement *in concreto* is a tangible embodiment to uphold truth and justice actualized on criminal and conviction. Furthermore, the criminal law enforcement process *in concreto* is expected to reduce the rampant trafficking of protected animals to prevent the loss of the presence of these protected animals.

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