



Law Enforcement against Corporations for Wildlife Crimes which are Protected Under the Constitution of the Republic Indonesia Number 5 of 1990

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Abstract Indonesia is rich in diverse natural resources, namely animal natural resources and vegetable natural resources. One of the gifts of Almighty God which can be used as a source of the country's economy for national development. However, as time goes by, the species that breed in the forest are starting to become endangered. This is caused by the behavior of people or business entities who only think about personal interests without thinking about the impact of what they have done. A corporation involved in crimes involving protected wild animals will be charged in accordance with the applicable articles to provide a deterrent effect against the perpetrators. This research aims to find out the types of crimes against protected wild animals and to find out how law enforcement is carried out against corporations that commit crimes against protected wild animals based on Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Living Natural Resources and Their Ecosystems. This research is normative legal research. The data collection method is by conducting a literature review of legal materials whose data sources come from secondary legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The data is described qualitatively descriptively and then analyzed to obtain conclusions from the problem formulations.

Keywords : Law Enforcement, Corporations, Crime, Protected Wildlife.

1. INTRODUCTION

Background

The Indonesian nation has been blessed by God Almighty with wealth in the form of abundant natural resources, both in the air, on land and in the air. One of the richness of natural resources is animals. There are a lot of animals in Indonesia, but Indonesia cannot protect the animals it has, causing the animals to be threatened with extinction. One of the main factors that threatens the extinction of animals is the act of hunting with the aim of saving. Various types of protected and endangered animals are still protected. Even though there are already rules prohibiting trade in protected animals, namely Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Living Natural Resources and their Ecosystems.

In ancient times, hunting for animals was for consumption. However, as time went by, the purpose of the hunt began to shift. Hunting is carried out to take only body parts which will later be used for craft materials, medicines and cosmetics. This is because animal trade has the potential to be a source of huge profits, especially for endangered animals. Because according to the principle, the rarer the animal, the more expensive or higher the price will be.

The various factors that influence the increase in trade in protected wild animals are very diverse, including economic factors, weak law enforcement and high market demand.

Perpetrators of trafficking in protected wild animals are usually charged under applicable laws. However, even though there is a law that regulates this criminal act, it still does not have a deterrent effect on the perpetrators. In fact, nowadays the practice of buying and selling wild animals is increasing and even becoming rampant. This crime occurs not only at the national level but has spread to countries whose transaction systems use social media.

Fraudulent animal crime is one of the categories of cross-border crime that is carried out. Cross-border or cross- country crime is a serious threat to global security and prosperity considering its nature involving various countries. To tackle these crimes, a multilateral mechanism was created through an international agreement, namely *the United Nations Convention Transnational Organized Crime* (UNTOC), which was formed in 2000. In 2010, the fifth UNTOC *Conference of State Parties* (CoSP) was formed to identify several crimes. The wildlife trade business increasingly has a big gap because there are so many hobby communities of animal keepers. This shows that the trade in protected wild animals is a criminal activity that has large profits due to increasing demand from buyers.

Indonesia's biological natural resources and ecosystems have an important position and role for the Unitary State of the Republic of Indonesia (NKRI). However, criminal cases of trafficking in protected wild animals still frequently occur in Indonesia. Biological natural resources and rare wildlife need to be managed and utilized in a sustainable, harmonious, harmonious and balanced manner for prosperity. (A Fatchan,2013) This reinforces that natural resources are everything that exists in the natural environment that can be utilized for various interests and needs for human life to be more prosperous. It is very relevant if the UUKH specifically regulates corporate criminal liability related to illegal animal crimes. Because this crime not only harms state finances but also harms the interests of environmental conservation, such as decreasing biodiversity which will have an impact on food availability, the risk of damage to the entire ecosystem and human health.

Seeing existing legal trends, corporate criminal liability is increasingly being accommodated in various laws and regulations. This shows that the awareness of legislators will theoretically have a major impact on crimes committed by corporations. Initially, criminal law limited the legal subjects that could be subject to crime to *individuals* or individuals. Likewise, the Criminal Code (KUHP) adheres to the view that legal entities cannot be punished because they do not have consciousness and do not have an actual body. With the increasing role of legal entities in economic activities and *the functional daderschap* (functional actor) doctrine starting to be accepted, corporations or legal entities are starting to be positioned as parties that can be held accountable.

Accountability for perpetrators of the trade in protected wild animals should also be imposed on every subject involved in it. This is especially true for buyers who are foreign nationals because the promotion method uses mass media or online which can have a major impact on state losses from the trade in protected animals. Without strict law enforcement, perpetrators can use financial profits from the trade in protected wild animals and hide them in the economic system to become the basis for the power of their networks.

Based on this description, the author feels interested in discussing further the criminal act of trafficking in protected wild animals entitled " **Law Enforcement Against Corporations for Crimes of Wild Animals Protected Based on Law of the Republic of Indonesia Number 5 of 1990** ".

Formulation of the problem

Based on the descriptions above, the author will discuss further legal issues as follows:

1. What types of protected wildlife crime ?
2. How is the law enforced against corporations that commit crimes against lying animals which are protected under Law of the Republic of Indonesia Number 5 of 1990?

2. RESEARCH METHODS

The research method used is a normative legal research method or literature study to find the truth of coherence. The approach to the problem in this research was carried out using a normative juridical approach, which means an approach through literature study (*library research*) by reading , quoting and analyzing legal theories and statutory regulations related to the problem formulations to be researched. Data analysis was carried out qualitatively, namely describing the data obtained from the literature review in a systematic form according to the main sentence and problem statement.

3. DISCUSSION

Types of Protected Wildlife Crime

Indonesia is an archipelagic country known for its diversity of rare animals protected by the government which have their own characteristics and are not found in other areas. (Hardjasoemantri Koesnandi. 2009). Protected animals are animals that receive protection from the government and society so that they do not carry out actions that violate the provisions set by the government regarding these animals. The sustainability of Indonesia's wildlife is very

dependent on the commitment of all *stakeholders*, especially the government as a policy maker. With the implementation of animal protection regulations, it can be seen that the government has paid special attention to both lying and non-lying animals.

Indonesia itself has signed and ratified international conventions related to the protection of animals in Indonesia, namely *the Convention on Biological Diversity* and *the Convention on International Trade in Wild Plants and Animals*. However, if under the convention there is a crime or crime related to protected wild animals, then law enforcement is returned to national law enforcement. (Mangunjaya Fachruddin M.. 2017)

Crimes against natural resources committed by individuals and legal entities have actually been carried out for a long time. And the crimes that are often committed are crimes in the form of trading or smuggling animals abroad (*illegal trading*) and possessing animals without a permit. The high commercial demand for illegal wildlife products ranging from skin, bones, tusks and meat encourages poaching of these animals. This results in a decline in the animal population. And if this action cannot be prevented, the wild animal populations protected by this law have the potential to experience extinction.

According to experts Alwan and Yasmirah Mandasari Saragih, what is meant by crime is an evil act, an act that violates the law and behavior that is contrary to applicable values and norms and has been approved by written law. The legal definition of crime is all human behavior that is contrary to the law and can be punished because it is regulated in criminal law. Meanwhile, the definition of crime in criminology is a certain act or deed that is not approved by society. (Yasmirah mandasari saragih and Alwan, 2021)

Illegal trade activities in protected wild animals carried out by individuals and legal entities have had an impact on economic, social welfare and government stability. In particular, animal fraud crimes are committed by legal entities because they are one of the categories of cross-border crimes that are carried out. What is meant by cross-border or cross-border crime is a crime involving a country that can affect global security and prosperity.

Crimes committed by individuals and legal entities have significant differences. It is said this because crimes committed by corporations are generally carried out systematically and have a big impact on the environment. This crime arises because of the specific goals and interests of a corporation to obtain the maximum results or profits. They manage natural resources by carrying out industrial activities by utilizing the science and technology they have in order to achieve success in the economic sector without considering the impact on the environment and the sustainability of life around them. (Topan Muhammad, 2009) Meanwhile,

the most serious impact of the activities carried out by these corporations is the extinction of animals which are of course very necessary for the balance of the ecosystem.

In Article 21 paragraph (2) of Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Living Natural Resources and Ecosystems, there are types of protected wildlife crimes, namely:

- a) Capturing, injuring, killing, keeping, possessing, keeping, transporting and trading in animals protected under legal regulations;
- b) keep, own, care for, care for and trade in dead protected animals;
- c) Removing protected animals from one place in Indonesia to another place inside or outside Indonesia;
- d) Trading, storing or possessing the skin, body or other parts of protected animals or goods made from these animal parts or removing them from one place in Indonesia to another place inside or outside Indonesia; And
- e) Taking, destroying, copying, trading, storing or possessing eggs and/or nests of protected wild animals.

Law Enforcement Against Corporations That Commit Wildlife Crimes Protected Under Law of the Republic of Indonesia Number 5 of 1990

To prevent nationally and minimize one of the crimes that occur in Indonesia, especially crimes against wildlife, it must start from the level. In general, the root of the problem is in the normative or regulatory aspects. The absence of corporate crime is related to the eradication of crimes against wild animals which have a massive impact on the biodiversity of protected wild animals.

Initially, criminal law limited the legal subjects that could be punished, namely to *individuals* or natural persons. Likewise, the Criminal Code (KUHP) adheres to the view that legal entities cannot be punished because they do not have consciousness and do not have an actual body. With the increasing role of legal entities in economic activities and *the functional daderschap* (functional actor) doctrine starting to be accepted, corporations or legal entities are starting to be positioned as parties that can be held accountable. (Sembiring Raynaldo, et al., 2014) There is an element of punishment because it is part of the criminal law enforcement mechanism. This means that the provision of criminal law is a policy process that has been planned to ensure justice for criminal incidents that occur. (Yasmirah Mandasari Saragih, Agam Saputra Antonius and T. Riza Zarzani, 2020)

In imposing criminal sanctions on corporations as perpetrators of crimes, there are 3 (three) forms of responsibility, namely the corporate management as the maker and administrator who is responsible, the corporation as the maker and holder of responsibility and the corporation as the maker and responsible corporation. In fact, even the punishment of the management will not provide sufficient guarantees that the corporation will not return to committing acts that are prohibited by law. Because the punishment of the management alone will not be enough to carry out repression of offenses committed by or with a corporation. For this reason, it is also necessary to criminalize the corporation and its management. (Yasmirah Mandasari Saragih and Alwan,2024)

Law is a means of providing protection to all parties, including animals and the environment. Because the true function of law itself is to protect and prosper society. Real legal protection for environmental sustainability, especially the environment, including wild animals, is expected to preserve the environment and animals so that they do not become extinct and can still be useful for present and future generations. (Mochammad Fikri Laudi and Wahyu Tris Haryadi,2024)

Law enforcement is a process of realizing legal desires into reality. The legal intent in question is the thoughts of the law-making body which are formulated in a legal regulation. The formulation of the thoughts of law makers as outlined in legal regulations will also determine how law enforcement is carried out.(Satjipto Raharjo ,2009) Law enforcement itself functions to provide protection for human interests. In order for human interests to be protected, the law must be implemented. Legal protection for wild animals in positive law is protection provided in statutory regulations with the aim of preventing extinction and threats to the development of wild animals.

To implement maximum penalties for corporations as perpetrators of crimes against protected wildlife, firm action is needed against corporations and corporate managers. In the event that the law does not regulate corporate legal subjects, the claim can be submitted to the management. Meanwhile, as a guideline for law enforcers in examining cases involving corporations, they must be guided by the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

Fraudulent animal crimes committed by corporations cannot be charged under Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Biodiversity and Ecosystems because this law does not yet regulate the exact legal sanctions that can be imposed on corporations. However, every criminal who is proven to have committed the crime of lying

will be protected in accordance with the criminal provisions contained in Article 21 paragraph (2) and will be charged under Article 40 paragraph (2) and Article 40 paragraph (4) of the Law of the Republic of Indonesia Number 5 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems, namely:

- Article 40 paragraph (2) which reads "Anyone who intentionally violates the provisions as intended 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 fine a maximum of IDR 100,000,000.00 (one hundred million rupiah); And
- Article 40 paragraph (4) which reads "Anyone who, because of his violation, violates the provisions as intended 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 fine maximum IDR 50,000,000.00 (fifty million rupiah)

We need to know that corporations or legal entities that have been subject to criminal penalties, corporations or legal entities can be subject to additional penalties, namely fines in the form of closing all or part of the company and revoking permits. What is meant by criminal fine is a criminal sanction that requires the perpetrator to pay an amount of money as the judge has acquitted of committing a criminal act. This fine is essentially intended to reduce a person's assets by force. If the fine imposed by the judge is not paid, the convict can be sentenced to a substitute prison sentence of not more than eight months. (Yasmirah Mandasari Saragih ,2020) The following are factors that can aggravate the implementation of criminal sanctions against perpetrators of fraudulent animal crimes, namely:

- If the crime committed has very serious consequences;
- If the crime committed involves certain cruelty to animals;
- If the number or number of specimens or objects involved;
- If the animal that is the victim of a violation is pregnant, pregnant, incubating or caring for young for which it is responsible at the time the violation occurs,
- If the perpetrator has previously committed violations against lying animals,
- If the profits from the crimes committed are large; And
- If the perpetrator's leadership or managerial role is in an organized criminal group.

Meanwhile, factors that can reduce criminal sentences for criminals include :

- If the perpetrator has a lesser or minor role when committing the crime;
- If the perpetrator has no previous criminal record;

- If the perpetrator shows remorse for the crime he has committed; And
- If the perpetrator voluntarily cooperates with law enforcement officials to investigate and prosecute other wildlife crimes.

4. CONCLUSION

From the descriptions above, the author draws the following conclusions:

1. The types of crimes against protected wild animals are capturing, injuring, killing, storing, possessing, maintaining, transporting and trading in protected animals while living in legal conditions; store, own, care for, transport and trade in dead protected animals; removing protected animals from one place in Indonesia to another place inside or outside Indonesia; trading, storing or possessing the skin, body or other parts of protected animals or goods made from these animal parts or removing them from one place in Indonesia to another place inside or outside Indonesia; and taking, destroying, sampling, trading, storing or possessing eggs and/or nests of protected wild animals.
2. Law enforcement against corporations that commit crimes against wild animals which are protected under Law of the Republic of Indonesia Number 5 of 1990 cannot be charged under Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Biodiversity and Ecosystems because this law does not yet regulate definite legal sanctions. that can be applied to corporations. However, every criminal who is proven to have committed the crime of lying will be protected in accordance with the criminal provisions contained in Article 21 paragraph (2) and will be charged under Article 40 paragraph (2) and Article 40 paragraph (4) of the Law of the Republic of Indonesia Number 5 of the Year 1990 Concerning Conservation of Biological Natural Resources and Their Ecosystems. And corporations or legal entities that have been convicted may be subject to additional penalties, namely in the form of fines in the form of closure of all or part of the company and revocation of permits.

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