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YOGYAKARTA, 04 – 07 APRIL 2017

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INTERNATIONAL CONFERENCE ON LAW AND SOCIETY

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta
2017

PROCEEDING

International Conference on Law and Society

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Message from Chairman

Yordan Gunawan
Chairman, International Conference on Law and Society 6,
Universitas Muhammadiyah Yogyakarta

AssalaamuʼalaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among UniversitasMuhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), UniversitiIslam Sultan Sharif Ali (UNISSA), Universiti Sultan ZainalAbidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfeltthanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

WassalamuʼalaikumWarahmatullahiWabarakatuh

Foreword

Trisno Raharjo
Dean, Faculty of Law, Universitas Muhammadiiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the FakultasHukum, UniversitasMuhammadiyah Yogyakarta in organizing this Inaugral International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the adventages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the develompment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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The Protection of Endangered Animals Under Indonesian Legal System: The Case of Illegal Poaching for Trade

HANNA NUR AFIFAH YOGAR, MUHAMMAD HARI ADIPURNA, AND NASRULLAH
Faculty of Law, Universitas Muhammadiyah Yogyakarta

ABSTRACT

As a country with humongous-biodiversity, Indonesia has a great deal of natural resources, consisting of plants and animals. According to World Wildlife Fund (WWF) of Indonesia, Indonesia is estimated has about 20% of world's mammals, 16% of reptiles and amphibians, 17% of birds, 25% of fish, all of them are inhabit the nature of this country. Unfortunately, the magnitude number of those animals are comparable with their extinction threat. This paper is the result of a normative research with statute, analytical and case approaches on protection of endangered animals under Indonesian legal system with special reference to the case of illegal poaching for trade. The study found that there are at least two main underlying causes towards the extinction of endangered animals in Indonesia. First, habitat loss due to the high rate of deforestation; second is illegal poaching for trade. There is linkage between one to another, and both of them contributing to the extinction threat of endangered animals. The Government of Indonesia has to consider the improving of wild animal protection by strengthening the legal system and its enforcement, supervising, controlling and by increasing the function of animal conservation as well. It will become the biggest concern if it relates to evidence of the illegal poaching for trade that has been overcome by Indonesia's Government.

Key words:*Endangered animal, illegal poaching, illegal trading, legal protection*

I. Introduction

Indonesia is a humongous-biodiversitycountry, because Indonesia is the richest biodiversity and the largest archipelago country in the world[1]. Indonesia has 2425 species of animals; consist of 515 species of mammals, 1519 species of birds, 270 species of reptiles and 121 species of butterflies. For the welfare of the biodiversity of Indonesia, Indonesia has a wealth of tropical rainforest in the world. Indonesian forest areas based on data up to 1990 reached 143.970 million hectares spread across the country[2].However, the truth to wildlife's especially endangered animals is shocking.

According to Natusch Daniel J.D in his journal, he stated the traders of amphibians and reptiles in the Indonesian provinces of Maluku, West Papua and Papua between September 2010 and April 2011. It recorded 5,370 individuals representing 52 species collected solely for the pet trade. At least 44% were either fully protected or had not been allocated a harvest quota, making their harvest and trade illegal. Approximately half were listed within the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[3]. In the law aspect, it can be seen in the increasing cases of poaching of wild animals are increasingly time by time. In the whole cases of animal wild poaching in Indonesia, from January up to mid-December 2015 there were at least 5,000 cases of wildlife poaching and trade[4] on the web (including on social media like Facebook).

In reality, the endangered animals live under two threats that result in environmental damage

to ecosystem, the first is habitat loss due to the high rate of deforestation and the second is illegal poaching. Beside of that, this problem is because of the lack of punishment, risk of being arrest is small, and very big advantages in the poaching and trading of this endangered animals. As written in National Geographic, National Geographic stated "The trade attractsorganized crime. Because the return is high, the risk of getting caught is low, and,until recently, the minimum of penalties"[5]. If the illegal poaching, illegal trading, and deforestation can't be stop, then the extinction will be come true.

The solution is stop illegal poaching, illegal trading, and deforestation. To realize it, we need social engineering approach[6]to solve the problems that arise in the life of society. Because in essence, social engineering is a means of social change or the means of engineering societies. so as to function and targets tepa analysis of the problems, at least every problem can be solved even in periods varied. In this kind of engineering, the focal point of focusing on all aspects, from the outermost up to innermost. This paper would like to answer on how isthe effectiveness of law enforcement in Indonesia against the wild animal illegal poaching? Furthermore, we will address on the obstacles faced by the Government of Indonesia in combating illegal poaching for trade.

II. Discussion

1. Threats to Endangered Animals in Indonesia

Geographically, Indonesia is located on the border of the Ancient Asian plate and the Australian plate is causing the diversity of species that live in the area of Indonesia.[7] Coupled with the diversity of flora and fauna is one of the major assets and the advantage for Indonesia, which the impact will touch on many aspects, such as a tourist attraction as well as a wealth of ecosystems. This stability should be kept, because the more surplus value is obtained the more threats also received. It can be seen clearly in the case experienced by wildlife which their habitat is threatened. Of the several factors into danger, there are two primary indications of the most instrumental in this regard to the deforestation and illegal poaching for trade.

Deforestation is the main factor of the threatened wildlife in Indonesia due to the forest is the natural habitat for wildlife[8], it cannot be denied as the number of people who need a place to stay, the party who had many interests and eventually lead to the deforestation. Coupled with the act of the parties who are not responsible to poach animals, especially endangered animals for trade. This action resulted in many animals being threatened in their habitat and population. It is truly unfortunate, because it should a significant difference between the interest for private matters and using as well as managing the habitat (in this case is forest).[9] With the great deal of tropical forest resources in Indonesia, having of this kind of the heaven on earth, tropical deforestation phenomenon is the worst thing ever happening. Becoming the one of four countries (Indonesia, Brazil, Zaire and Peru) that contain of more than half of the world's total forests[10], Indonesia has been providing habitat for the vast majority of the animal species. If this present its been decreasing, it shows humans are destroying "the world" rapidly.

Ministry of Environment estimates that there are 51 cubic meters of logs were obtained from illegal logging,[11] besides, there also log smuggling that will be distributed to overseas. Which the logs are part of the forest, the habitat of animals.While, from January up to mid-December 2015 there were at least 5,000 cases of wildlife trade on the web only[12] (including on social media like Facebook). And the number increases considerably compared to the data compiled in 2014, when there were approximately 3,640 online ads offering wide range of wild animal species. It performs that with the easy access to illegal animal trade, flourishing also illegal poaching do. In

fact, the wild animals that made the object of poaching is animal with endangered or within protected status. Moreover, it has been surprising that the number of wildlife poaching case is also increasing. In East Java has recorded over 370 cases of wildlife poaching. Ironically, many of the cases took place within protection forests or nature conservation areas. Among the nature conservation areas in East Java that are vulnerable to poaching are Bromo Tengger Semeru National Park, R. Soerjo Grand Forest Park, Baluran National Park, Meru Betiri National Park, forests around Ijen Mountains, Yang Highlands Wildlife Reserve, Mt. Arjuna, and Mt. Kawi.[13]

In basic, the protection of wild animal protection also contains in Indonesian Criminal Code, Article 302 (1), for an offense of intentionally hurting or injuring an animal or harming its health, without purpose or exceeding what is necessary for the purpose. Meaning that every single conduct which threats the animals, is automatically prohibited, more specific legal provisions appears in Law no. 18 of 2009 on the Health and Productivity of Animals and on Animal Husbandry, and also prevention of animal cruelty does not appear yet to be a main concern of this legislation. This explains that it is not just a weakness in the law enforcement system, but also on the substance of the regulations. Besides, another obstacle emerged in the conservation of wild animals, especially on illegal poaching for trade.

2. Preventive and Punitive Measures for the Protection of Endangered Animals under Indonesian Law

In addition to the repressive measures for the perpetrators, automatically also necessary policies and preventive efforts in law enforcement in the field of conservation of protected animal species. roles involved also openings only the government, but society also has a role and responsibility in the effort. This evidence can be seen from the efforts of the government through legislation, the Minister of Forestry establish Riau as a conservation area Sumatran elephant (Elephas maximus sumatranus) Regulation No. P.73/Menhut-II/2006 change Regulation No. P.54/Menhut-II/ 2006 concerning the Riau province of Sumatra As Elephant Conservation Centre. Forestry Minister also regulates the establishment and operation of conservation agencies to Regulation No. P.54/Menhut-II/2006 on Conservation Institute[14].

On the other hand, it should also be noted that preventive measures should be carried out in line with the policy of the management of the species' habitat. In the case above shows that zoning is the human settlement tends to coincide with the species' habitat zoning so that conflict becomes inevitable. In addition, policy conversion of forests into oil palm plantations can no longer be considered from a commercial aspect alone, but also must be based on the value and ecological impact, taking into account the carrying capacity and carrying capacity carefully. Status of environmental preservation should be aligned with development. Required harmony and harmony between policy development with the conservation or preservation of the environment.

Meanwhile, in terms of the punitive, it registered some regulations relating to this issue, those are:

1. Indonesian Civil Code, Article 302;
2. Law No. 5 1990 on the Conservation of Natural Resources and Ecosystems;
3. Law No. 41 of 1999 on Forestry;
4. Law No. 32 of 2009 on the Protection and Environmental Management;
5. Government Regulation No. 8 of 1999 on Utilization of Wild Plants and Animals;
6. Government Regulation No. 7 of 1999 on Preservation of Plants and Animals;
7. Government Regulation No. 68 of 1998 on Nature Reserve Area and Nature Conservation

Areas;

8. Government Regulation No. 13 of 1994 on Hunting Wildlife Poaching;
9. Presidential Decree No. 4 of 1993 on Wildlife and National Flower Forestry;
10. Ministerial Decree No. 26 / Kpts-II / 1994 on the Use of Long Tailed Macaques (Macaca fascicularis), monkey (Macaca nemestrina) and Fish Arowana (Scleropages formosus) For Export Purposes Forestry and;
11. Agriculture Decree No. 104 / KPTS-II / 2000 on Procedures Taking Catch Wild Plant and Wildlife.

And for the international scope, we can refer to the Universal Declaration on Animal Welfare (UDAW).[15] Which for some principles that contains in UDAW are recognized in existing legislation, containing expansion and incorporation of more specific principles and goals from.

3. The Effectiveness of Indonesian Prevailing Law towards the Protection for Endangered Animals

It has to be admitted that in term of the legal enforcement on the case of illegal poaching for trade in Indonesia is still weak. Even there has the number of regulation is regulated in, but for the application of the regulation still need preparation. We can find the example on wildlife poaching in 2015 that it tends to be high. In East Java only, ironically, hunting of wildlife was just a lot going on in the protected forest and natural conservation area. There are at least six convictions for traffickers of wildlife, with a range of prison sentences of between 6 months up to 2 years, and that is not giving a deterrence effect. The effectiveness of the law in Indonesia is still less supported by all components that should indeed have a responsibility for this. Whereas in fact, the legal system that is already available should have been able to fulfill the rights and protection of wild animals in Indonesia, especially on the cases of illegal poaching for trade.

Meaning to say, with only a light punishment imposed, then the perpetrators have not felt a deterrent effect against the punishment which he received. Any type of animal cruelty, including illegal poaching for trade, conservation crime, all the substance of the law cannot provide the effect and results will be subject to reduced adverse action.

Discussion of the crime of wildlife conservation in Law no. 5 1990 constitute a criminal offense preservation of the diversity of wildlife, a policy to keep the diversity of species threatened with extinction, such Explanation of Article 11 of Law No. 5/1990. Criminal sanctions under Article 40 of Law No. 5/1990 hit equally to the relevant parties[16]. In terms of the substance of the Act No. 5/1990, it appears that the concrete form of legal protection is specifically given by the diversity of wildlife preservation efforts with the specifies status of protected species, which is threatened with extinction and animal population is rare or endemic[17].

But sometimes, the perpetrator could only divert the reason he did so on several occasions the offender was sentenced to only got a misdemeanor or even the punishment is abolished. Because it cannot be denied that (*strafuitsluitingsgrond* / grounds of impunity) is affirmed in Article 22 of Law No. 5/1990, which in theory is the justification of punishment *rechtvaardigingsgrond*[18], which can eliminate the unlawful nature (wederrechtelijk) deeds. One of the acts referred regulated in Article 22 paragraph (3) of Law No. 5/1990, namely murder as dangerous to human life (noodweer). And in some cases, this proposition is a strong reason hunters.\

4. The Obstacles Faced by Indonesia's Government in Combating Illegal Poaching for Trade

In dealing with this problem, the Indonesian government is still complicated by the increasing of the sophistication of technology and access to hidden from poaching offender and also elements that are not responsible for the participation of habitat damage which resulted in a decrease in the number of endangered animal populations and is also protected in Indonesia. The perpetrators of poaching in particular already has an extensive network in this illicit business so sometimes escaped from the observation and also not easy to be tracked. Monitored from the existing regulations in this regard, Indonesia seems to be enough to have strong legal ammunition.

However, the performance of the law itself still has not optimally impact on the phenomenon of illegal poaching for trade in Indonesia. Evaluating this, we can refer to the theory that put forward by Lawrence M. Friedman regarding to the success or failure of a rule of law that is depending on the three elements of the system, namely the legal structure, legal substance and legal culture.[19] A deeper note of the three elements, Indonesia is at particular attention on legal substance and legal culture. In the insistence on eradicating illegal poaching for trade, the synergy between the government and the role of the community still cannot be complementary to the fullest. This can be proved by the case has recorded in February 2009 reported that four Sumatran tigers were dead because of the people are snared them in the District of Pelangiran and Gaung, Indragiri Hilir, Riau, thence nine Tigers dead over the past four years in the area of South Aceh and the western coast of Aceh. From West Sumatra reported a resident was caught selling tiger skins and bones and ready to be marketed in Riau.[20] Whereas basically, these fatal acts could be prevented if there is good communication between government and society. Although this does not happen often, but their impact is big enough for the environment. In Indonesia, to deal with cases that resulted in habitat and the endangerment and extinction of animals, already initiatedstages of determining quotas, licensing trade in plant and wildlife, and control the circulation of wild plants and animals as a system for controlling the trade of plants and wildlife[21], as follows; quota. With using the principle of precautionary principle and non-detriment finding. Which means a limit on the type and number of plants and wildlife that can be drawn from the natural habitat; licensing; trading. The trader should have a license for doing this, and; supervision and oversight of trade. Yet it is truly unfortunate that the understanding of the requirements has been avoided. For some cases, the other party, except the trader, they feel that the regulation is provide to only for the trader.

Sometimes when the sale and purchase occurred in the society, the majority of people also enjoy the benefit of such transactions, so it is quite contrary to article 37, Law no. 5 of 1990 on the Conservation of Natural Resources and Ecosystems:

(1) The participation of the people in the conservation of natural resources and ecosystem is directed and driven by the Government through various activities that are efficient and effective.

With the purpose for public awareness will be one of the weapons and shields in case of illegal poaching for trade. Then If those three elements above are fixed (Lawrence M. Friedman), then the legal system in Indonesia in responding to and dealing with cases of illegal poaching of wild animals will also can be resolved. And another focus also concerned with the conservation and rehabilitation facilities for wild animals which are victims of illegal poaching.Also, holding of public education and specialized training to authorized officers to no longer missed the finesse of poaching in Indonesian jurisdiction. Since most of the consumers (the buyer of endangered ani-

mals) both living to be maintained as well as products made from endangered animal organs, errors only by the hunters and sellers only.

However, sometimes this hunt for the perpetrator could only divert the reason he did so on several occasions the offender was sentenced to only a misdemeanor or even abolished the punishment. Other problems also arise in the hall conservation or breeding animals, where the facilities are inadequate and lack of medical personnel to deal with the physical and psychological condition of the animals.[22]

III. Closing

The flare cases of animal wild illegal poaching in Indonesia is still not balanced with efforts to handle it. Even the regulation provided as listed in Indonesia Criminal Code, Article 302, Law no. 18 of 2009 on Husbandry and Animal Health, and so on has not been able to address this issue. Law enforcement is affirmed on the perpetrators of illegal hunting is still relatively mild and less deterrent effect, so it does not affect significantly to the reduction and countermeasures of this tort.

What the circumstances, the possibility is still very easy to fix is the prevention phase. If it should be categorized, then the base is needed in the handling of this case by classifying on the bases of action:

a. Base Community
b. Base Action[23]

Though the two are linked, but it seems the community base is the most powerful foundation to be built and repaired. The most fundamental thing is that the people around really know the circumstances da local phenomenon. but keep in mind, the direction of the government is also needed. government contribution itself is used as a reference, because each layer structure that works heavily influenced by the performance of the government as well. in this case the government is also required to continue gives specific directions for local residents, who live on site and habitat conservation, as well as training of officials to be more trained and alert in case illegal poaching for trade.

ENDNOTES

1 Kabupaten Garut, "Hari Cinta Puspa dan Satwa", http://www.garutkab.go.id/accessed on March 1, 2017 at 03.54 PM.

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7 Widada, Sri Mulyati, Hirosi Kobayshi, 2006, *Sekilas Tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya,* Jakarta: Perlindungan Hutan dan Konservasi Alam, p. 26.

8 https://www.profauna.net/en/facts-about-indonesian-animals#.WMCox4F97IV, accessed on Sunday, March 5, 2017 at 08:12 AM

9 Thomas J. M., *Positive Impact Forestry,* (Washington: Island Press 1998), p. 3

\10 Charles L. Harper, *Environment and Society* (New Jersey: Pearson Prentice Hall, 1996), p. 96

[11] http://www.menlh.go.id/penebangan-hutan-dan-deforestasi-fakta-dan-angka/, accessed on Sunday, March 5, 2017 at 09:42 AM
[12] *Profauna (Protecting of Forest and Fauna) Report* on Illegal Poaching in Indonesia 2015. Op. Cit
[13] *Ibid*
[14] http://www.hukumonline.com/berita/baca/hol21707/kejahatan-konservasi-telaah-yuridis-atas-pembunuhan-satwa-langka-dilindungi, accessed on March 5, 2017 at 9:11 PM
[15] The Universal Declaration on Animal Welfare (UDAW) is a proposed formal international acknowledgement of a set of principles giving animal welfare due recognition among governments and the international community. An expression of support for the UDAW demonstrates a government's commitment to working with the international community to improve animal welfare.
[16] Article 40 paragraph (5) of Law No. 5/1990
[17] Article 20 of Law No. 5/1990
[18] Article 49 paragraph (1) Criminal Code
[19] Lawrence M. Friedman, *The Legal System: A Social Science Perspective,* (New York: Russell Sage Foundation, 1975)
[20] http://www.hukumonline.com/berita/baca/hol21707/kejahatan-konservasi-telaah-yuridis-atas-pembunuhan-satwa-langka-dilindungi, accessed on Sunday, March 5, 2017 at 14:17 PM
[21] BKSDA Yogyakarta's Data
[22] BKSDA South Sumatera's Interview, March 9, 2017
[23] http://blog.cifor.org/28075/masyarakat-vs-tindakan-respon-terhadap-perdagangan-satwa-liar?fnl=id, accessed on March 5, 2017 at 7:47 PM

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