

ANALYSIS OF JUDGES' CONSIDERATIONS IN IMPOSING SANCTIONS ON PERPETRATORS OF CRIMES AGAINST BIOLOGICAL CONSERVATION AND ECOSYSTEMS KEEPING AND POSSESSING ANIMAL SKINS TO PROTECT PROTECTED ANIMALS IN INDONESIA

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ABSTRACT

Crimes against wildlife refer to all activities involving wild animals that are prohibited by law. Today, wildlife crime is one of the world's largest criminal industries. There is strong evidence that wildlife crime increases as economic well-being increases. One of the criminal acts that developed in society was keeping and possessing protected animal skins. This act is a crime that can be punished against the perpetrator. The formulation of the problem in this study is setting cumulative prison sanctions and fines in the crime of keeping and possessing protected animal skins, what is the criminal responsibility for perpetrators who keep and possess protected animals, how is the cumulative criminal law analysis of imprisonment and fines against keeping and possessing protected animal skins by decision number 41/Pid.B/LH/2020/PN.Liw Based on the results of the research it is understood that the cumulative sanctions of imprisonment and fines for the crime of keeping and owning protected animal skins in the decision of the District Court Number 41/Pid.B/LH/2020/PN.Liw are regulated in Article 21 paragraph (2) letter d Jo. Article 40 Paragraph (2) Law Number 5 of 1990 Concerning the Conservation of Living Natural Resources and Ecosystems and the defendant has been legally and convincingly proven guilty of committing the crime of keeping or possessing protected animal skins..

INTRODUCTION

Indonesia is a country rich in natural resources, both biological and non-biological. Indonesia's biological resources are known not only for their richness but also for their unique qualities. These natural resources play a vital role in life and are a gift from God Almighty. Therefore, they must be managed and utilized sustainably, harmoniously, and in balance for the well-being of the Indonesian people in particular and humanity in general, both now and in the future.

Sustainable utilization of natural biological resources and their ecosystems is carried out through activities to utilize the environmental

conditions of nature conservation areas and the utilization of wild plant and animal species. The explanation of Law Number 5 of 1990 concerning the Conservation of Natural Biological Resources and Their Ecosystems states: "Natural biological resources and their ecosystems are the most important part of natural resources consisting of animal nature, plant nature or in the form of natural phenomena, both individually and together, have functions and benefits as elements that form the environment, whose presence cannot be replaced."

The greatest threat to wildlife conservation is human activity, particularly the conversion of forest areas for development purposes such as plantations, mining, residential expansion, transmigration, and other infrastructure development. In addition to causing habitat fragmentation, these activities often trigger conflicts between humans and wildlife, resulting in casualties on both sides and often resulting in the expulsion of these animals from their habitats.

Another form of human activity that directly leads to the removal of these animals from their natural habitat is hunting and the illegal trade in wildlife and their derivatives. The high commercial demand for illegal wildlife products, including skins, bones, fangs, and meat, has driven increased poaching.

The trade in wildlife, including its body parts and processed products, appears to have become a lucrative and important international business. Numerous wildlife species are routinely captured from the wild and shipped worldwide. Large-scale harvesting, primarily for commercial purposes, is a major cause of the extinction of many species. Initially, wildlife harvesting was primarily for daily needs. Later, this harvesting activity evolved into a cash-based trade with other parties.

Wildlife crime refers to any activity involving wildlife that is prohibited by law. Currently, wildlife crime is one of the largest criminal

industries in the world. There is strong evidence that wildlife crime increases with economic prosperity. There is also evidence that wildlife crime increasingly overlaps with other organized criminal activities. The primary drivers of the illegal wildlife trade are the demand for traditional medicines, exotic pets, trinkets, and food, with some wildlife products valued at more than gold and platinum. While the environmental impacts of wildlife crime, particularly on endangered species, have long been recognized, the impacts of the illegal wildlife trade on economic and social well-being and government stability remain significant..

It is currently impossible to provide accurate estimates of the scale and volume of wildlife crime in Indonesia. Current data gaps and biases are significant, the number of threatened and targeted species is vast, and the available data is often not readily accessible or easily comparable. Nevertheless, existing data for specific species and locations, combined with statements from experts combating wildlife crime on the ground, paint a compelling and deeply concerning picture.

Wildlife crime, defined as the illegal hunting, possession, or trade of species prohibited by international and/or national law, is a global industry operating on an industrial scale. This activity is primarily driven by the demand for animal parts for use in medicines and consumer goods, as well as the social status afforded by ownership of these goods.

Factors contributing to wildlife crime in Indonesia include limited or weak implementation of spatial planning and weak protection of conservation areas. This leads to relatively uncontrolled deforestation, opening access for poaching and increasing human-wildlife conflict, which serves as a starting point for wildlife entry into the illegal trade. Furthermore, overlapping mandates, various political interests in wildlife crime, and a lack of coordination between institutions complicate law enforcement efforts.

The broader impact of wildlife crime in Indonesia is not well understood. While environmental impacts on specific species, such as tigers, rhinos, and certain birds, have been documented, the potentially significant social and economic impacts are based on limited data or focus on specific locations or species. Analysis of these social and economic impacts is severely hampered by the limited availability of comparable data from various sources (NGOs and government agencies). However, areas where wildlife trafficking is better understood indicate a complex and well-organized activity controlled by criminal syndicates.

Some illegal activities involve the trade in whole or parts of prohibited species, such as tigers, pangolins, or elephants. Other activities involve the illegal trade in permitted species, such as reptiles and birds, either by passing off wild-caught specimens as captive-bred or exceeding quotas.

Crimes against wildlife committed online are also a growing problem in Indonesia. One of the crimes that are developing in society is keeping and possessing protected animal skins. This act is a crime that can be punished for the perpetrator as in the case of decision Number 41 / Pid.B / LH / 2020 / PN.Liw with the defendant Suanda Bin Sadun who has been legally and convincingly proven guilty of committing the crime of keeping or possessing protected animal skins so that he is punished with imprisonment for 2 (two) years and a fine of Rp. 30,000,000, - (thirty million rupiah) with the provision that if the fine is not paid, the defendant must serve a substitute sentence of 3 (three) months imprisonment.

Based on the above ruling, Indonesian criminal law recognizes, in addition to the penalty of deprivation of liberty, a penalty involving the payment of a sum of money. This penalty, which involves the payment of a sum of money, is called a fine. According to the system adopted by the Criminal Code (KUHP), these two principal penalties cannot be imposed

simultaneously; rather, they are alternatives, meaning a choice must be made between the penalty of deprivation of liberty and the fine. Both cannot be imposed cumulatively or simultaneously.

The Criminal Code does not recognize the formulation of cumulative criminal sanctions, namely the formulation of criminal threats with the editorial conjunction and. Ninik Suparni stated that the provisions of the Criminal Code's sentencing system do not recognize the accumulation of the principal penalties threatened for a particular crime, especially imprisonment with a fine or imprisonment with a fine. This is a basic principle of principal penalties and only applies to general crimes originating from the Criminal Code.

The considerations of the legislators regarding the basic principles of the principal criminal penalties as explained in the *Memorie van Toelichting (MvT) WvS Netherlands* are that imposing two types of principal penalties simultaneously cannot be justified because the penalty of deprivation of liberty has a different nature and purpose from the type of fine.

In contrast to the provisions of special crimes regulated outside the Criminal Code, which recognizes a cumulative criminal sanction formulation system, namely the formulation of criminal threats with wording and as well as a combined or mixed alternative cumulative formulation system, namely the formulation of criminal threats with wording and or. The provisions require that both principal penalties be imposed together. Ismu Gunadi and Jonaedi Efendi argue that the cumulative formulation system is known in laws and regulations outside the Criminal Code.

RESEARCH METHODS

Judging from the nature of this research, it is an analytical descriptive research, namely research that attempts to describe a legal

condition/phenomenon with legality in more depth/completely regarding social status and the relationship between phenomena. The purpose of descriptive research is to produce an accurate picture of a group, describe a process or relationship, use basic information from a technical relationship with the definition of this research and attempt to describe it completely. cumulative imprisonment and fines for those who store and possess protected animal skins based on decision Number 41/Pid.B/LH/2020/PN.Liw.

This research employs normative juridical research, specifically examining legal principles. The study was conducted by analyzing decisions related to cumulative prison sentences and fines for those who store and possess protected animal skins, based on decision number 41/Pid.B/LH/2020/PN.Liw. This was done to examine the application of positive law to concrete cases occurring in society, particularly the judge's considerations that form the basis for making decisions.

The approach used in this research is the case approach, which is carried out by examining cases related to the issues faced which have become court decisions, namely court decisions. Number 41/Pid.B/LH/2020/PN.Liw. The conceptual approach is carried out by studying the views and doctrines within legal science, which will uncover ideas that can give rise to legal understandings, legal concepts, and legal principles relevant to the issue at hand. Understanding these views and doctrines serves as a basis for researchers in constructing legal arguments to resolve the issue at hand..

Data collection is a crucial stage in the research process, as it serves as the source of the research. Data collection focuses on the underlying problem, ensuring that the research avoids any deviations or ambiguities in its discussion. This study utilized both primary and secondary data.

The data collection tool used is a library research method in the form of scientific books, laws and other documentation such as magazines, the internet, journals and other theoretical sources related to cumulative prison sentences and fines for those who store and possess protected animal skins.

RESULTS AND DISCUSSION

The Indonesian nation is blessed with abundant natural resources, both on land and in the waters. These resources are strategic resources, controlled by the state for optimal and sustainable management to ensure the continued well-being of the Indonesian people. Indonesia's biodiversity is indeed abundant, but its abundance is not unlimited, and it is vulnerable to extinction if overexploited. Excessive exploitation, to a certain extent, can even lead to its extinction.

Wildlife has high economic value. The exploitation of natural biological resources for trade, particularly wild animals, has long been carried out physically, such as for meat, skin, and other parts of wildlife with economic value, as well as aesthetically, such as through attractions and wildlife husbandry that showcase the physical beauty, sounds, and characteristics of wild species. In practice, the existence of wildlife is decreasing day by day, even approaching extinction.

The use of natural biological resources for trade purposes, especially wild animals, has long been carried out in an extractive physical manner, such as in the form of meat, skin and other parts of them that have economic or aesthetic value, such as attractions and the maintenance of wild animals that show the physical beauty, sound and character of wild animal species.

The exploitation of protected wildlife has created significant problems for their existence, including reduced attention to population sustainability, through illegal trading and unauthorized possession. If left unchecked, this could lead not only to drastic population declines but also to the extinction of certain species, particularly those protected by law.

According to the Convention on International Trade in Endangered Species (CITES), Indonesia is a significant contributor to the global wildlife organ trade. The trade in wildlife organs supplies traditional medicines, traditional foods, and accessories (including fur and skin). These organs fetch very high prices on the retail market. For example, Sumatran tiger bile can be more expensive than gold (a precious metal), and wall hangings made from tiger skin can fetch up to Rp 26 million per piece.

The latest development in the trade in endangered species is the use of social media platforms. Previously secretive and illegal, or restricted to certain trading centers, the trade in endangered species has become easier and more open, provided individuals understand internet technology. In the past year, various species of endangered species have become readily available through online trading sites, and it has even spread to social networks like Facebook and Twitter.

Owners of endangered species openly promote their animals through social media. Their modus operandi involves sellers posting photos of the animals they are selling, including their phone number and price. Buyers first transfer money, then the purchased wildlife is sent via a courier service or picked up in person at a location designated by the trader in secret. Consequently, the trade is difficult to handle because the trading system is conducted via social media, and transactions often involve indirect contact with the trader. This clearly complicates the investigation and prosecution process by the authorities.

The types of animals that are often traded through the internet include mouse deer (*Tragulus javanicus*), pangolin (*Manis javanica*), barking deer (*Muntiacus mutjack*), jungle cat (*Prionailurus bengalensis*), Javan langur (*Trachypithecus auratus*), slow loris (*Nycticebus sp*), Javan hawk-eagle (*Nisaetus bartelsi*), black eagle (*Ictinaetus malayensis*), king cockatoo (*Probosciger atterimus*) and seram cockatoo (*Cacatua*

molucensis). Social networking sites that trade endangered animals through the internet include Toko Bagus, Kaskus and Berniaga.com, but then in 2012 the Toko Bagus site agreed with ProFauna to not display advertisements offering protected animals. Toko Bagus's policy is a good example and should be immediately emulated by other companies.

It should be noted that in conducting the trade or sale of wild animals, whether in whole form, meat, skin and other parts, it cannot be done simply but must begin with the determination of a quota for taking or capturing wild animals from the wild, which is the maximum limit for the type and number of wild animal specimens that can be taken from the natural habitat. The determination of the quota for taking or capturing wild animals is based on the principle of caution and scientific basis to prevent damage or degradation of the population. The compilation of the quota is based on the fact that the availability of data on the potential of wild animals that describe the population and distribution of each type is still very limited, thus requiring the role of NGOs (Non-Governmental Organizations) and universities to help provide information on the potential and distribution of wild animal species that can be utilized.

Control and supervision of wildlife trade is also carried out on the capture of wild animals from nature, this aims to ensure that wild animals can be utilized in accordance with the permits granted (not exceeding the capture quota) by the BKSDA (Natural Resources Conservation Agency), as regulated in Article 19 paragraph (1) of PP No. 8 of 1999 concerning the Utilization of Plant and Wildlife Species that Trade in wild plant and wildlife species can only be carried out by Business Entities established under Indonesian law after receiving a recommendation from the Minister, in this case carried out by the BKSDA (Natural Resources Conservation Agency). This is intended so that the capture of wild animal specimens does not damage the habitat or population in nature, as well as for specimens

that are used in a live state so as not to cause large numbers of deaths caused by improper capture or capture methods. The exception to Article 19 paragraph (1) above is that limited-scale trade can be carried out by communities living in and around Hunting Areas and around Hunting Parks as regulated in the provisions of laws and regulations regarding hunting of game animals.

One of the reasons for the rampant poaching of wildlife is a growing culture within our society, where people generally enjoy, or even have made it a hobby, keeping pets, sometimes even animals that are protected in the wild. Consequently, the trade in protected animals is rampant, leading to the crime of illegal possession of protected animals.

Trading activities in protected wild animals cannot be separated from the existence of factors that influence perpetrators of criminal acts to carry out these activities.

The perpetrators who trade hornbill beaks as protected animals can be subject to criminal sanctions. Talking about criminal acts against birds, it involves several types of laws and regulations such as Law No. 5 of 1990 in conjunction with Government Regulation No. 8 of 1999 concerning the utilization of wild plants and animals in Law No. 5 of 1990 does not include acts of hunting animals, but if referring to Article 21 paragraph (2) it can be interpreted that hunting or poaching and trading in wild animals is equated with the activities of capturing, injuring, killing, storing, possessing, transporting, destroying, and removing protected wild animals from one place to another.

The types of birds that can be traded based on Government Regulation Number 8 of 1999 are unprotected wild animals, obtained from nature, or the results of captivity, in this case captive birds are included in the protected category, however these animals are the result of artificial breeding that has received permission from the Minister of Forestry.

Animals for captive breeding purposes are obtained from natural habitats or from sources that are legal according to government regulations.

The crime of crimes against birds based on Article 40 paragraph (2) and paragraph (4) is a crime as referred to in Article 21 paragraph (2). Illegal hunting and trade in birds are activities aimed at obtaining birds that are not being cultivated in an unlawful manner. Illegal hunting and trade in birds are categorized as wild animals regulated in Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Ecosystems as described above, if the hunting and trade are oriented abroad, it will result in state losses to the environment, namely the loss of germplasm and significant economic losses. Therefore, the state is obliged to always take firm action against perpetrators of illegal hunting and trade in birds in forest areas throughout Indonesia.

CONCLUSION

Regulation of cumulative sanctions of imprisonment and fines in criminal acts storage and possession of protected animal skins in the District Court Decision Number 41/Pid.B/LH/2020/PN.Liw is regulated in Article 21 paragraph (2) letter d Jo. Article 40 Paragraph (2) of Law Number 5 of 1990 concerning Conservation of Natural Biological Resources and Ecosystems and the defendant has been legally and convincingly proven guilty of committing the crime of storing or possessing the skin of a protected animal as charged in the Public Prosecutor's indictment.

Criminal liability for perpetrators who keep and own protected animals based on the decision of the District Court Number 41/Pid.B/LH/2020/PN.Liw is that the defendant was sentenced to imprisonment for 2 (two) years and imposing a fine of Rp. 30,000,000 (thirty million rupiah) with the provision that if the fine is not paid, the defendant must serve a substitute sentence of 3 (three) months imprisonment.

The cumulative criminal law analysis of imprisonment and fines for those who store and possess protected animal skins based on decision Number 41/Pid.B/LH/2020/PN.Liw is There were no matters found that could free the defendant from criminal responsibility, either as justification or as a reason for forgiveness, so that the actions committed by the defendant must be accounted for.

BIBLIOGRAPHY

- Ali, Mahrus, *Fundamentals of Criminal Law*. Sinar Grafika, Jakarta, 2011.
- ; *Principles of Corporate Criminal Law*, RajaGrafindo, Jakarta, 2013.
- Arrasjid, Chainur, *A Thought on Criminal Psychology*, Law and Society Study Group, Faculty of Law, USU, Medan, 1999.
- Arief, Barda Nawawi, *Anthology of Criminal Law Policy*, Citra Aditya Bakti, Bandung, 2012.
- ; *Legislative Policy with Imprisonment*, Undip, Semarang, 2016.
- Chazawi, Adami, *Criminal Law Lessons Part 2*. RajaGrafindo Persada, Jakarta, 2017.
- Ekaputra, Muhammad and Abdul Kahir. *The Criminal System in the Criminal Code and Its Regulations According to the New Criminal Code Concept*. Usu Press, Medan, 2010.
- Gunadi, Ismu and Jonaedi Efendi, *Criminal Law*, Kencana Pranadamedia Group, Jakarta, 2014.
- Hardjasoemantri, Koesnadi, *Environmental Law: Conservation of Natural Resources and their Ecosystems*, Gadjah Mada University Press, Yogyakarta, 2011.
- Huda, Chairul, *From No Crime Without Fault Towards No Criminal Responsibility Without Fault*, Prenada Media Group, Jakarta, 2018.
- Ilyas, Amir, *Principles of Criminal Law*. Rangkang Education and PuKap, 2012.

Jurdi, F. Legal Logic, Prenadamedia Group, Jakarta, 2015.

Lamintang, PAF Indonesian Penitentiary Law, Armico, Bandung, 2014

Nurul Ichsan, R., & Setiadi, D. (2022). SOCIALIZATION OF STATE CIVIL APPARATUS EMPOWERMENT TO IMPROVE THE QUALITY OF TOURISM SERVICES IN THE MEDAN CITY TOURISM OFFICE. *Jurnal PKM Hablum Minannas*, 1(1), 19-24. Retrieved from <http://ejournal.steitholabulilmi.ac.id/index.php/jhm/article/view/113>

Nasution, L., & Ichsan, RN (2022). The Influence of Budget on Managerial Performance at PT. Duta Marga Lestarindo. *Journal of Education, Humanities and Social Sciences (JEHSS)*, 4(3), 1274-1280.

Ichsan, RN, & Nasution, L. (2022). The Influence of Service Quality and Price on Customer Satisfaction at PT. Kurnia Aneka Gemilang Tanjung Morawa. *Journal of Education, Humanities and Social Sciences (JEHSS)*, 4(3), 1281-1288.

Ichsan, RN, Marzuki, M., & Purba, N. . (2022). LEGAL ANALYSIS OF CRIMINAL PUNISHMENT AGAINST PERPETRATORS OF THE CRIMINAL ACT OF FALSEING ACADEMIC DEGREES (Study of Tanjung Pinang District Court Decision Number 114/Pid.Sus/2021/PN.Tpg). *METADATA Scientific Journal*, 4(3), 285-300. Retrieved from <http://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/237>

Ichsan, R., Panggabean, N., Syahbudi, M., & Nasution, L. (2022). CREATIVE ECONOMY-BASED INNOVATION DEVELOPMENT STRATEGY. *Darma Agung Journal*, 30(3), 865-882. doi:10.46930/ojsuda.v30i3.2333

Reza Nurul Ichsan, Lukman Nasution. (2022). THE INFLUENCE OF WORK PROFESSIONALISM ON WORK PERFORMANCE AT THE MEDAN CITY COOPERATIVE AND SME OFFICE. *JOURNAL OF SOCIAL HUMANITIES EDUCATION RESEARCH*, 7(2), 162-166. <https://doi.org/10.32696/jp2sh.v7i2.1607>

Reza Nurul Ichsan, Lukman Nasution (2022). Human Resources Management Development Strategy at Microfinance Institutions in North Sumatra, 23(191), 10.47750/QAS/23.191.20. https://admin.calitatea.ro/assets/Documents/Archive/PDF/20221109_b33f84d5-5e1c-45ef-bccc-966dabd7f3ae.pdf

Jonner Lumban Gaol, Reza Nurul Ichsan (2022). Traditional Market Management Model Based on Digital Marketing, 32 (191).

10.47750/QAS/23.191.27.https://admin.calitatea.ro/assets/Documents/Archive/PDF/20221109_badab131-f0a9-4b28-86e3-4d41e2aef5be.pdf

Pajrin, ZN, Syamsuri, AR, Nasution, L., & Ichsan, RN (2022). The Influence of the Wage System, Work Environment and Welfare Benefits on Employee Work Productivity of PT. Samawood Utama Work Industries Tanjung Morawa, Deli Serdang, North Sumatra. *International Journal of Business, Technology and Organizational Behavior (IJBTOB)*, 2(6), 646-656.

Nasution, L., & Ichsan, RN (2022). PRACTICAL ADMINISTRATION UNDERSTANDING TRAINING IN ORGANIZATIONAL DEVELOPMENT. *Jurnal PKM Hablum Minannas*, 1(2), 31-36.

Nst, VFH, Gaol, JL, & Lubis, MA (2022). THE EFFECT OF WORK ETHICS ON SERVICE QUALITY THROUGH WORK PROFESSIONALISM AT CV. SENTOSA DELI MANDIRI MEDAN. *PROINTEGRITA JOURNAL*, 6(3), 201-213.

Nuritta, C., Lubis, D., Novita, R., & Nst, VFH (2022). SOCIALIZATION OF PREVENTION OF IMPRESSIVE ACTS AMONG MIDDLE AGE CHILDREN IN BANDAR RAHMAT VILLAGE, TANJUNG TIRAM DISTRICT, BATUBARA REGENCY. *Jurnal PKM Hablum Minannas*, 1(2), 42-46.