

CRIMINAL LIABILITY IN PROTECTED WILDLIFE SMUGGLING: JURIDICAL ANALYSIS OF DECISION NUMBER 106/PID.SUS/2024/PN.TJB

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ABSTRACT

Wildlife protection is a crucial aspect of preserving Indonesia's biodiversity, yet increasingly widespread smuggling practices pose a serious threat to protected species survival. This study analyzes criminal liability in the case of pangolin scale smuggling via KM. Fajar 99, adjudicated in Decision No. 106/Pid.Sus/2024/PN.Tjb. Using normative legal research with case, statutory, and conceptual approaches, findings indicate that the judge prioritized substantive justice, determining that the ship master (Syamsir) lacked criminal intent as he merely performed navigational duties based on official documents. Legal responsibility should instead be directed at the exporter (CV. Asli Bersatu) and shipping company (PT. Melda Jaya) as the principal actors, and Customs for failing to conduct mandatory boatzooking inspections. This study recommends applying corporate criminal liability, strengthening Customs inspection mechanisms, and enhancing inter-agency coordination."

Keywords: *Criminal Liability; Wildlife; Smuggling; Conservation; Law Enforcement*

INTRODUCTION

Indonesia is one of the world's megabiodiversity countries, with around 300,000 species of wildlife or around 17% of the total animal species in the world. This biological wealth creates a great responsibility for the country to maintain its sustainability, especially amidst the rampant illegal wildlife trade and smuggling that threatens the survival of protected species. Pangolin (*Manis javanica*) is one of the most illegally traded animals in the world. Pangolin scales have high economic value on the black market, especially for traditional medicine in East Asia. Indonesia as the natural habitat of the Javan pangolin faces significant smuggling pressure through various port routes. Legally, wildlife protection in Indonesia is regulated through Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems, which in Article 21 paragraph (2) in conjunction with Article 40 paragraph (2) expressly prohibits the hunting, trade, and shipping of protected animals. In addition, Law Number 17 of 2006 concerning Customs regulates criminal sanctions for transporting export goods without valid customs documents.

The pangolin scale smuggling case via the KM Fajar 99, decided in Decision Number 106/Pid.Sus/2024/PN.Tjb, presents an interesting legal challenge: a ship's captain is made the sole defendant in a crime that, in fact, involves a more complex chain of actors. This decision serves as a mirror for wildlife law enforcement in Indonesia, particularly regarding the distribution of criminal responsibility in organized crime.

METHOD

This research uses a normative legal research method, which focuses on the study of positive legal principles. Normative legal research is conducted by examining library materials or secondary data, consisting of primary, secondary, and tertiary legal materials.¹

The approaches used include, case approach, namely examining concrete cases that have obtained permanent legal force; statute approach, namely examining relevant laws and regulations; and conceptual approach, namely examining relevant legal concepts such as criminal responsibility and substantive justice. Data sources were obtained through literature review, including Tanjungbalai District Court Decision Number 106/Pid.Sus/2024/PN.Tjb, laws and regulations in the fields of natural resource conservation, customs, and shipping, as well as relevant legal literature. Data were analyzed qualitatively using descriptive-analytical methods.

DISCUSSION

Legal Framework For Wildlife Protection In Indonesia

The legal system for wildlife protection in Indonesia relies on several complementary legal instruments. Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems is a *lex specialis* that regulates the prohibition on trade and capture of protected animals. Article 21 paragraph (2) letters a and b prohibits anyone from capturing, injuring, killing, keeping, possessing, caring for, transporting, and trading protected animals, whether alive or dead.

Jimly Asshidiqie stated that the laws that have been enacted and promulgated must have gone through a very long process until they were finally passed into public property which are open, binding to the public. If a law that has been prepared, discussed and debated in such a way is finally enacted and promulgated accordingly.²

¹ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, (Malang: Intrans Publishing, 2022), P. 48.

² Jimly Asshidiqie In Eka NAM Sihombing, Dani Sintara, Cynthia Hadita, "Limitations Of Revision The Legislations In The Process Of Formulating The Legislations In INDONESIA", *Nomoi Law Review*, 3, No. November (2022): 116–124.

In the context of cross-border trade, Indonesia has ratified the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is implemented through Government Regulation No. 8 of 1999 concerning the Utilization of Wild Flora and Fauna Species. CITES provides a trade control mechanism not only in sending countries but also in receiving countries, through a strict export-import permit system.

The customs dimension of wildlife protection is regulated in Law Number 17 of 2006 concerning Customs, specifically Article 102A letter e, which threatens criminal penalties for carriers carrying exported goods without valid customs documents. In cases of smuggling by sea, Articles 29-30 of the Minister of Finance Regulation Number 203/PMK.04/2017 stipulate the obligation for physical inspection of vessels (boatzoeking) by Customs officers.

However, the implementation of this legal framework still faces challenges in the form of:

- (a) Overlapping authority between law enforcement agencies;
- (b) Sanctions that are deemed not to provide maximum deterrent effect;
- (c) Weak coordination between the Ministry of Environment and Forestry, Customs and Excise, and the police; and
- (d) The lack of consistent implementation of corporate criminal liability.

Wildlife Smuggling Law Enforcement Practices

Law enforcement against wildlife smuggling in Indonesia involves various institutions with different mandates. The Ministry of Environment and Forestry (KLHK), through the Directorate General of Natural Resources and Ecosystem Conservation (KSDAE), is tasked with monitoring the circulation of protected wildlife. Meanwhile, Customs and Excise, under the Ministry of Finance, is responsible for conducting customs inspections, including boat zoning.

Boatzoeking, a physical inspection mechanism for ships, is a crucial tool in preventing smuggling by sea. Under applicable regulations, Customs officers are required to match ship manifest documents with the actual cargo condition before departure. However, in practice, this mechanism is often not implemented optimally, particularly in smaller ports with limited monitoring resources.

Disparities in court decisions in wildlife smuggling cases are also a serious concern. Several cases demonstrate that the sanctions imposed are not commensurate with the resulting ecological impacts. Furthermore, prosecutions often focus solely on individuals in the field, while the intellectual and corporate actors behind the smuggling escape legal accountability, creating an incomprehensive law enforcement system.

Legal Analysis of Decision Number 106/Pid.Sus/2024/PN.Tjb"**a. Chronology and Legal Facts**

On November 26, 2023, the ship KM. Fajar 99 GT.34 No.37/PPs departed from Tanjungbalai Port to Port Klang, Malaysia, under the command of the Defendant Syamsir who was suddenly appointed to replace the main captain, Rinaldi, who was unable to attend. During the action carried out by Customs officers, 9 (nine) packages of pangolin scales with a gross weight of 292.3 kilograms and a net weight of 27.85 kilograms were found which were not listed in the Outward Manifest Number BC 1.1:000837.

The trial facts revealed that:

- (1) Syamsir was unaware of the existence of pangolin scales disguised as salted fish;
- (2) Outward Manifest document made by PT. Melda Jaya as a shipping company;
- (3) The Export Notification of Goods (PEB) is prepared by CV. Pribumi Bersatu as the exporter;
- (4) The process of loading goods onto the ship is carried out by the exporter using TKBM (Steering and Unloading Labor) from Pelindo; and (5) Customs does not carry out a physical inspection (boatzoeking) before the ship departs.

b. Judge's Considerations and Verdict

The Panel of Judges at the Tanjungbalai District Court ruled that Defendant Syamsir was legally proven to have violated Article 102A letter e of Law Number 17 of 2006 concerning Customs, namely transporting export goods without being protected by valid customs documents. The Defendant was sentenced to 1 (one) year in prison and a fine of Rp. 50,000,000.00 (fifty million rupiah) .

In its deliberations, the Panel of Judges stated that although Syamsir was not actively involved in the smuggling scheme, his ignorance could not completely exonerate him because there was negligence in not checking the conformity of the Outward Manifest document with the actual condition of the cargo. However, the judge also firmly stated that the responsibility for the smuggling must be extended to include PT. Melda Jaya and CV. Pribumi Bersatu as the parties who actually orchestrated the smuggling process.

In a separate case, the Director of CV. Pribumi Bersatu (Saprin alias Ucock Minah), who was initially a witness and later named a suspect, confirmed that the exporter was indeed the main actor in this wildlife smuggling chain.

c. Analysis: Substantive Justice vs. Formal Justice

This ruling reflects a substantive justice approach, which emphasizes that the law should not be applied mechanically and formally without considering factual realities and human values. Referring to Satjipto Rahardjo's view, progressive law requires law enforcement not merely to apply norms literally but also to explore the substantive justice that exists within society.

From the perspective of criminal liability theory, two elements must be met: *actus reus* (an unlawful act) and *mens rea* (malicious intent). The panel of judges found that although the *actus reus* was formally met—Syamsir operated a ship transporting illegal goods—the *mens rea* element of intent was not fully proven. Syamsir was the victim of a disorganized work system between PT. Melda Jaya and CV. Pribumi Bersatu.

From a shipping law perspective, Law Number 17 of 2008 concerning Shipping expressly states in Article 40 paragraph (1) that it is the shipping company that is responsible for the safety and security of the goods it transports. This strengthens the argument that PT. Melda Jaya as a shipping company should be the primary subject of responsibility, not the captain who is hierarchically merely an employee.

The problematic jurisdiction of investigators is also a key consideration in this ruling. Institutionally, ship captains engaged in shipping activities should be prosecuted by the Shipping PPNS Investigators under the Ministry of Transportation (Kesyahbandaran), not by Customs Investigators under the Ministry of Finance. This overlapping authority demonstrates the need for cross-sectoral regulatory harmonization in wildlife smuggling law enforcement.

Corporate Criminal Liability for Wildlife Smuggling

This case underscores the urgency of implementing corporate criminal liability for environmental crimes in Indonesia. The doctrine of corporate criminal liability recognizes that corporations can be subject to criminal law when criminal acts are committed in the name of or for the benefit of the corporation. In the context of this case, there is a strong argument that the smuggling was carried out systematically by CV. Pribumi Bersatu and PT. Melda Jaya.

Articles 116-119 of Law No. 32 of 2009 concerning Environmental Protection and Management open up the possibility of corporate criminal liability in the environmental sector. Strengthened by the New Criminal Code (Law No. 1 of 2023), which explicitly recognizes corporations as subjects of criminal acts, law enforcement has stronger instruments to prosecute shipping companies and exporters found to be involved in wildlife smuggling.

CONCLUSION

First, legal protection for protected wildlife in Indonesia has a comprehensive legal framework, but its implementation still faces various obstacles, especially in terms of inter-institutional coordination, consistency of law enforcement, and the application of corporate criminal liability.

Second, Decision Number 106/Pid.Sus/2024/PN.Tjb reflects the prioritization of substantive justice over formal justice. Although the ship's captain was formally found guilty of violating customs regulations, comprehensive criminal liability must extend to the exporter and shipping company as the "primary actors in the smuggling," highlighting the failure of Customs and Excise to enforce its boatzoeking obligations.

Third, there is an urgent need for consistently apply corporate criminal liability to companies involved in the wildlife smuggling chain; strengthening Customs oversight mechanisms through risk-based physical inspections; revising and harmonizing Law Number 5 of 1990 with customs and shipping regulations; and building effective cross-agency coordination through a joint wildlife law enforcement task force.

Based on the findings of this study, the authors recommend, the government must immediately revise Law Number 5 of 1990 which is no longer relevant to developments in modern smuggling methods; Customs officers are required to carry out boatzoeking consistently, especially in small ports that are prone to smuggling; Public prosecutors need to be more active in using corporate criminal liability instruments to ensnare companies that are part of the wildlife crime chain; and community empowerment and strengthening of whistle-blower programs need to be increased to support early detection of wildlife smuggling;

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ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v7i1.30370>

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