
**LIABILITY FOR ILLEGAL TRADE IN PROTECTED NON-ENDEMIC
WILDLIFE IN INDONESIA**

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ABSTRACT

Keywords: animals; illegal; trade.

One of the most important natural wealth for humans is the diversity of animals found on this earth. Every country on earth has its diversity of animals; some examples are the Komodo dragon from Komodo Island, Indonesia, the giant panda from Shaanxi Province, China, the wildebeest from the Serengeti, Tanzania, the grizzly bear from Alaska, United States, and synchronous fireflies from Selangor Malaysia. Along with the development of technology, it turns out that the internet has also become the dominant factor influencing the amount of trade in protected endangered species. So far, thousands of protected animals are sold regularly via the internet. Both sellers of protected animals and their buyers take advantage of the advantages of the internet, which cannot be found in the real world, namely anonymity and the wide reach of the capital market. According to the Head of the Ministry of Forest Protection and Nature Conservation, According to Law no. 5 of 1990 concerning the Conservation of Living Natural Resources and Their Ecosystems, Conservation of living natural resources is living natural resources which use them as needed to ensure compliance with their needs and improve the quality of the aid and its value. Conservation of living natural resources and ecosystems is based on preserving and utilizing living natural resources and their ecosystems harmoniously and balanced.



Introduction

One of the most important natural wealth for humans is the diversity of animals found on this earth (Christanto, 2014). Each country on earth has a diversity of animals; some examples are Komodo dragons originating from Komodo Island, Indonesia, giant pandas originating from Shaanxi Province, China, wildebeest originating from the Serengeti, Tanzania, grizzly bears originating from Alaska, United States, and synchronous fireflies from Selangor Malaysia (Guntur & Slamet, 2019).

Some international communities in various countries have begun to realize the importance of preserving animals on Earth. Various ways have been done to preserve animals, one of which is not hunting endangered animals. However, not all people know the importance of preserving endangered animals (Januarfitra, Masyhadi, Okta, & Ramadhan, 2021). A report released by World Wildlife Fund (WWF) International warns that the illicit trade in animals and their body parts, which now reaches a value of 19 billion US dollars, not only threatens the habitat and survival of various species in the world but also threatens the stability of governments and national security of the countries involved (Kurniawati & Hartanto, 2016).

The report reveals that efforts that have been made to curb the illegal trade in body parts of rhinos, elephants, and other threatened species are increasingly experiencing obstacles in tackling the trade in endangered species at the international level (Hanif, 2015). World Wildlife Fund (WWF) President Carter Roberts said the fighting effort was almost eclipsed by the technology, resources, and organizational power it possessed (Alysia, Kurniawati, Aini, & Yudha, 2022).

Indonesia is a country consisting of more than 17,000 islands, and in its territory, there are a variety of unique and endemic species. This natural wealth should be an added value for Indonesia to be able to prosper its people.

In meeting the needs and getting great benefits for some people, exotic species owned by Indonesia often become easy targets for trade because of their uniqueness and rarity. Sumatran elephants, Komodo dragons, one-horned rhinoceros, yellow-crested parrots, orangutans, tapirs, and birds of paradise are just a few of the animals often traded illegally. Not to mention crops such as mahogany, ironwood, and so on (Oktaviani, Dharmadi, & Puspasari, 2017).

Animal hunting has started since humans existed on Earth. Hunting animals in those days was intended for consumption. In this day and age, hunting animals is not entirely for consumption but for taking body parts for crafts, medicine, and cosmetics. Animal trade has enormous profit potential, especially for endangered animals; the rarer the animal, the more expensive it is. Due to the many uncontrolled problems of buying and selling endangered species, an organization that provides animal protection called the International Union for Conservation of Nature and Natural Resources (IUCN) does not stand still.

The IUCN Red List is a list that discusses the conservation status of various types of creatures, such as animals, issued by the IUCN. This list was first issued in 1948 and is the most influential guide on the status of biodiversity. The IUCN aims to warn the public and policymakers about the importance of conservation issues in improving the rarity status of a species.

One of the biggest causes of increased animal trade is the world market's large demand for animal meat. The trade-in natural animal meat often found in the trade is venison, the meat of certain types of birds, the meat of primate species, the meat and eggs of turtles, and the fins of shark species (Rifa'i, Irwansyah, Sholihah, & Yuliawati, 2020). Venison, birds, turtle eggs, and primates are generally used locally. Shark fins and turtle shells have received legal and illegal export commodity levels. In addition to the high world market demand for animal meat, the cosmetic and pharmaceutical industries also affect the animal trade in the world. The cosmetic and pharmaceutical industries that use one of their basic ingredients derived from certain parts of natural animals are also feared to increase the number of slaughters and captures of these animals. For example, whale fat, shark liver and fat, musk rase glands, and animal capture, especially primates, are used for experimental animals.

The trade-in preserves/offsets and natural animals as pets also affect the trade of endangered animals on Earth. For example, Sumatran tigers in Lampung and Palembang,

paradise and natural animals often exported legally and illegally, are exotic bird species with beautiful poultry feathers, such as parrots and cockatoos. The decline in biological populations (flora and fauna) is more related to development activities and human greed that can disrupt population breeding and damage animal habitats.

The trade in endangered species is still carried out illegally. It is still difficult to eradicate because the trade in protected animals is in great demand by many people at very high prices.

The current law in Indonesia concerning the conservation of biological natural resources and ecosystems is Law Number 5 of 1990. It concerns the conservation of biological natural resources and their ecosystems. Handling illegal trade in non-endemic protected wildlife in Indonesia has not been optimal. Based on the information obtained, until 2014, there was ownership of non-endemic protected wildlife in a living condition and parts of which the origin of the acquisition was unclear, based on information from Sub-Directorate I of the Directorate of Criminal Investigation of the National Police Headquarters, it can be ascertained that the results of the acquisition of animals and also their parts are through illegal trade or smuggling, even some of them are obtained from conservation institutions (zoos).

International trade in plants and wildlife is one of the arrangements in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES aims to establish a system to control international trade in plants and wildlife and their products. Such control is based on the fact that unlimited commercial exploitation of plant and wildlife resources is one of the greatest threats to the survival of a species.

The Government of Indonesia ratified the Convention on International Trade in Endangered Species or CITES (Convention on International Trade in Endangered Species), which is the only global treaty or treaty with a focus on the protection of plant and wildlife species against international trade and exploitation that is not by applicable regulations, which may endanger the preservation of plants and wildlife, through Presidential Decree Number 43 of 1978 (Aristides, Purnomo, & Samekto, 2016). It is the transformation of international law into national law. With the accession of CITES, the convention is binding for Indonesia and obliges Indonesia to protect endangered species from international trade. In addition, each party to the convention must designate one or more managing authorities responsible for managing the licensing system by appointing one or more scientific authorities that assess the impact of trade on the sustainability of the species (Irijayani, Windiani, & Wahyudi, 2016). As a member of CITES, Indonesia must act against these irresponsible perpetrators. Declaring its participation in CITES means Indonesia is ready to implement the objectives. As a hard law, CITES is bound by Indonesia, so legislation should support Indonesia's commitment to national and regional regulations (Hanim, Chalim, & Hafidz, 2020).

As an environmental institution, to see whether the environment's written rules have been implemented effectively or not, according to Juan Carlos Vaquero Cites must carry out three stages, namely:

1. Implementasi (Implementation)

A country implements CITES obligations through three distinct phases. By adopting legislative, economic, information systems, management plans, and penalty enforcement units, the convention and national level refer to the steps taken by individuals or legal entities, such as corporations and government agencies, to fulfill their domestic legal obligations.

2. Compliance

At the international level, this stage has two dimensions: what member states have done to meet their obligations with the bonds in the convention.

3. Law Enforcement

In CITES, law enforcement is the measures member states take to stop or impede this legal trade, including inspections to determine the status of compliance with legal obligations, detecting legal requirements necessary to fulfill obligations, and imposing sanctions for violating conventions or national rules.

Indonesia is known as a country that has abundant natural resources. The definition of natural resources is stated in Article 1, paragraph of Law No. 32 of 2009 concerning Environmental Protection and Management; natural resources are environmental elements consisting of biological and non-biological resources that, as a whole, form an ecosystem unity. Biological natural resources are biological elements consisting of vegetable natural resources (plants) and animal natural resources (animals), which form an ecosystem with the surrounding non-biological elements. Indonesia's biological natural resources and ecosystems have an important position and role in national life and development. Therefore, they must be managed and utilized sustainably for the welfare of the Indonesian people and humanity in general, now and in the future.

Wildlife trafficking is a serious problem for the survival of wildlife, especially animals included in the list of endangered animals. The rarer the animal, the more expensive it will be. The high economic value of these animals, both intact and body parts, has encouraged humans to continue hunting and trading protected wildlife. Poaching and trafficking of protected wildlife is already a crime against animals that is carried out in a well-organized and wide network, from the local level to the destination country. Trading protected wildlife is a business that provides large profits but with little risk.

The objectives of this study are:

1. Analyze how to conduct illegal trade transactions in protected non-endemic wildlife in Indonesia.
2. Analyze the Criminal Liability of illegal trade in protected non-endemic wildlife in Indonesia.

Research Methods

Types of Research

In discussing the above problems, this type of research uses normative juridical, normative juridical is to examine or analyze secondary data in the form of legal materials,

especially primary legal materials, and secondary legal materials, by understanding law as a set of regulations or positive norms in the legal system that regulates human life.

Problem Approach

In this normative juridical research, a statutory approach (Statute Approach) is used, which examines all laws and regulations related to the legal issues being handled. Moreover, the conceptual approach (Conceptual Approach) departs from the views and doctrines that developed in legal science. By studying the views and doctrines of law, researchers will find ideas that give birth to legal understandings. Legal concepts and legal principles relevant to the issue at hand. Understanding these views and doctrines is a backbone for researchers in building a legal argument to solve the legal issues.

Sources of Legal Materials

The source of legal material used in writing this thesis is obtained from:

a. Primary Legal Materials

The primary legal material in this study is in the form of the Constitution of the Republic of Indonesia Year 1945, Law Number 5 Year 1990, concerning the Conservation of Biological Natural Resources and their Ecosystems, including ensnaring the treatment of perpetrators unreasonably towards animals, Government Regulation Number 7 Year 1999 concerning the Preservation of Plant and Animal Species. Criminal Code, Cites Convention (Convention on International Trade in Endangered Species of Wild Fauna and Flora). Government Regulation Number 7 of 1999 concerning the Preservation of Plant and Animal Species; Government Regulation Number 8 of 1999 concerning the Utilization of Plant and Wild Animal Species; Government Regulation Number 45 of 2004 concerning Forest Protection; Presidential Regulation Number 16 of 2015 concerning the Ministry of Environment and Forestry, Regulation of the Minister of Environment and Forestry Number P.18/MenLHK-II/2015 concerning Organization and Work Procedures of the Ministry of Forestry (State Gazette of the Republic of Indonesia Year 2015 Number 713), Peraturan Menteri of Environment and Forestry of the Republic of Indonesia Number p.20 / MENLHK SETJEN / KUM.1 / 6/ About Protected Plant and Animal Species,

b. Secondary Legal Material

It obtained literature studies relevant to the subject matter, consisting of literature, as well as opinions or opinions of experts and legal practitioners on the internet and a collection of legal theories from legal experts.

c. Legal Material Collection and Processing Procedures

The procedure for collecting primary legal material begins with understanding the legal norms of supporting laws and regulations. Then proceed with the collection and review of secondary legal materials, namely the opinions of legal experts as stated in the literature, books, or other sources, after it is felt that sufficient legal materials are sorted out by the writing systematics so that it is expected to get a clear and constructive picture of the existing problems.

d. Legal Material Analysis

After the legal material is classified, an analysis is carried out using legal interpretation and relevant legal theories, and then deductive conclusions are drawn. The conclusions are drawn from the laws and regulations used as the basis for this study and then linked or applied to Illegal Animal Responsibility.

Results and Discussion

A non-governmental organization (NGO) active in efforts to protect forest animals, Profauna Indonesia, alleges a conspiracy to smuggle hundreds of orangutans into Thailand; hundreds of orangutans from Indonesia have been smuggled to Thailand and suspected of conspiracy to hide the results of the smuggling. One of the suspected orangutan smuggled shelters from Indonesia is Safari World in Bangkok, Thailand. In addition, there are 115 orangutans in Safari World, and most are very young, rigorous, cruel, and merciless in training for orangutan boxing shows.

Safari World says 41 orangutans have died. This contradicts their statements so far, which state that they are very successful in captive breeding orangutans. The Indonesian government has been working on the return of the unfortunate orangutan. The Indonesian team consisting of the Ministry of Forestry, the Indonesian Institute of Sciences (LIPI), the Borneo Orang Utan Survival Foundation, the Network of Animal Rescue Centers, and Profauna who came to Thailand were forced to return empty-handed. Authorities in the country have been uncooperative in returning orangutans to Indonesia. Therefore, Profauna Indonesia protested in front of the Thai Embassy on Jalan Imam Bonjol, Central Jakarta, to urge the Thai government to cooperate in repatriating the smuggled orangutans.

There is smuggling of orangutans and other endangered Indonesian animals because they have been victims of Kalimantan forest fires, to be smuggled out of Indonesia. Especially the field staff of the BOS Foundation (Borneo et al.) in charge of extinguishing fires and rescuing animals in the peat forest area of Mawas, Mantangai, Kapuas Regency, Central Kalimantan found several orangutans and other wildlife trying to escape and get out of the forest. Some of them drooped limply from the smoke, and some were immediately translocated to the nearest forest that was still safe. However, if irresponsible people find orangutans and intend to hunt these wildlife, then it is very easy for them to be caught. The forest fire season also keeps many wild orangutans out of the forest in weakened conditions. Usually, this is used by people deliberately waiting for this opportunity to get orangutans.

If poachers capture orangutans, it means that there are orangutans that have been killed. Orangutans are loved by people who do not understand that orangutans are now on the verge of extinction and play a very important role in preserving the forest itself. Therefore, the relevant authorities are expected to tighten supervision, especially in small port areas that have been far from monitoring. Small ports or small river channels are difficult to supervise from the perspective of the relevant authorities.

In addition to the problem of forest fires and smuggling, another major threat faced by orangutans and other endangered species is the problem of palm oil, which is now increasingly prevalent in Kalimantan. Many oil palm plantations are planted on unsuitable land. It is unsuitable for high oil palm production and even approaches or is planted in primary forests whose status has changed to conversion forests. In Kalimantan, it can be close to the living habitat and life of orangutans and other endangered animals. From data from the Indonesian Plantation Research Institute, it is stated that Indonesia in the 2005-2020 period must expand oil palm plantations by around 120,000-140,000 ha/year. This means that in 15 years, there must be new oil palm plantations covering an area of 1.8 to 2.1 million ha. Moreover, Indonesia aims to become the world's largest palm oil exporter.

In some cases, oil palm land has been misused; for example, in East Kalimantan, 2.5 million ha of fictitious oil palm plantations that are only used for timber from the forest by land clearing have been found. The ecosystem and all the contents of living things in the forest have already been damaged and almost destroyed. The location is sometimes very close to the habitat of wild orangutans. Some of them have destroyed the forest where orangutans and other animals live. Sometimes, the condition of orangutans trapped in oil palm plantations is miserable. They lack food, are hunted, and some are killed. They are considered pests because they damage oil palm plantations. The problem of orangutans and oil palm itself has also been sought to be resolved in the RSPO (Roundtable on Sustainable Palm Oil) forum. BOS (Borneo et al.) seeks a dialogue between related parties and conveys various alternative solutions to achieve harmony between orangutans and oil palm plantations.

According to Profana Indonesia Director Rosek Nursahid, although orangutans are endangered animals protected by law, the trade in these animals is still rife. Rosek said the rampant trade in orangutans, even other protected animals, resulted from low public awareness and weak law enforcement in the country. If the law is enforced, the community will not dare to violate it. These endangered species are protected by law, as outlined in Law Number 5 of 1990, concerning the conservation of biological natural resources and their ecosystems. Orangutan traffickers can face imprisonment for five years and a fine of Rp100 million. Furthermore, Rosek said, habitat destruction and orangutan trade are the main factors in the decline of orangutan populations in the wild, in addition to the increasingly widespread forest conversion and hunting by the community. Therefore, he also hopes to encourage the government to pay more serious attention to orangutan conservation, including orangutan habitat, which is increasingly displaced and endangered from the face of the earth. This is because the habitat of orangutans, the only great ape living in Asia, is only left on the islands of Sumatra and Kalimantan. In contrast, three relatives, chimpanzees, gorillas, and bonobos, live in Africa. Rosek said that if we could still find orangutans in other parts of Asia decades ago, they could only be found in Sumatra and Kalimantan, and there are very few of them.

Modus Operandi in Criminal Acts Related to Trade in Protected Wildlife

Wildlife trafficking, which is also a crime that has been neatly organized, has a wide and strong network, and with the mode of ownership, maintenance, and smuggling of

protected animals, continues to grow. In some cases, the illegal wildlife trade is carried out by exporters with official permits.

Along with the development of the times and the sophistication of increasingly advanced technology, it realizes the ease of access for someone to communicate; animal lovers often misuse this convenience to get the desired animal by transacting through social media. The mode used is the mode of operation. Namely, merchant groups create merchant communication groups on Facebook social media and transactions without direct face-to-face. In online trading, whether through Facebook or others, traders complete sales groups with joint transaction means, often called members (joint accounts), until they are more secure. In the way it works, the reader becomes a third party in the transaction, bridging the merchant and the buyer. If the merchant and buyer agree, the buyer sends the money to the member, and the seller sends the animal to the buyer. If the buyer has received the animal according to the specifications, the buyer confirms to the reader. Rekber will send money to the seller's account. In this online merchant group, there are usually special animal delivery services. In addition to using Facebook social media not infrequently, there is also still trade in protected wildlife using conventional trading patterns by meeting and transacting directly with the actors; in this case, sellers and buyers can launch illegal transactions with each other.

Conservation of biological natural resources is the management of biological natural resources whose use is carried out wisely to ensure the sustainability of their supplies while maintaining and improving the quality of diversity and value. Conservation of biological natural resources is necessary to protect, utilize, and preserve various biological natural resources in Indonesia. Conservation is based on preserving the ability to utilize biological natural resources and ecosystems harmoniously and sustainably. The purpose of the conservation of biological natural resources is to strive to realize the preservation of biological natural resources and the balance of their ecosystems so that they can better support efforts to improve community welfare and the quality of human life.

The conservation strategy of biological natural resources and ecosystems includes 3 (three) activities: protection of life support systems, preservation of the diversity of plant and animal species and their ecosystems, and sustainable use of biological natural resources and their ecosystems. The life support system is a natural process of various biological and non-biological elements that ensure creatures' survival. The purpose of the life support system is to maintain ecological processes that support the continuity of life to improve community welfare and the quality of human life.

Legal Protection of Animals from Their Natural Habitat

The understanding of animals can be seen in Article 1, number 5 of the KSDAHE Law: animals are all animals that live on land, water, and air. In the KSDAHE Law and PP PJTS, there is no understanding of what is meant by protected animals; there is only an explanation of the types of protected animals, so the author argues that protected animals are animals that are in danger of extinction and have low populations protected by the government to overcome the extinction of these animals.

Provisions regarding the definition of trafficking in protected animals are not expressly regulated in laws and regulations, especially in the KSDAHE Law. Therefore, before the author explains the definition of trade in protected animals, the author will first explain the definition of trade, the understanding of animals, and the understanding of protected animals.

Based on the Big Dictionary of Indonesian, trade means trading, trading affairs, and business. Thus, what is meant by trade is an activity of exchanging goods or services or both based on mutual agreement between one party and another, where the activity is not due to coercion from either party.

The legal basis for protected area management was strengthened with the passing of the Law on the Conservation of Biological Natural Resources and their ecosystems in 1990. Intended as an overarching framework for biodiversity conservation and use, the law aims to protect its life support systems and the diversity of plant and animal species, including their ecosystems, and conserve protected plants and animals. Protected animals are animals that have rarely existed and are therefore protected by various regulations. One of the actions that still often occurs and violates the rules in animal protection is the illegal trade of animals. Illegal wildlife trade is an act that violates the provisions contained in Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems. Diana, in Article 21, mentions the prohibition of trading protected animals.

Positive laws in Indonesia distinguish animals by "wildlife" and "pets." Wildlife, according to Article 1 Point 7 of the Biological Conservation Law, is all animals that live on land, water, and air and still have a wild nature that is free-living and kept by humans. At the same time, pets are defined by Article 1 number (4) of the Livestock Law as animals whose lives partially or wholly depend on humans for certain purposes.

Criminal Liability of Perpetrators of Crimes Against Protected Animals Based on KSDA Law

According to Andi Hamzah, the word Accountability is defined as Responsibility; in this case, what is meant by responsibility is the consciousness of the soul of a person who can assess the relationship between his mental attitude and actions that are against the law so that he can be accountable to him. Therefore, the author argues that accountability is a consequence or consequence that must be accepted and carried out by a person to account for his actions that have been proven to have committed a despicable act.

Criminal liability is fundamental in criminal law; guilt, accountability, and crime are expressions and daily conversations in morals, religion, and law. These three elements are interrelated and rooted in a common situation; they both include rules about behavior followed by a group of similarities giving birth to conceptions of guilt, responsibility, and crime. This indicates the birth of conceptions based on normative systems.

Conclusion

Based on the results of research on non-endemic animal smuggling, it can be concluded that various factors influence illegal wildlife trade (PISL) in Indonesia. These factors include the economy, environment, the use of animals as entertainment, and the reduction of the original habitat of wildlife due to forest conversion to oil palm plantations, industrial crops, and mining. The main factor causing the illegal wildlife trade is economic, where the scarcity of wildlife is associated with the high price of animals in the market. The environment also plays a role, especially in people's traditions and beliefs about using wildlife for consumption or indigenous rituals. In tourist destinations, there is still a view that hunting and trading animals as souvenirs or crafts for tourists is reasonable.

The Ministry of Environment and Forestry carries out accountability for illegal wildlife trade through concrete measures and efforts. The ministry is strengthening networks by involving communities, NGOs, academics, and other organizations in supporting the handling of this problem (Wibowo, Susiatiningsih, & Paramasatya, 2022)v. Efforts are made through advocacy of regulations and legislation, improving facilities and infrastructure, and the community's and other parties' active involvement. The revision of Law No.5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems is being carried out as part of legal advocacy.

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