

**CRIMINAL LAW ENFORCEMENT AGAINST ORANGUTAN
TRAFFICKING AS PROTECTED ANIMALS****Muhammad Yusril Mahendra Butar-Butar, Alvi Syahrin, Marlina, Wessy
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ABSTRACT

Illegal trade in protected wildlife is an environmental crime and the Conservation of Living Natural Resources and Ecosystems as specified in Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems, illegal trade in protected wildlife is still rampant and it is very damaging to the environmental ecosystem. So that this research is to elaborate on the legal protection of endangered animals in sustainable management of biological natural resources, law enforcement against the trade in protected animals according to the Law on Conservation of Biological Natural Resources and Ecosystems, and the judge's consideration of decision 1360/Pid.B/Lh/2022/Pn.Lbp and decision 95/Pid.B.Lh/2022/Pn.Bj on protected animal trafficking syndicates. The method used in this thesis is the normative juridical research method carried out by means of library materials or secondary materials. So that the author uses the statutory approach method (statute approach) and case approach (case approach). The data analysis method used is qualitative. The trade of Orangutans as protected wildlife is a criminal offense as specified in Article 21 paragraph (2) in conjunction with Article 40 paragraphs (2) and (4) of Law No. 5 of 1990. In Decisions 1360/Pid.B/LH/2022/PN.Lbp and 95/Pid.B/LH/2022/PN.Bnj , the panel of judges whose cases handed down sentences against the defendants, but the criminals generally given by the panel of judges were limited to the substance of the defendants in Law No. 5 of 1990, even though what the defendants had done had harmed the environment and endemic animals that were on the verge of extinction, so the author requests the Supreme Court of the Republic of Indonesia to request a special court for handling the environment and protected animals.

Keywords: Law Enforcement, Juridical Review, Protected Animal Trade.

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INTRODUCTION

The environment is a space occupied by humans with other creatures, each of which does not stand alone in the process of life, interacts with each other and needs in the ecosystem. As a whole, the environment cannot be discussed partially, but must be viewed as a whole (*holistic*) and contains a regular system and places all elements in it equally. In its development, environmental problems are becoming more serious, especially considering that natural resources are used to carry out development aimed at fulfilling and improving community welfare.

These conditions require that the management of natural resources and the sustainable environment needs to be improved in quality with the support of fair and firm environmental law enforcement, quality human resources, expanding the application of environmental ethics and increasingly solid social and cultural assimilation, and encouraging changes in the way of looking at the environment that is based on environmental ethics through internalization into production and consumption activities/processes, which is a set of legal norms that regulate environmental management to ensure the sustainability and development of environmental capabilities, namely laws that regulate environmental challenges (the environment) that cover all objects and conditions, including humans and their behavior that can affect the survival and welfare of humans and other living things.

The community exploits protected wildlife with the aim of fulfilling economic needs, with the passage of time and the development of the era, wildlife hunting is increasingly popular among Indonesian society, this can be seen through the increasingly popular wildlife trade activities in the province of North Sumatra, in its development a habit has arisen in keeping wildlife as an exclusive activity in the midst of society, so with the emergence of this habit will increase the hunting of protected wildlife by hunters.

In its development, local people who generally do not know the trade of wild animals, they hunt only for consumption . However, with the presence of some people from outside the area who hunt protected wild animals, all these habits and behaviors have changed, the animals that are hunted are not only for consumption but are also traded alive as pets, in the form of preserves, basic ingredients for medicine and for processing into souvenirs.¹

Based on this, wildlife trade syndicates trick local residents into hunting and will gain economic benefits if they can help in hunting protected wild animals, including orangutans (*Pongo Abelli*).

¹ Tony Suhartono dkk, *Pelaksanaan konservasi cites*, Jakarta, Japan International Cooperation Agency, 2003, p. 5

Protection of protected wildlife, considering the existence of Orangutan (*Pongo Abelli*) is threatened with extinction and this will have a negative impact with the destruction of its ecosystem in the environment in North Sumatra. So with the various threats to the extinction of protected animals must be able to be prevented with a very strong form of law enforcement so that the trade in protected wildlife does not happen again.

Environmental law enforcement can be preventive and repressive, preventive law enforcement is an effort to control actions taken to prevent or reduce the possibility of things happening that are not done to prevent or reduce the possibility of things happening that are not desired in the future/criminal acts. Preventive actions (prevention) are actions taken by the authorities before social deviation occurs so that a criminal act can be suppressed or prevented, generally done through guidance, direction or invitation. While repressive law enforcement is an effort made when a criminal act/crime has occurred, the action is in the form of law enforcement *by* imposing punishment.

This repressive effort is an effort to overcome crime. Prevention with repressive efforts to prosecute the perpetrators according to their actions that they do are unlawful and detrimental to society, so that they do not respond and others will not do it considering the sanctions they bear are very heavy.²

Law enforcement against wildlife itself is essentially an effort to raise public awareness of the importance of protecting, preserving and utilizing the environmental ecosystem, especially protected wildlife, through sustainable conservation in the form of various outreach activities, establishing various wildlife sanctuaries and protected forests, and can carry out operations from control to legal action, including sustainable environmental education.

Indonesia is known as a country rich in natural resources. Natural resources referred to in Article 1 of Law No. 32 of 2009 concerning Environmental Protection and Management, natural resources are elements of the environment consisting of biological and non-biological resources which as a whole constitute a single ecosystem. Indonesia's natural resources are also a habitat for endemic animals or animals that are only found in Indonesia. The number of endemic mammals in Indonesia is 259 species, then 384 species of birds and 173 species of amphibians.³ The existence of these endemic animals is very important, because if they become extinct in Indonesia, then rare animals will also be in the world.

² Alvi Syahrin et al., *Hukum Lingkungan*, Medeka Kreasi, 2022, p. 3

³ Profauna Forest & Wildlife, About Indonesian Wildlife Facts, 2024. Facts about [Indonesian Wildlife](#) | [PROFAUNA](#) accessed on July 12, 2024

Indonesia's natural resources and ecosystems have an important position and role for national life and development, therefore they must be managed and utilized sustainably for the welfare of the Indonesian people and humanity in general for now and in the future. ⁴One of the natural resources owned by Indonesia is Indonesia is a variety of animals, which are spread throughout the islands in Indonesia, animals whose habitat is the territory of Indonesia are the characteristics of an island inhabited by these animals, because the ecosystem in it supports the development of animals in Indonesia.⁵

The elements of biological resources and their ecosystems are interdependent on one another, and their utilization will influence each other so that damage and extinction of one of them will result in disruption of the ecosystem, for this reason it is necessary to regulate their utilization and protect their ecosystems.⁶

Talking about natural resources, Indonesia is known as a country that has various natural resources, especially animal natural resources (Wildlife). Indonesia is proven by precisely around 385 species of amphibians, 720 species of mammals, 723 species of reptiles, and 1599 species so that in this case also regarding animals and their classification and their classification itself into 2 (two), namely protected animals and high extinction rates and their populations. ⁷ It is estimated that Indonesia has as many as 300,000 species of wild animals or around 17% of the world's animals are found in Indonesia, although Indonesia's area is only 1.3% of the world's land area. Indonesia is number one in terms of mammal wealth (515 species) and is a habitat for more than 1539 species of animals that live in Indonesia.

Indonesia is known as a country that has a long list of endangered wildlife. Currently, the number of endangered Indonesian wildlife species is 184 mammal species, 119 bird species, 32 reptile species, 32 amphibian species, and 140 species. The total number of endangered Indonesian wildlife species with the critically endangered category is 69 species, the *endangered category* is 197 species and the vulnerable category is 539 species. These animals will truly become extinct from nature if there is action to save them. ⁸However, with the massive exploitation of natural

⁴ Daud Silalahi, 1992, *Hukum Lingkungan Dalam Sistem Penegakan Hukum Lingkungan Indonesia*, Alumni, Bandung, Bandung, p. 54

⁵ Muhammad Iqbal, *Tinjauan Yuridis Terhadap Kepemilikan dan penjualan Satwa Langka Tanpa Izin Di Indonesia*, Jurnal Beraja NITI Volume 3 No 3, Samarinda, 2014, p. 2

⁶ *Ibid*, p. 30

⁷ Komang ayu dina maylina dan Gde Made Swardhana, *perlindungan satwa liar terhadap ekpolitik melalui peragaan satwa di Lembaga konservasi: prespektif hukum pidana Indonesia*, Jurnal Kertha Semaya, vol 9, 2021, 1737-1749

⁸ *Profauna Protecng of fauna & wildlife*, 2018 *Facts About Wild Animals*, <https://www.profauna.net/id/fakta-satwa-liar-di-Indonesia>, 13 February 2023

resources, especially wildlife, it has become the main livelihood for some people. This is very worrying considering that the use of wildlife is carried out almost every day without paying attention to the balance of the ecosystem.⁹

Wildlife trade is a serious problem for the survival of wildlife, especially animals that are already on the list of endangered animals. The rarity of an animal species will make its owner proud, so that collectors will be more massive in looking for certain types of animals by buying them from hunters or coming directly to the habitat of the desired animal.¹⁰ So the high economic value of these animals, both in their entirety and in parts, has encouraged humans to continue hunting and trading protected wildlife.

Hunting and trading of protected wildlife is a crime against animals that is carried out in an organized and neat manner with a wide network, starting from the local, national to other countries. The protected wildlife trade business is a business that provides great profits but with small risks.¹¹

Data from the Director General of GAKKUM KLHK noted that during 2019 there were 65 cases of protected animal trade while in 2020 it had thwarted the illegal trade of 1,733 protected animals among the animals from the counseling that were successfully secured, 975 were released and 758 died during transportation and when they arrived at their destination.¹² And throughout 2021 there were 1,594 accounts that traded protected animals online, 309 accounts that had been followed up by 5 GAKKUM KLHK Centers spread throughout Indonesia, meanwhile the sting operation for the trade of protected animals managed to thwart and 5,720 protected animals and 402 animal body parts that were about to be traded illegally, in addition there were 38 cases of illegal trade of protected animals that already had complete investigation files for further legal proceedings.

A case of animal trafficking in the form of a forest orangutan has occurred in Medan. In accordance with Decision Number 95/Pid.B/LH/2022/PN.Bnj on behalf of Eddy Alamsyah Putra, it is stated that on Tuesday, February 1, 2022, Eddy Alamsyah Putra chose at 00.05 WIB to sell 1 (one) Orangutan (Pongo Abelli) with Thomas Di

⁹ Arief Budiman, 2014, "Pelaksanaan Perlindungan Satwa Langka Berdasarkan Undang-Undang Nomor 5 Tahun 1990 Tentang Konservasi Sumber Daya Alam Hayati Dan Ekosistemnya", *Jurnal Gema*, 2014, 1372-1379

¹⁰ <https://jurnalistik.fikom.unpad.ac.id/illegal-satwa-trading-impacts-on-the-balance-of-the-natural-ecosystem/> accessed on May 24, 2023 at 15.00 WIB.

¹¹ Fachruddin M Mangunjaya, dkk. 2017. *Pengembangan Satwa Langka untuk Keseimbangan Ekosistem*, Lembaga pemulian Hidup & Sumber Daya Alam Majelis Ulama Indonesia, Jakarta, p. 25

¹² <https://www.betahita.id/news/lipsus/5835/tahun-2020-ada-perdagangan-1700-satwa-liar-dilindungi.html?v=1610321818/> accessed on Friday, May 19, 2023 at 16.00 WIB.

Raiders for Rp. 12,000,000 and 1 box made of wood containing 1 wild animal Orangutan (*Pongo Abelli*) which will be sent to Irwansyah alias Aju Bin Min Hua to be sold kepada Zainal yaitu warga Negara Asing dengan harga Rp. 50.000.000.

The case of protected animal trade, especially Orangutans, researchers conducted research into NGO (*Non-governmental Organization*) networks, especially WALHI North Sumatra and the Medan Legal Aid Institute. so that from the case of animal trade, especially the Sumatran Orangutan (*Pongo Abelli*) in North Sumatra, there were 2 cases that could be revealed in 2022 by the North Sumatra Police. This indicates that law enforcement against protected animals has not been running optimally.

METHOD

The research that will be used is normative legal research. This means the activity of identifying legal problems, analyzing legal problems, conducting legal reasoning, analyzing the problems faced and then providing solutions to the problems, where the problems studied in this normative legal research are caused by problematic norms or rules, either because of conflicts in the norms, the ambiguity of meaning in the norms, the contradictions in the norms or the legal vacuum.¹³

The approach method used in this research is the statute approach. This statute approach is an approach that is carried out by examining all laws and regulations related to the legal issues being handled.¹⁴

DISCUSSION

Legal Protection Of Orangutans As Rare Animals In Sustainable Management Of Natural Resource

Natural biological resources and their ecosystems have an important role in the lives of living creatures, so they need to be managed and utilized sustainably, harmoniously and in balance for the welfare of the Indonesian people in particular and humanity in general, both now and in the future.

Every freedom to do according to what he wants then the environment will be threatened. This requires the presence of various environmental laws and regulations which are intended to prevent actions that are not only detrimental to himself, but also to society as a whole. The government must also enact the protection of animals that have fair ecological value.¹⁵

¹³ Peter Mahmud Marzuki, *"Penelitian Hukum"* (Jakarta Timur: Prenadamedia Group, 2019), 60

¹⁴ Ibid

¹⁵ Takdir Rahmadi, *Hukum Lingkungan di Indoneisia*, (Jakarta: PT Raja Grafindo Persada, 2011) p. 33

Legal protection for protected animals has types of animals, clear legal regulations to be able to carry out and legal efforts in legal protection. With the existence of legal regulations, legal protection for animals against forestry crimes, in this case the ecosystem is damaged due to hunting of protected animals, which crimes have harmed the country economically and the ecosystem and these crimes have been organized against protected animals as an example of the Sumatran Orangutan.

Biological natural resources are elements in which consist of plant natural resources (plants) and biological natural resources (animals) which together with having non-biological elements around them as a whole form an ecosystem. Thus, protected animals can become one form of shared concern where protected animals or animals have great meaning for the environment in Indonesia.¹⁶

Wildlife is all animals that live on land and in the air that still have wild characteristics, both those that live freely and those that are kept by humans, it is stated in Article 1 number 7 of Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems. According to Alikodra, protected animals can be interpreted as animals that live wild in freedom without human intervention.¹⁷ So in the natural ecosystem, protected animals play an important role, one of which is to preserve the forest environment.

Protected animals are one part of biodiversity and are also not free from human threats where protected animals can be taken from their habitat for certain reasons. In essence, Indonesia is an archipelago that is very famous for its diversity of rare animals that are protected by the government and are also a habitat for endemic animals. Some people take protected animals for trade both nationally and internationally because of their high economic value. So people who take protected animals have their pleasure or hobby.¹⁸

Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems has prohibited all forms of trade in protected animals. Thus, trade in protected animals is a form of criminal offense 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 Conservation of Natural Resources and Ecosystems.

¹⁶ *Ibid* .

¹⁷ Alikodra, H.S. 1990. *Pengelolaan habitat satwa liar*. Bogor. Institut Bogor

¹⁸ Erlina B, S. Endang Prasetyawati, Nita Yolanda, *Analisis Pertanggungjawaban Pidana Terhadap Tindak Pidana Pengangkutan Satwa yang Dilindungi Dalam Keadaan Hidup Secara Ilegal*, vol 4, widya yurdika, Juni 2023, pp. 154-155

In the description of the main ideas that are the background and reasons for the issuance of the regulation of the Minister of Environment and Forestry (LHK) Number: P.20/MENLHK/SETJEN/KUM/1/6/2018, it is stated in point (B) that the status of protected plant and animal species can change (dynamic), so that it is possible for the status of species to change from being protected to not being protected, and vice versa.¹⁹

That looking at the criteria for protected animals, there are 15 types of animals protected in Indonesia, there are 10 protected rare animals: ²⁰those whose status is on the verge of extinction are:²¹

- a) Orangutans, whose populations are of great concern, can be found in the tropical forests of Kalimantan and North Sumatra.
- b) Komodo dragons only exist in Indonesia. *The International Union for Conservation of Nature and Natural Resources* (IUCN) has designated Komodo dragons as rare animals and only exist in the world, only in Indonesia.
- c) The one-horned rhinoceros population is of great concern because it is hunted only for its very expensive horn. In addition to Indonesia, this rhinoceros is also found in Southeast Asia, India and China.
- d) Sumatran tigers, the number of tigers currently only 400-500 left, the Sumatran tiger is very different from other types of tigers because its fur tends to be darker, the black pattern on its skin is wide and the distance is very close to each other. Sumatran tigers are often the target of hunting to take their skin and make it into carpets, clothes, bags or just decorations, even tiger fangs can be sold at prices ranging from 400 thousand to 1.5 million rupiah.
- e) Anoa animals have been on the most protected list since the 2000s because their numbers are only less than 5,000 in Indonesia. The meat of the horn skin can be sold.
- f) This predatory Javan hawk-eagle is considered a rare animal mascot in Indonesia, its appearance is similar to the bird that is the symbol of our country, namely the Garuda. Currently, the Javan hawk-eagle can only be found on mountains in Java and this Javan hawk-eagle can be found easily in different mountain forests in Java.

¹⁹ *Ibid* .

²⁰ Regulation of the Minister of Environment and Forestry of the Republic of Indonesia. No. P.20/MENLHK/ SETJEN/KUM.1/6/2018 concerning Protected Plant and Animal Species

²¹ [List of Protected Animals in Indonesia and Their Regions of Origin - Yupi \(yupiland.com\)](#)

- g) Tarsius is the smallest primate, can only be found in North Sulawesi, the population continues to decline from year to year.
- h) The Bali starling is a type of songbird with a very beautiful appearance, which makes hunters interested in catching it.
- i) Pangolin is an animal that looks similar to using, except that this animal has hard skin with scales and the original habitat of this animal is Java and Sumatra. Where this animal often roams and can be found very easily. It is said that pangolin meat is very popular in the import market, especially in China. The price of 1 kg of pangolin meat can be priced at 600 thousand to 1 million rupiah.
- j) Babirusa is an animal that is very fierce compared to other types of pigs. This animal has a distinctive feature of fangs that are recorded upwards. The population of babirusa in Indonesia is recorded as only 4000.

In Law Number 5 of 1990 concerning Conservation of Natural Biological Resources and their Ecosystems, it concerns the protection and utilization of genetic resources as regulated in Law Number 5 of 1994 concerning the ratification of *the United Nations Convention on Biological Diversity*, which in its considerations states that biodiversity also includes genetic resources which include animals.²²

Indonesia has classified Orangutans as protected wildlife. Wildlife is divided into two groups, namely protected species and unprotected species. So based on the Attachment to the Government Regulation of the Republic of Indonesia Number 7 of 1999 concerning the Preservation of Plant and Animal Species, Orangutans (*Pongo abelli*) are included in the list of protected animals. Regulations regarding the protection of protected animals can be found, among others, in Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems, in this case also Government Regulation Number 8 of 1999 concerning the Utilization of Plant and Wild Animal Species, and regulations that are very sectoral such as Presidential Decrees and Ministerial Decrees. So according to the WWF organization there are 3 species of Orangutans in Indonesia, namely the Sumatran Orangutan (*Pongo abelli*), the Tapanuli Orangutan (*Pongo Tapanuliensis*), and the Bornean Orangutan (*Pongo pygmaeus*) which are currently also facing very serious threats in the wild such as illegal burning, habitat loss, trade, and hunting of Orangutans to be used as pets.²³

²² Rofi Wahanisa, Muh. Afif Mahfud, *Tinjauan Pengaturan Konservasi Sumber Daya Alam Hayati dalam berbagai Putusan Mahkamah Konsitusi*, vol 18, No 2, Juni 2021, pp 399-400

²³ [Orangutans | Global Environmental Conservation Organization - WWF Indonesia](#) accessed on July 23, 2024

There are several legal regulations that focus on protecting protected animals in Indonesia, including:

- Law Number 5 of 1990 concerning Conservation of Natural Resources and their Ecosystems.
- Government Regulation Number 7 of 1999 Concerning Preservation of Plant and Animal Species
- Government Regulation of the Republic of Indonesia Number 8 of 1999 Concerning the Utilization of Wild Plant and Animal Species
- Presidential Decree Number 43 of 1978 Concerning *the Convention on International Trade in Endangered Species of Wild Fauna and Flora*

If associated with the current condition of the existence of all species of Orangutans in Indonesia currently have been classified as endangered animals by the IUCN Red List Data. In line with the conservation status, it indicates a decline in the population of Orangutans in the wild, so that Orangutans are currently included in one of the appendix I animals whose trade is strictly prohibited throughout Indonesia and in the world.²⁴ So these animals need to be protected.

Legal protection must see the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relations between members of the community and between individuals and the government which is considered to represent the interests of the community. So in this case the concept of legal protection for endangered animals, Muchsin Legal protection is something that protects legal subjects through applicable laws and regulations and is enforced with a sanction. legal protection can be divided into two, namely preventive legal protection and repressive legal protection.²⁵

Natural animal resources in Indonesia, especially geographically, are a country whose climate is suitable for the survival of wild animals, so it is not surprising that Indonesia has diversity and all of its regions. However, it can also be seen that some animals in Indonesia, especially the Orangutan, are already threatened due to human actions, including the rampant illegal animal trade.²⁶

The application of sanctions to a person cannot be done just like that, but only if there is a violation of the rule of law can sanctions be applied. Regarding the problem

²⁴ Bornean Orangutan Survival Foundation (BOSF), "Thearts to Orangutan", tersedia di <https://www.Orangutan.or.id/threats> diakses pada 02 September 2023.

²⁵ Achmad Adi Surya Guntur Silam, DIsertasi "*Perlindungan Hukum terhadap Satwa Langka Orangutan (Pongo Pygmaeus) dalam Pengelolaan Sumber Daya Alam Hayati Berkelanjutan*", Universitas Brawijaya, 2018, p. 128

²⁶ *Ibid* .

explained above based on the provisions of Article 21 paragraph (2) letters a and b of Law No. 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems, it has been stated that every person is prohibited from:

- a. Catching, injuring, killing, keeping, possessing, maintaining, handling and trading protected animals while alive: and
- b. Storing, owning, maintaining, dealing with and trading in dead protected animals.²⁷

Perpetrators who violate the provisions above will be subject to criminal sanctions with a maximum prison sentence of 5 (five) years with a maximum fine of IDR 100,000,000.00 (one hundred million rupiah) in accordance with the provisions of Article 40 paragraph (2) of Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems

Law Enforcement Against Orangutan Trade As Protected Animals Based On Law Number 5 Of 1990 Concerning Conservation Of Natural Living Resources And Their Ecosystems

The case of wildlife trade in Indonesia is very rampant from every region in Indonesia, so it can be seen with the case of wildlife trade, especially Orangutans, which are one of the animals traded which are very interesting in terms of selling the Orangutan. So with this Orangutan trade, the sales value is very promising, where the price of the Orangutan trade can be from tens of millions to hundreds of rupiah generated.

That seeing a crime of wildlife trafficking is increasingly ineffective and the problems faced by the community and law enforcement officers in overcoming the crime of wildlife trafficking are increasingly complex, it is necessary to balance it with the improvement and development of a comprehensive criminal law system that includes the development of habits or culture, structure, and substance of criminal law. It is clear that the policy of a criminal law or called (*Penal Policy*) occupies the most strategic position in the development of modern criminal law which is always changing.

As an introduction to efforts or criminal law policies (*Penal Policy*), it is necessary to pay attention to the statement sourced from Barda Nawawi Arief regarding criminal law policies or politics. Studies concerning criminal law politics are very important, this aims to complement positive criminal law science. Positive criminal law science is more of a science for implementing positive law. while criminal law

²⁷ Article 21 paragraph (2) letters a and b of Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems

policy applies more science to create or formulate and update positive law .
²⁸According to Wisubroto, ²⁹Criminal Law Policy (*Penal Policy*) is an action related to the following matters:

- a) How does the government try to combat crime with criminal law?
- b) How to formulate criminal law so that it is in accordance with social conditions;
- c) How does the government's policy regulate society with criminal law?
- d) How to use criminal law to regulate society in order to achieve greater goals.

Barda Nawawi Arief stated that in essence, in matters concerning criminal law policy (*penal policy*) it is not merely a technical work of legislation that can be carried out in a normative legal manner and is systematic and dogmatic. In addition to the normative legal approach, criminal law policy also requires as well as a comprehensive approach from various other social disciplines as well as an integral approach to social policy and national development in general .³⁰

So that efforts to combat crime by using criminal law advice are essentially also part of law enforcement efforts, especially criminal law enforcement. Therefore, criminal law policy (*Penal Policy*) is part of law enforcement policy (*Law enforcement policy*).³¹

Settlement of Orangutan trade cases law enforcement must be able to eradicate wildlife trade which has resulted in threats that can lead to extinction such as illegal hunting and trade and damage habitat. ³²The high illegal circulation of protected animals, especially Orangutans, trade in protected animals is one form of profit for hunters to carry out illegal trade. The extinction of protected animals, then no one will be able to see them directly, therefore the existence of protected wildlife must always be maintained.³³

²⁸ Barda Nawawi Arief, *Beberapa Aspek Pengembangan Ilmu Hukum Pidana (menyosong Generasi Baru Hukum Pidana Indonesia)*, Pidato Pengukuhan Guru Besar dalam Ilmu Hukum Pidana Fakultas Hukum Universitas Diponegoro, Semarang 25 Juni 1994, p. 27

²⁹ Wisubroto, *Kebijakan Hukum Pidana Dalam Penanggulangan Penyalahgunaan Komputer*, (Yogyakarta: Universitas Atmajaya, 2004), p. 12

³⁰ Dey Ravena dan Kristian, *Kebijakan Kriminal (Criminal Policy)*, (Kencana: Bandung 2016) Op.cit, p. 119

³¹ Dey Ravena and Kristian, *Op.cit* , p 130

³² Muhamad Erwin, *Lingkungan Dalam Sistem Perlindungan Dan Pengelolaan Lingkungan Hidup Indonesia*, Edisi Revisi, Bandung: PT. Refika Aditama, 2015, p. 77

³³ Takdir Rahmadi, *Hukum Lingkungan di Indonesia*, Jakarta: PT. Raja Grafindo Persada, 2011, Op cit. p. 236

The case of protected wildlife trade, especially Orangutans, can be done through litigation and non-litigation efforts where seeing existing cases related to animals are always very underestimated and do not seek special attention from the government. The Ministry of Environment and Forestry, Directorate General of Conservation of Natural Resources and Ecosystems, should be able and firm in enforcing the law against perpetrators of protected wildlife trade crimes, especially protected animals such as Orangutans. So this can be seen from the perspective of non-litigation and litigation.

The flow of handling cases against protected animals through litigation from the PPNS level according to Article 39 paragraph (1) of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems is an official who has the authority from the scope of his duties and responsibilities in covering the conservation of natural resources and their ecosystems, is given special authority as an investigator as referred to in Law Number 8 of 1981 concerning criminal procedure law, to conduct investigations into criminal acts in the field of conservation of natural resources and their ecosystems. Looking at Article 39 paragraph (3) of Law Number 5 of 1990, it has mentioned the authority of PPNS or often also referred to as PPNS BKSDA, namely as follows:³⁴

- a. Conducting investigations into the truth of reports or information regarding criminal acts in the field of conservation of natural resources and their ecosystems;
- b. Conducting investigations into persons suspected of committing criminal acts in the field of conservation of natural resources and their ecosystems;
- c. Checking the identification of a person who is in a nature reserve or nature conservation area;
- d. Conducting searches and confiscating evidence of criminal acts in the field of conservation of natural resources and their ecosystems;
- e. Requesting information and evidence from people or bodies in connection with criminal acts in the field of conservation of natural resources and their ecosystems;
- f. Make and sign minutes;
- g. Stop the investigation if there is insufficient evidence of a criminal act in the field of conservation of natural resources and their ecosystems.

The authority of the Forestry PPNS also plays a role in Article 77 Paragraph (1) of Law Number 41 of 1999 concerning Forestry, which means that it is a civil service

³⁴ *Ibid.*

position whose scope of duties and responsibilities is forest management, so that it is also given special authority as an investigator as referred to in Law Number 8 of 1981 concerning Criminal Procedure Law.

PPNS with police investigations in criminal law enforcement in the coordination relationship against a crime against animals, this is interpreted as coordination according to Money and Reily, that coordination is a regular alignment or rearrangement of interdependent activities of individuals to achieve common goals. Mc. Farland also defines coordination as a process where leaders develop regular group effort patterns among their subordinates and ensure unity of action in achieving common goals.³⁵

In the implementation of investigations carried out by PPNS on criminal acts against protected animals, PPNS carries out coordination since the sending of the Letter of Notification of Commencement of Investigation (SPDP). The principle of coordination should be carried out since the first time information is received about the alleged criminal act. Coordination from the beginning is intended for the implementation of the ongoing function of supervision. Coordination carried out from the beginning will continue until the prosecution stage. In accordance with the authority of PPNS held based on Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems, what distinguishes their authority from Polri investigators is only the authority to arrest and detain. So if in the implementation of the investigation PPNS requires assistance from Polri Investigators, PPNS must submit a written request.

Delivery of the results of the first stage of the investigation, namely the case files and the delivery of the second stage, namely the delivery of suspects and evidence. In addition to criminal acts against protected animals, if there are other criminal acts committed by PPNS, they often exchange information regarding criminal acts under the authority of PPNS BKSDA.³⁶

In the coordination between Civil Servant Investigators (PPNS) and Police Investigators, it is regulated in the Regulation of the Chief of Police (PERKAP) Number 20 of 2010, in the regulation it explains the coordination between PPNS and Police Investigators. One of them is in Article 1 of the definition of Coordination, namely: "Coordination is a form of working relationship between Police Investigators and PPNS in conducting investigations of certain crimes which are the legal basis, according to the joints of functional relationships". The Non-litigation Approach of BKSDA PPNS can be carried out through prevention, rescue and recovery efforts of protected animals, so that BKSDA PPNS can carry out rescue for protected animals

³⁵ Soewarno Haryadiningrat, *Study Ilmu Administrasi dan manajemen*, 1998. p. 88

³⁶ *Ibid.*

that are threatened, including those that are smuggled or traded illegally. PPNS can take action to care for confiscated wildlife and possibly release them back into their natural habitat after they are healthy and recovered. Then PPNS non-litigationally conducts educational efforts to the community to educate the public, schools, and local communities about the importance of protecting protected animals and forests. So that it can help reduce the demand for illegal animal products.³⁷

PPNS BKSDA also has a role in enforcing regulations such as permits related to wildlife and protected animals. They can ensure that if a community has wildlife and protected animals, then PPNS can request a permit that follows the applicable regulations in the maintenance and trade of wildlife and protected animals, so PPNS tries to do positive things in a non-litigation manner by collaborating with NGOs and Environmental Organizations and international institutions that focus on protecting protected animals.

The non-litigation approach of PPNS seeks to provide counseling and consultation to owners of pets or pet facilities to provide education and understand the rules related to protected animals. It should be noted that PPNS can also mediate and negotiate cases of conflict between permit holders or animal owners and parties who care about the environment, because mediation and negotiation can help reach a resolution without involving the courts.

That in Article 21 paragraph (2) Number 5 of 1990 concerning Conservation of Natural Biological Resources, it states the following acts which constitute criminal acts in law enforcement against protected wild animals:³⁸

- a. Every person is prohibited from capturing, injuring, killing, keeping, possessing, maintaining, transporting and trading protected animals while they are alive;
- b. Every person is prohibited from keeping, owning, maintaining, transporting and trading in dead protected animals;
- c. Every person is prohibited from removing protected animals from one place in Indonesia to another place within or outside Indonesia;
- d. Every person is prohibited from trading, keeping or possessing the skin, body or other parts of protected animals or goods made from these parts or removing them from one place in Indonesia to another place inside or outside Indonesia.

³⁷ *Ibid.*

³⁸ Article 21 paragraph (2) Number 5 of 1990 concerning Conservation of Biological Natural Resources

- e. Everyone is prohibited from taking, damaging, destroying, trading in keeping or possessing eggs and/or nests of protected animals.

So article 21 paragraph 2 above is directly related to animals, while that related to the ecosystem or habitat of animals in article 19 paragraph (1) of Law Number 5 of 1990 which reads as follows "everyone is prohibited from carrying out activities that can result in changes to the integrity of the nature reserve area". So with the damage to the ecosystem and the extinction of protected rare animal species in particular, they can no longer be attended if they are still carried out. In the end, if the trading of rare animals continues to be carried out, then this must be done with a criminal law policy against animals, the scope of the criminal law policy, penal and non-penal against the trade in protected animals, so that our children and grandchildren will not be able to see unique and beautiful animals from the wild.

The policy of determining the type of sanctions in criminal law cannot be separated from the objectives to be achieved in criminalization. In other words, the formulation of the objectives of criminalization is directed to be able to sort and at the same time measure the extent to which the types of sanctions, both penal and non-penal, have been determined at the legislative policy stage in order to achieve their objectives, namely to provide protection and public welfare effectively.³⁹

Although basically the type of sanctions for each form of crime is different, what is clear is that all determinations of penal sanctions must remain oriented to the purpose of the punishment itself. While on the other hand, the purpose of punishment until now is still the center of attention in various countries such as the Netherlands and is the subject of much discussion among legal experts.⁴⁰

Efforts to combat crime through the penal route place more emphasis on the repressive nature or oppression after the crime has occurred, while through the non-penal route, there is more emphasis on the preventive nature or prevention before the crime occurs.⁴¹

Legal Considerations On Decisions 1360/Pid.B/Lh/2022/Pn.Lbp And 95/Pid.B/Lh/2022/Pn.Bnj On Protected Animal Trade Syndicate

Criminal cases of protected animals in the jurisdiction of the Pakam District Court and the Binjai District Court include numbers 1360/ Pid.B/LH/2022/PN.Lbp and 95/Pid.B/LH/2022/PN.BNJ. Looking at the case of one decision from the Lubuk

³⁹ Dey Ravena and Kristina, *Op.cit* , p 214

⁴⁰ Peter J.P. Tak, *sentencing In The Nethelands*, (Makalah seminar perbandingan Hukum pidana, Universitas Bahyangkara: Surabaya, 1997), p. 23

⁴¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, (Jakarta: Kencana, 2008), p. 3

Pakam jurisdiction which began on Wednesday, April 27, 2022, witness Ngalu Surbakti together with witness Benny Syahputra, SH, Witness Derry Ade Syahputra, members of the North Sumatra Police General Criminal Investigation Unit received information from the public informing them that the defendant Thomas in Raiders alias Thomas was keeping a protected animal in the form of 1 (one) Sumatran Orangutan (*Pongo abelli*) alive.

Based on this information, the police officer witness then conducted an investigation by posing as a buyer (*undercover buy*) ordering the Sumatran Orangutan from the defendant and it was agreed on Thursday, April 28, 2022 on Jalan Cemara Asri Beolevard Raya, Cemara Asri Complex, Sampali Village, Percut Sei Tuan District, Deli Serdang Regency, North Sumatra Province, to make a transaction, in which the Sumatran Orangutan was offered by the defendant to a team of police officers who were disguised as buyers for Rp. 23,000,000 (Twenty Three Million Rupiah). Then on April 28, 2022 at around 16.00 WIB at Jalan Cemara Asri Beolevard, Asri Complex, Sempali Village, Percut Sei Tuan District, Deli Serdang Regency, North Sumatra Province. Deli Serdang, North Sumatra Province, Police witness, witness Ngaku Surbakti together with witness Benny Syaputra, SH, witness Derry Ade Syahputra met the defendant together with 4 (four) friends of the defendant named Arya Rivaldi Pratama, Raihan Ali Imran, Haidar Yashir and Putri Adelina Br, Seimbiring who came using 1 (one) unit of white Toyota Yaris car with Police Number BK 1665 RO, At that time the defendant showed the police witness 1 (one) Sumatran Orangutan (*Pongo Abelli*) in a living condition which was stored in the car, immediately the police witness arrested the defendant.

When the defendant was arrested, evidence was confiscated in the form of 1 (one) protected animal, the Sumatran Orangutan (*Pongo abeli*) in a living condition, 1 (*one*) Toyota Yaris car with Police Number BK 1665 RO, white with Frame Number MHFKT9F32G6083349 and Engine Number INZ-Z431946, 1 (one) Samsung type A 10 mobile phone in black with IMEI number 1: 354668774515130 and IMEI 2: 358183414515132, then the defendant and the confiscated evidence were taken and handed over to the North Sumatra Police Criminal Investigation Unit for further investigation. That the defendant's actions in capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a living condition did not have a permit from the authorities.

In that case, The defendant was charged by the public prosecutor with a single charge as threatened with criminal penalties under Article 21 paragraph (2) letter a Jo. Article 40 (2) of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems :

1. The element of "Whoever";
 - Considering, that which is meant by "whoever" is any person or anyone as a legal subject, who is accused by the Public Prosecutor of having committed a crime, for whom the Panel deems competent and capable of being held responsible for the consequences of all his actions;
 - Considering, in the trial, the Public Prosecutor presented the Defendant named Thomas Di Raiders alias Thomas, after the Chairperson of the Panel asked about his identity, the defendant admitted and confirmed what was stated, the defendant was competent and able to be held responsible for his actions if later proven guilty;
 - Considering, that with the above considerations, the Panel of Judges is of the opinion that this element has been fulfilled;
2. The element "It is prohibited to capture, injure, kill, keep, own, maintain and trade in protected animals while they are alive."
 - Considering, first of all the Assembly needs to analyze the meaning of the word "intentionally" in this second element;
 - Considering that according to VAN HATTUM, *Opzet* (intentionally) according to linguistics only means *oogmerk* (intention), in the sense of purpose and will according to the term law, *Opzettelijk* (intentionally) is replaced with *willens en wettens* (wanting and knowing). While according to (bedoeling) such as the plan and desire of the maker, it means there is a difference between intention (*oogmerk*) and intention (*opzet*). If the intention (*oogmerk*) is limited to the closest goal (*naaste doel*) of the maker, it means that the meaning of intention (*oogmerk*) always also means intention (*opzet*), but not every intention (*opzet*) is also an intention (*oogmerk*).
 - Considering that in the criminal law literature it is stated that the definition of intent (*opzet*) may be narrower, may be the same, or may even be broader and general intent. According to ANDI HAMZAH it may be broader than general intent. According to ANDI HAMZAH. Intent (*oogmerk*) is the same as intention, only for the first level of intention, namely intentionally with intent (*opzet als oogmerk*). And the definition of intention as intent as stated by VOS intended if the maker wants the consequences of his actions. He never does his actions if the maker knows that the consequences of his actions will not occur.
 - Considering, that according to the Big Indonesian Dictionary, what is meant by trading is trading or selling. buy;

3. Considering, that Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Natural Biological Resources and their Ecosystems Article 1 number 5 explains that animals are all types of animal natural resources that live on land, and/or in water, and/or in the air;

In the case, in essence the judge decided that: (1) Declaring the Defendant Thomas Di Raiders alias Thomas above was proven legally and convincingly guilty of committing a crime "Intentionally committing a violation of trading protected animals" as the Single indictment of the Public Prosecutor; (2) Sentencing the Defendant therefore to imprisonment for 1 (one) year, a fine of Rp. 10,000,000 (Ten Million Rupiah) with the provision that if the fine is not paid then it is replaced with imprisonment for 6 (six) months

The actions committed by the Defendant Thomas Di Raiders alias Thomas have fulfilled the elements in Article 21 paragraph (2) letter a Jo. Article 40 (2) Law Number 5 of 1990 Concerning Conservation of Natural Resources and Ecosystems, however the imposition of a prison sentence of 1 (one) year, a fine of Rp. 10,000,000 (Ten Million Rupiah) is considered not comparable to the losses experienced by the state due to damage to the animal ecosystem and the environment, considering that Orangutans have activities as forest canopy openers ⁴²and plant seed spreaders in the forest, these activities have an impact as a balancer and ecological growth for the environmental ecosystem.⁴³

Law enforcement for the criminal acts committed by the Defendant is hampered by the substance of the sanctions imposed by Article 21 paragraph (2) letter a Jo. Article 40 (2) of Law Number 5 of 1990, so that these laws and regulations are no longer relevant to today's socio-economic situation, so that based on this, it has become urgent to revise Law No. 5 of 1990 and include aggravating sanctions for acts of hunting and trading protected animals in Indonesia.

CONCLUSION

Legal protection for Orangutans as protected animals in Indonesia has been formulated in various laws and regulations, including in Article 21 paragraph (2) of

⁴²The role of Orangutans is very large for the availability of sunlight in the forest considering the condition of the tropical rainforest is very dense and dark. When looking for food or making nests, Orangutans always pick branches and leaves from trees. In this way, the top of the forest will be open, making it easier for sunlight to enter and reach the ground. Then, new plant shoots can grow well because they get enough sunlight. As we know, sunlight is very important in the process of processing food for plants.

⁴³ Leuser Conservation, Don't Hunt, Orangutans Are Very Important for the Forest, [Don't Hunt, Orangutans Are Very Important for the Forest | Leuser Conservation Partnership](#), accessed on December 1, 2024.

Law No. 5 of 1990, Government Regulation No. 13 of 1994 concerning Hunting of Gamed Animals up to Presidential Decree No. 4 of 1993 concerning National Animals and Flowers. So that protected animals, especially Orangutans, have been formulated in various forms of Law Number 5 of 1994 concerning the ratification of *the United Nation Covention on Biological Diversity*. So that trade in protected animals until now still shows an increase in criminal acts in smuggling and trade in animals in particular is increasingly rampant.

Law enforcement against protected animals, especially Orangutans (*Pongo abelli*) must be able to cooperate with *stakeholders* to pay attention to protected animals, so that PPNS, BKSDA, and Polri can eradicate illegal trade in protected animals. In order not to become extinct against protected animals, especially Sumatran Orangutans. Then it must be improved towards the community regarding understanding of protected animals and understanding of the environment.

The judge's considerations regarding the imposition of sanctions contained in Decision Number: 1360/Pid.B/LH/2022/PN Lbp, but in terms of imposing criminal sanctions on the Defendant and his network, it does not reflect justice for animals and the environmental ecosystem, this is due to the negative impacts arising from hunting and trading protected animals, if referring to the theory of the legal system, this problem can be explained with the legal substance in Article 21 paragraph (2) letter a Jo. Article 40 (2) of the Republic of Indonesia Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems has not provided a deterrent effect for perpetrators of criminal acts of hunting and trading protected animals, and the legal culture in society regarding the hunting and trading of protected animals has not yet arisen, compliance and legal awareness of the community regarding hunting and trading protected animals is a criminal act, as well as the negative impact on the environmental ecosystem if there is an extinction of animals that disrupts the stability of the environmental ecosystem.

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