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# Legal Protection of Protected Wildlife in the Criminal Law System in Indonesia

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**Abstract :** *This research was to examine the protection of protected wildlife which was natural resource that must be managed wisely because the scarcity of protected wildlife. The research method used normative research type that was a research that conceptualize the law as the norm both in legislation and outside the provisions of legislation (living law). The results showed that the losses arising from the trade in wildlife/protected wildlife, not only covering the economic and social fields but also included the life values (value and culture) which became the pride of the nation and state. Therefore, criminal law was required to regulate the prohibition of traded fauna/protected wildlife or preserved or possessed such endangered protected wildlife.*

## INTRODUCTION

Natural resources is gift from Allah SWT that must be managed wisely, because natural resources has limited its use.<sup>i</sup> Natural resources is everything that exists in the natural environment that can be utilized for variety of interests and needs of human life to be more prosperous.<sup>ii</sup>

Indonesia is one of the countries with high biodiversity. Biodiversity is the largest in the entire territory of Indonesia. Indonesia is in the tropics become one of the reasons Indonesia be nation rich in natural resources biodiversity.<sup>iii</sup> The wildlife/animals are scattered throughout the islands in Indonesia are the characteristic of an island inhabited the animals, because the ecosystem in it supports the wildlife breeding. In Indonesia, the wildlife/animals have already scarce encountered in their natural habitat. The scarce wildlife/animals that are rarely encountered in their natural habitat are like the Sumatran tiger, the one-horned rhinoceros, anoa, bird of paradise, the Sumatran elephant, the Javan tiger, and many more animals living in the water, and in the endangered air.<sup>iv</sup>

The Natural Resources either biological or non-biological is environment element that is very important for the survival of the Indonesian nation. The importance of Natural Resources is explicitly mentioned in Article 33 Paragraph (3) of the Constitution of the State of the Republic of

Indonesia, of 1945, that "the earth, water and natural resources contained therein are used for the most of people's prosperity". In that regard, the environment is necessity that should be preserved because it becomes the absolute requirement for the life order of the state, nation and people. That is why the sustainability of the state life is determined whether the environment can support, so the environmental law has very fundamental position in terms of the sustainability of the state, nation and human life.

The function of flora and fauna in conservation efforts besides as source storage of plasma nutfah (gen resource), also serves as system of life buffer, especially as regulator of the balance of nature and medicine. The function as gen resources is invaluable asset; as the source of plasma nutfah is the most important aspect in the preservation of scarce wildlife. The diversity of plant species and tropical forest wildlife and coral reefs become indication of the source of plasma nutfah which are opportunity in the field of development either agriculture, livestock, fisheries, forestry, or various industrial life and for the benefit of human and all living things. On the basis of that consideration, then efforts to find the essence of legal protection of protected wildlife in the form of criminal act in the legislation is an inevitability for the sustainability and continuity of human life and other creatures in sustainable (sustainable development).

One of the many forest areas that became the National Park in Indonesia is Lore Lindu National Park located in Donggala Region of Central Sulawesi Province, which was inaugurated on October 14, 1982. The inauguration of this park coincided the holding of the 3rd World Congress of the National Park in Bali, with overall area of approximately 229,000 hectares.

The location of Lore Lindu National Park is surrounded by several villages within the area of the main residential settlements dependent on the management of natural resources in the Lore Lindu National Park area. Because they hanged their life since ancient times hereditary, long before the area where they live was declared officially became National Park. In addition there are several villages

in the vicinity outside the area where the inhabitants also live from forest products in the form of rattan, resin and others, and by way of the nomadic gardening traditionally.

Based on some of the descriptions, it could be assumed that the efforts of the legal protection of protected wildlife in Indonesia as set forth in the provisions of legislation which regulates the environmental management has not been able to guarantee its protection, so that in the research analyzes the regulation of environmental crime against the protection of protected wildlife in Indonesia, the interesting law becomes the main problem is why environmental crime that related to protected wildlife cannot guarantee its existence in Indonesia.

### RESEARCH METHOD

This research used normative research type that was a research that conceptualize the law as the norm both in legislation and outside the provisions of legislation (living law). The selection of this type of normative research related to the formulation of the problem that being the issue of legal research and normative legal research type was used to analyze the content, nature and legal duties stipulated in the legislation and contained in the law substance.

### DISCUSSION

In fact, the management or conservation of natural resources is not only means of preservation and protection, but also its utilization also wisely in accordance with the principles and applicable legal norms.<sup>v</sup> Legal protection in the field of biodiversity conservation and protected wildlife as part of environmental law, has different distinctive features with other legal types. The difference is that this law is in the field of administrative law, civil law and criminal law. This implies that in the case of imposition of sanctions concerning this field, it can be administrative sanctions (revocation of permits), criminal sanctions (corporal punishment, fine or both) and civil the form of administrative, criminal and civil sanctions (compensation payments and restoration of the environment).<sup>vi</sup>

The imposition of sanctions against persons and/or legal entities that violate the legislation provisions in the field of conservation of natural resources biodiversity and its ecosystem based on its quality can be in the form of administrative, criminal and civil sanctions. Even against violation with certain qualities, the third sanctions mentioned above can be dropped simultaneously (stimulant). Therefore, any violations occurring in this field, first of all must be

held recovery selectively, which aspects are administrative, criminal and civil liability.

To determine what sanctions will be imposed against an environmental violation case in this biodiversity resources and its ecosystem, it should be discussed by the various authorities, such as regional government, police and prosecutors to determine which cases need to be dealt with administratively, criminal and civil liability.

The imposition of sanctions in any violation in the field of conservation of natural resources biodiversity and its ecosystem will have the impact of sociological society. Any sanction imposed that matters is if this has happened, at least the impact will be very wide for the community, Because of sanctions will give signal that the existing regulations are not just written on paper or bluff.<sup>vii</sup>

Considering the urgency of conservation of natural resources biodiversity and its ecosystem including protected fauna, for human life are vital, so the legal provisions applicable in this field must be fully upheld and defended. Any violations relating to the field of natural resources biodiversity conservation including the breach of protected fauna, shall be dealt with firmly in accordance with the provisions of the applicable legislation. Any person or legal entity proven to have violated the law provisions applicable in the conservation field, shall be prosecuted and sanctioned by law such sanctions can be administrative, civil and criminal.

#### 1. Administrative Sanctions

Administrative law contains regulations that among others, related to legal protection for the people. So, the regulations of environmental legislation which was born by government in the form of means of wisdom (beleids instrumentarium) which is administrative law.<sup>viii</sup>

The purpose of administrative sanctions is in order of violating the law immediately stopped, and restore on its original state before any violation, obeys all orders according to the sanctions imposed on him. In addition to the implementation of administrative coercion, also known as other administrative sanctions namely in the form of company closure, ban on catching/hunting protected fauna, forced money and revocation of permits.

One of the legal sanctions that can be imposed by law against violations in the field of conservation of natural resources biodiversity and its ecosystem including protected fauna is administrative sanction. Administrative sanctions can be imposed on any violation committed by persons or corporations to their acts of natural resources biodiversity and resulting in the extinction of protected animals.

The opportunities on the possibility of violation of the law in protected wildlife are rampant hunting of protected fauna to be traded since Indonesia is country that has the level of biodiversity and the level of endemism (uniqueness) are very high. Thus, incorporated in one of Mega Biodiversity Countries (PHPA2005), according to World Convention Monitoring Committee Indonesia (1994). Indonesia's natural wealth in the form of biodiversity among others has 1.539 species of birds (17%) of all bird species in the world.

In 2003 the Government through the Decree of the Minister of Forestry Number 516/skpts-II/1995 which was then stipulated in Government Regulation No. 7/1999, had stipulated the names and types of rare protected fauna ie at least 236 protected species with details of 70 species of mammals, 93 species of aves, 31 species of reptiles, 7 types of qisces, 20 types of insecta , 1 type of anthozoa and 14 types of bivalvic.

Therefore, these animals have economic potential and high selling value, then the smuggling of wildlife-endangered protected is rampant. Smuggling of these endangered species is very worrying because these activities are not recorded in the official statistics of export activities.<sup>ix</sup>

## 2. Civil Sanctions

In Law Number 32 of 2009 on the protection and management of the environment or UULPH, civil sanctions in the form of damages and maintenance costs were set forth in article 20, whereas in article 21 regulated the absolute liability (strict liability), Both articles above, difficult to implement until now.

In UUKSDA, it seems that there is no article governing civil sanctions that could be imposed on violators of law in the field of conservation and violations of protected fauna. Therefore, if there is violation of law in the field that causes the civil sanction must be imposed, then it should refer to Article 20 UULPH (as *lex generalis*) because UUKSDA (as *lex specialist*), does not specifically regulate civil sanctions.

The implementation of civil sanctions in the environmental field, including conservation and protection of protected wildlife is very difficult, because the settlement of environmental cases through civil law is less popular in Indonesia. It is protracted civil process in the court both in the first instance court, appeal and cassation. Moreover, considering that most of our law enforcement officers (including Judges), have not mastered environmental and regulatory laws yet, either specifically or globally.

During this time in Indonesia the tendency to pursue criminal lane in the settlement of environmental cases stands out, because in criminal

law there are tools such as detention, searching, confiscation and others. Moreover, in UULPH and UUKSDA contained and detailed clearly in separate articles.<sup>x</sup>

## 3. Criminal sanctions

Nyoman Sarikat Putra Jaya<sup>xi</sup> said that the effort of enforcing environmental law through criminal law is how the three main problems in this criminal law are set forth in the law Which has a bit more role to do social engineering. According to Helmy<sup>xii</sup> the efforts are made include the formulation of criminal offence (criminal act), criminal liability, and sanctions both criminal and discipline/order. In accordance with the objective not only as an instrument of order, environmental law also contains the purpose of community renewal (social engineering). Law as social engineering tool is essential in environmental law.

The purpose of criminal sanctions in environmental law are to improve, the maker (lawbreaker), in order he turned into a good person and to pay attention to the environment and the rights of others, to live in healthy environment and peaceful.<sup>xiii</sup> In UULPH, criminal sanctions are regulated in article 22, while UUKSDA is regulated in article 40. If the note of criminal sanction in UULPH and compared with criminal in UUKSDA, there are differences in the imposition of criminal confinement and the amount of the fine. In UULPH, the act classified as crime as set forth in Article 22 Paragraph (1) threatened criminal by imprisonment for maximum of 10 years and or fine of up to Rp 100,000 (one hundred million rupiah). In UUKSDA, criminal act consists of two types of levels: first: the offender in Article 19 Paragraph (1) and Article 33 Paragraph (1), and second: violating in Article 21 Paragraph (1) and Paragraph (2) and Article 33 Paragraph (3).

For the first type of crime, is regulated in Article 40 paragraph (1) with threatened criminal by imprisonment for maximum of 10 years and or fine of up to Rp 200,000 (two hundred million rupiah). The second type of crime is regulated in Article 40 paragraph (2) with with threatened criminal by imprisonment for maximum of 5 years and or fine of up to Rp 100,000 (one hundred million rupiah).

The height sanctions contained in UULPH are actually understandable, given that the urgency of wholeness and preservation of natural resources biodiversity and its ecosystem for the survival of the nation, either present or future is vital, or in other words, the damage of natural resources biodiversity and its ecosystem will have enormous impact and greatly endanger the nation's survival either present or future.

Given the height criminal sanctions in UULPH, then it should be used as an umbrella of UUKSDA, it is considering that the natural resources cannot be separated with the things that are regulated in UULPH. The severe criminal sanctions imposed are expected can muffle the minimum possible crime and violation of protected fauna in Indonesia.

If the case described above is related to the practice in the field is very inconsistent, research findings several cases of hunting, arrest and protected fauna trading, until now have not been processed in accordance with the provisions of applicable law. According to Haruna POLHUT Investigator of Central Sulawesi, many cases occurred in Central Sulawesi related to protected fauna violation, but never prosecuted in accordance with the provisions of legislation because the perpetrator is an official in Palu City (interview, December 20, 2016) the same thing also happened in Selayar Regency. According to Jusman the Head of BKSDA Selayar, the cases of violations against the protected fauna are never completely resolved according to the rule of law applicable, because the perpetrators are the people who play an important role in South Sulawesi Province (interview, January 5, 2017).

According to the researcher, that the above case is in violation of Article 44 Paragraph (1), because it clearly can cause extinction to the protected fauna ecosystem. Therefore the threat of criminal sanctions imposed is Article 40 Paragraph (1) UULPH and confinement 10 years and maximum fine of Rp 200,000,000,-\* (two hundred million rupiah); with severe punishment as mentioned above will make citizens think hard to do activities violating the fauna that are protected by the state.

The severe criminal sanctions imposed and fines are closely aligned with the intent of UULPH, stating that irresponsible acts that may cause damage to natural reserve areas and natural conservation areas or provisions on protection of protected plants and protected wildlife are threatened with severe criminal sanctions imposed and fines, severe criminal is deemed necessary because the damage and extinction of the protected fauna and its ecosystem will result in substantial losses to communities that cannot be assessed by material, whereas breeding of protected fauna will take a long time.

From the overall description concerning the application of the above sanctions, both administrative, civil and criminal sanctions consistently in accordance with applicable laws, have relationship and influence towards the realization of conservation of natural resources biodiversity and its ecosystem, meaning by the application and imposition of consistent legal

sanctions to every perpetrators of UULPH violations will be influential in shaping the compliance of citizens against the applicable law. From the form and the realization of the adherence of the people to the legal provisions (UULPH and UUKSDA) will realize the conservation of natural resources biodiversity including the protected fauna.

Illegally protected trade in wildlife poses become serious threat to the preservation of wildlife in Indonesia. Wildlife protected illegally trafficked on facts found in the field are mostly catches from nature. Even, protected species of fauna and endangered are also traded freely in animal markets throughout Indonesia, such as the bird market in splendid Malang, indeed these Wildlife are not explicitly placed in front of the pet store. The trader hide the protected animals/fauna inside their store, if there is buyer who ask, then they offer to the buyer, like tiger child, yellow-crested cockatoo often found in splendid market Malang for sale by trader. Whereas, tiger and cockatoo have been designated as protected wildlife by the government with Government Regulation No. 7 of 1999 and should not be traded by public.

Whereas in the law has been regulated on the prohibition of trading fauna/protected wildlife as well as maintain or have protected wildlife. In Law No. 5 of 1990 on the conservation of natural resources and its ecosystems in Chapter V, preservation of plant and wildlife species, Article 21 Paragraph (2) stated that everyone is prohibited from catching, injuring, killing, storing, possessing, maintaining, transport and trading protected wildlife alive. But, in fact the prohibitions that were regulated by this law did not make the perpetrators afraid to trade fauna/wildlife. Even the more rampant fauna that are traded and there was special place that trade the protected fauna.<sup>xiv</sup>

Trade in protected wildlife/fauna is in violation of Law No. 5 of 1990 on the conservation of natural resources biodiversity and its ecosystem. In the law, the traffickers of protected wildlife/fauna can be punished with 5 years imprisonment and fine of Rp. 100,000,000.00 (one hundred million rupiah). Although there is already law protecting protected wildlife from illegal trade, but in practice wildlife trade, protected wildlife/animals are still happening openly in many places in Indonesia.

Research findings, that in the international market an orangutan baby was valued at about USD 2.500,- and it was recently revealed that approximately 200 Indonesian orangutans were smuggled into the country. With the current dollar exchange rate ranging from Rp. 9.800, -, Then it could be calculated the potential state losses on smuggling was approximately Rp. 4.900.000.000,-

That number recently we got a case. There were many other cases and other protected fauna-wildlife that were sold abroad illegally, such as smuggling of yellow-crested cockatoo which was also popular commodity, according to WWS Monokuari, every 4 months there were 6,480 yellow crested cockatoo parrots were smuggled to Singapore with the price ranging from Rp. 5,000,000,- each tail, we could imagine how much state money lost worth Rp. 32.400.000.000,-<sup>xv</sup>

Losses arising from the trade of protected wildlife/protected wildlife, not only covering the economic and social fields but also included the life values (value and culture) which became the pride of the nation and state. It can be said that in fact and recognized internationally, Indonesia included three countries which had the world's largest biodiversity (biological diversity) with Zaire and Brazil. Where based on research institute International clearly stated that Indonesia biodiversity had very high degree of uniqueness (endemic). Not only that of 300,000 endangered species in the world 17% were in the forest of Indonesia, as many as 515 species of mammals and 1539 species of birds, and 45% of the world's fish species live in Indonesian water.<sup>xvi</sup>

## CONCLUSION

The purpose of criminal sanctions in the environmental law protection of protected wildlife was to improve the maker (lawbreaker) in order he changed, could preserve the protected wildlife. Losses arising from the trade in wildlife/protected wildlife, not only covering the economic and social fields but also included the life values (value and culture) which became the pride of the nation and state. Therefore, criminal law required to regulate the prohibition of traded fauna/protected wildlife as well as preserved or possessed such endangered protected wildlife.

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<sup>ii</sup> A. Fachtan, 2013, *Geografi Tumbuhan dan Hewan*, Yogyakarta: Penerbit Ombak, hlm. 244

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