



MONITORING AND PROSECUTING THE ILLEGAL ELEPHANT IVORY TRADE IN INDONESIA

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Abstract: Indonesia is also estimated to have as many as 300,000 species of wildlife, and as many as 17% of animals worldwide are found in Indonesia. One of the problems is the declining elephant population and the lack of public knowledge about protected animals, such as the illegal ivory trade and the decline in the elephant population due to poaching for ivory. Illegal wildlife trade poses a serious threat to wildlife conservation in Indonesia. Until now, there are still cases of the illicit trade in elephant ivory that cause endangerment caused by several factors; illegal wildlife trade has obstacles and obstacles in its enforcement, including the lack of knowledge and supervision of law enforcement officials on protected wildlife management, so that the identification of animal species becomes difficult and takes a long time because of the many smuggling routes both on land and at sea. Also, the threat of sanctions does not provide a deterrent effect for the perpetrators. This also encourages people to continue committing illegal protected wildlife trade acts. This research aims to understand and analyze the effectiveness of law enforcement and the obstacles faced in law enforcement, the method used in this research is the normative legal research method which focuses on the study of legal norms that exist in legislation, legal doctrine, and legal theories, with the approach of relevant legislation and legal issues to find legal solutions and find the truth and case approaches.

Keywords: Illegal Trade; Law Enforcement; Monitoring and Prosecuting

1. Introduction

Due to its diverse biodiversity, Indonesia is considered one of the easiest places for wildlife crime. In addition, it is regarded as one of the most vulnerable places for wildlife crime. Data shows that the current state of Indonesia's biodiversity is not in line with its rich biodiversity, especially for wildlife whose populations have been dwindling. The International Union for Conservation of Nature (IUCN) Red List includes 145 fish species, 32 amphibian species, 32 reptile species, 121 bird species, and 185 mammal species that are considered endangered. If biodiversity is lost or reduced, wildlife crime will affect food security, risk ecosystem damage, and human health.

The illegal ivory trade in Indonesia is a major problem that threatens the sustainability of elephant species and the ecosystem as a whole. With elephant populations continuing to decline in Indonesia (there are estimated to be only around 2,000 left worldwide), the threat of illegal trade has never been more pressing. On the black market, ivory is often used to make items such as smoking pipes and jewelry, which attracts criminals.¹

Law Number 5 of 1990 on the Conservation of Natural Resources and Ecosystems, Article 21 Paragraph (2) states, "Every person is prohibited from capturing, injuring, killing, storing,

¹ Fathi Hanif, "Upaya Perlindungan Satwa Liar Indonesia Melalui Instrumen Hukum Dan Perundang-Undangan," *Jurnal Hukum Lingkungan Indonesia* 2, no. 2 (2015): 29–48.



possessing, maintaining, transporting, and trading protected wildlife in a live state.” Unfortunately, sanctions are very light, and the law is still weak. Articles 21, paragraph 2 and 40, paragraph 2 clarify that the law accommodates criminal charges for those who trade wildlife. Still, the punishment is not proportional to the benefits received by the perpetrator, so it does not have a deterrent effect.

The Indonesian government has established various regulations to protect wildlife, including Law No. 5 of 1990 on the Conservation of Living Natural Resources and their Ecosystems. But, despite strict legal measures, smuggling and illegal trade practices are still rampant. For example, in recent years, law enforcement officials have uncovered numerous cases of ivory smuggling through Indonesian ports, suggesting the existence of an organized international trade network.²

Enforcing the law against perpetrators of the illegal ivory trade requires collaboration between various government agencies, including the Ministry of Environment and Forestry (MoEF), the police, and non-governmental organizations that focus on wildlife protection. This study aims to explore the effectiveness of monitoring and prosecuting the illegal ivory trade in Indonesia and the challenges faced in enforcing the law.³

In this regard, it is essential to analyze various law enforcement cases, the methods used by law enforcement agencies to identify and apprehend offenders, and the impact of such actions on elephant populations and the ecosystem. Through this research, we hope to develop policy recommendations to improve the effectiveness of surveillance and law enforcement in combating illegal trade and protecting Indonesia's biodiversity.

2. Research Method

This type of research uses a normative legal method that focuses on the study of legal norms in legislation, legal doctrine, and legal theories. It uses secondary and primary legal materials and then draws a conclusion in relation to the problem under study. This research uses a legal approach that emphasizes research on relevant laws and legal issues with the aim of finding legal solutions and the truth. It also uses a case approach that focuses on case studies that have been decided by the court, analyzing judges' considerations to understand the application of legal norms in practice.

3. Discussion

3. 1 Law enforcement against perpetrators of the illegal ivory trade in Indonesia

Trade in endangered animals and their parts is now a beneficial business. According to a study by the International Union for Conservation of Nature (IUCN), 17,291 out of 47,677 animal species are threatened with extinction. One in five endangered species are mammals, while the rest are reptiles. The illegal ivory trade is one of the biggest threats to elephant

² Anita Sekar Mustikaningtyas, “PeNeGakan Hukum TeRhadaP PeLaku Tindak Pidana PeRdagangan Satwa Liar Yang Dilindungi BeRdasarkan Undang-Undang Nomor 5 Tahun 1990 TeNtang KonseRvasi Sumber Daya Alam Hayati Dan EKosisteMnyA” (UAJY, 2019).

³ Muhammad Iqbal, M Yamin Lubis, and Nelvita Purba, “Penegakan Hukum Terhadap Pelaku Perdagangan Satwa Dilindungi Di Wilayah Hukum Pengadilan Negeri IDI,” *Jurnal Ilmiah METADATA* 3, no. 2 (2021): 401–2.

conservation in Indonesia. Much of the illegally traded wildlife comes from the wild, not captivity. Protected and endangered wildlife species are also freely traded in animal markets in Indonesia.⁴

Although many regulations prohibit this practice, law enforcers still face various difficulties. Between 2011 and 2021, 22 elephants were reportedly killed due to poaching in Way Kambas National Park (WKNP). Reports indicate that many elephant carcasses were found without tusks. This is because 17,000 hectares of the total 125,000 hectares of Way Kambas area still need to be improved. The wildlife trade is an economic activity at local, national, and international levels.

With a case example based on the Pahlawan District Court Number 231/Pid Decision.Sus/2015/PN.PLW, the Defendant ARI Bin Kamin Als HARI, together with the witness Herdani Sardavio Bin Hasan Basri Alias Andre and the witness Ishak Bin Ibrahim (each witness was examined as a Defendant in a separate case file), on Friday, February 6, 2015, at approximately 10.00 Wita, or at least at some time in 2015, located in the Industrial Plantation Forest (HTI) area located at km 79 of the PT RAP axis road in the vicinity of the Tesso Nillo forest, together with the witness Herdani Sardavio Bin Hasan Basri Alias Andre and the witness Ishak Bin Ibrahim Alias Robi (each witness was examined as a Defendant in a separate case file), on Friday, February 6, 2015 at approximately 10:00 a.m. or at least at some time in 2015 at the axial plantation forest area km 79 of the PT RAP corridor road around the Tesso Nillo forest, Senggati Village, Langgam District, Pelalawan Regency or at least at a place that is still included in the jurisdiction of the Pelalawan District Court.

For killing protected animals, namely elephants, for their ivory. The other 3 (three) people are the defendant ARI, Br. Ishak and Br. ANWAR SANUSI. The defendant, ARI Bin KAMIN Als HARI, has been proven legally and convincingly guilty of committing the crime of "Intentionally killing protected animals while alive together," as in the Primair indictment, and imposed a prison sentence of 2 (two) years and 6 (six) months and a fine of Rp 20,000,000 (twenty million rupiah). Provided that if the fine is not paid, it shall be substituted with imprisonment for 3 (three) months.⁵

Protecting and managing protected areas and conserving and utilizing wild plants and animals are regulated in Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems, hereinafter referred to as the Conservation Law. In addition, Government Regulation No. 7 Year 1999 regulates the preservation of plant and animal species, including a list of protected species in Indonesia. The utilization of wild plants and animals is regulated in Government Regulation No. 8 of 1999, which describes the utilization of protected species for certain activities, with terms and conditions permitted by the Ministry of Environment and Forestry. Trade crimes in endangered wildlife are regulated

⁴ Philippe Bangun, Ika Riswanti Putranti, and Marten Hanura, "Efektivitas Kerjasama WWF Indonesia–Bbskda Riau Dalam Memerangi Perdagangan Ilegal Gading Gajah Sumatera Di Provinsi Riau 2010-2015," *Journal of International Relations Universitas Diponegoro* 3, no. 4 (2017): 75.

⁵ Henri Zanita, "Penyelesaian Hukum Kasus Tindak Pidana Terhadap Pembunuhan Satwa Yang Dilindungi Berdasarkan Undang-Undang No 5 Tahun 1990 Tentang Konversi Sumber Daya Alam Hayati Dan Ekosistem (Studi Di Wilayah Hukum Pengadilan Negeri Pelalawan)" (Universitas Islam Riau, 2019).

explicitly by Law No. 5/1990 on the Conservation of Living Natural Resources and their Ecosystems. This law consists of 14 chapters and 45 articles describing protecting protected plants and animals and their habitats.⁶

Law No. 5/1990 on conserving biological natural resources and their ecosystems describes several prohibited actions. The first prohibition in this law relates to actions that could damage the integrity of the nature reserve area. The law specifically prohibits the following actions against animals, that is :

- a. Capturing, injuring, killing, keeping, possessing, maintaining, transporting, and trading protected animals alive;
- b. Keeping, possessing, maintaining, transporting, and trading protected wildlife in a dead state;
- c. Removing protected wildlife from one place in Indonesia to another place within or outside Indonesia;
- d. Trading, keeping, or possessing the skin, body, or other parts of protected animals or items made from such parts or removing them from one place in Indonesia to another place inside or outside Indonesia;
- e. Taking, damaging, destroying, trading, keeping, or possessing eggs and/or nests of protected wildlife.

This is related to the provisions of Article 21 paragraph (2) letters a to e in Law No. 5/1990 on protecting biological natural resources and their ecosystems. Wildlife trade activities often lead to the capture and killing of animals, as well as the keeping of rare animal body parts, due to the high demand for their possession. This situation encourages criminals to continue their activities against protected wildlife.

Specifically, the acts mentioned in Article 21 paragraph (2) letter d are apparent: prohibited acts related to the trade, storage, and possession of protected animal body parts and skins. Perpetrators who violate this regulation may be subject to criminal sanctions. The criminal offense described in Article 21 paragraph (2) letter d often occurs in the community. This is due to the high public interest in owning body parts or skins of rare and protected animals, so many people commit these acts because they are considered profitable.⁷

Sadly, this law is still very weak, with low sanctions. Article 21, paragraph 2 explains that criminal sanctions exist for those who trade wildlife, but these sanctions are not proportional to the profits made by the perpetrators. This makes the sanction ineffective as a deterrent, as the trade in protected wildlife can be very profitable. Compared to fines, criminal sanctions do not feel too heavy for the perpetrators.

3. 2 Obstacles and constraints in prosecuting wildlife traffickers

Wildlife is an irreplaceable part of the earth's natural system that must be protected for present and future generations. Therefore, conserving them and enforcing wildlife trade

⁶ Nicholas Panggabean and Mella Ismelina Farma Rahayu, "Sanksi Pidana Bagi Pelaku Perdagangan Satwa Liar Yang Dilindungi Secara Illegal," *UNES Law Review* 6, no. 2 (2023): 5812.

⁷ Iqbal, Lubis, and Purba, "Penegakan Hukum Terhadap Pelaku Perdagangan Satwa Dilindungi Di Wilayah Hukum Pengadilan Negeri IDI."

regulations is essential. Communities and countries must be the best protectors of wildlife. One way to protect wildlife is to limit the amount of wildlife traded.

Illegal wildlife trade (IWT) is a term commonly used for wildlife trade or poaching offenses, which are defined as unlawful practices or forms of crime (violation of law) and violation of animal rights (Ministry of Environment and Forestry). Illegal wildlife trade includes hunting, transporting, torturing/killing, transporting, moving, holding, and acquiring animals for exploitation. Poachers are those involved in the illegal wildlife trade (including poachers). Illegal wildlife traders are those who profit from the value of wildlife sold on illicit markets, locally, nationally, and internationally, whether alive or dead, whole or in body parts, locally, nationally, or internationally. Humans are the leading cause of wildlife trade, and it is undeniable that humans are one of the main threats to wildlife extinction in the wild. Wildlife extinction in nature.⁸

There are many reasons why wildlife is precious. Wildlife is not easy to come by and is rare. They are often considered exotic and therefore have economic value. These factors lead to wildlife being hunted for exploitation alive or dead as a commodity, exploited alive or dead as a commodity. In addition to their relatively high economic value, the causes of IWT include suboptimal law enforcement, weak regulations, misperceptions about animal welfare, the use of animals as a means of prestige and lifestyle, and a lack of knowledge about animal ecology. Lack of knowledge about animal ecology. In addition to these reasons, there are also other factors that trigger the shipment of animals abroad in Indonesia. Some of the motivations for illegal wildlife trade include wildlife as food, animals as talismans, animals as souvenirs or ornaments, animals as entertainment, animals as medicinal ingredients, human-animal conflicts, and forests being converted into plantations.⁹

Therefore, restricting wildlife trade is one way to protect them from extinction. Although there are already regulations on the trade of protected wildlife, many people are not able to distinguish between those that are protected and those that are not. This human attitude can jeopardize endangered wildlife, as there are those who want to own the animals without caring about their numbers in the wild.¹⁰

Until now, there are still many cases of protected wildlife trade. In addition, there is also smuggling through waters that are often used by smugglers, coupled with the existence of illegal ports and lack of supervision from authorities at sea. This makes it difficult for BKSDA (Natural Resources Conservation Center) to handle these cases. Many obstacles make it difficult to prosecute wildlife trade criminals.

⁸ Rahmatun Nisa, "Perlindungan Hukum Satwa Liar Dilindungi Di Aceh Dari Perburuan Dan Perdagangan Ilegal (Penelitian Di Balai Konservasi Sumber Daya Alam Aceh)," *Perlindungan Hukum Satwa Liar Dilindungi Di Aceh Dari Perburuan Dan Perdagangan Ilegal (Penelitian Di Balai Konservasi Sumber Daya Alam Aceh)*, no. 27 (2024): 11.

⁹ reNaya O KareN Sasialang, "PeNyidikan TeRhadaP Satwa Yang Dilindungi SeSuai DeNgan KonseRvasi SumberR Daya Alam Hayati Dan EKosisteMnya," *LeX Administratum* 11, no. 5 (2023).

¹⁰ Rizki Zakariya, "Penguatan Kerja Sama Lintas Negara Dalam Penegakan Hukum Perdagangan Satwa Liar," *Jurnal Hukum Lex Generalis* 2, no. 11 (2021): 1045.

There is also a sea route between Lampung and Jakarta, namely Rawa Bening - Bekasi and Tanjung Priuk, which is one of the main routes for the domestic ivory trade. The International Union for Conservation of Nature (IUCN) states that Sumatran Elephants and Borneo Elephants are endangered species. Although CITES Appendix I prohibits trade in elephants, poaching and ivory trade still threaten their populations. In this case, the Rawa Bening - Bekasi and Tanjung Priuk sea routes are one of the smuggling routes for ivory.¹¹

Some of the factors that become obstacles and constraints in dealing with protected wildlife based on the Law on Conservation of Natural Resources and Ecosystems No. 5 of 1990 are as follows:

a) Legal Factors

Although there is already a Law No. 5 of 1990 on the Conservation of Living Natural Resources and Ecosystems, the sanctions are relatively light as stated in Article 40 paragraph (2) with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,- (one hundred million rupiah). The fines are not proportional to the profits obtained from the ivory trade, so it does not have a deterrent effect on the perpetrators.

b) Law enforcement factors

Coordination is a way of working to improve good relationships to facilitate the implementation of work, maintain mutual trust, mutual support and respect in every activity carried out, this condition will be created if each party can work well and feel mutual need. Law enforcers still lack knowledge and understanding of the impacts of wildlife trade and the lack of coordination between the police, BKSDA (Natural Resources Conservation Agency) and the community, which also causes obstacles in enforcement efforts.¹²

c) Facilities

Law enforcement against illegal elephant ivory trade is often hampered due to limited facilities such as adequate equipment, unmet finances and lack of educated human beings without these factors law enforcement will not run smoothly, To crack down or deal with cases of protected wildlife poaching requires enormous financial support, because not only is the area very large but also the locations are scattered in various places.

d) Difficulty tracking suspects

The main problem with wildlife poaching and conservation efforts is the difficulty of finding and arresting the perpetrators and the people involved. The poaching chain consists of three parts: poachers, traders and buyers. If the activity is illegal, the chain can become even longer and more complicated. Because these networks are so secretive, only poachers and middlemen are often caught, while the main masterminds often get away. The biggest challenge is the difficulty of proving their involvement. Although wildlife

¹¹ Dinda Hafidzah, Antonius Reiyhand Nathaniel Matahelumual, and Elsa Aprina, "Upaya Pemerintah Terhadap Penanggulangan Kejahatan Penyelundupan Satwa Liar Dilindungi Melalui Jalur Wilayah Perairan Indonesia," *Lex Renaissance* 7, no. 4 (2022): 858–59.

¹² Wildanu S Guntur and Sabar Slamet, "Kajian Kriminologi Perdagangan Ilegal Satwa Liar," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 8, no. 2 (2019): 182.

protection regulations are in place, law enforcement has not been fully effective, hampering prosecutions.

e) Community factors

The lack of public knowledge and awareness of protected animals and the impacts caused, so that many people do not understand the importance of law and law enforcement systems that make people lack a sense of responsibility to comply with the law.¹³ Conflicts between marine and terrestrial laws have resulted in overlapping mandates and unclear responsibilities. For example, Government Regulation No. 7/1999 on the Preservation of Plant and Animal Species regulates protected wildlife, which clearly prohibits the utilization of protected wildlife in any form, while Law No. 5/1990 on the Conservation of Natural Resources and Ecosystems regulates legal sanctions for perpetrators of illegal trade in protected wildlife. This makes it difficult to apprehend and prosecute perpetrators of illegal wildlife trade, whether endemic (native to Indonesia) or non-endemic (from outside Indonesia).¹⁴

4. Conclusion

The illegal ivory trade in Indonesia is a serious problem that threatens the sustainability of elephant populations and the ecosystem as a whole. Although the Indonesian government has enacted several regulations to protect wildlife, including Law No. 5 of 1990 on the Conservation of Living Natural Resources and their Ecosystems. Law enforcement efforts to eradicate wildlife trade have not been maximized and wildlife trade continues to occur. This is evidenced by the rampant wildlife trade. This violation is caused by various factors, such as large profits, weak law enforcement, elephant and human conflicts that are exploited by criminals, high demand for ivory, and lack of public understanding and knowledge about the illegal ivory trade. There are still many challenges faced in the field of law enforcement, to tackle the illegal ivory trade in Indonesia requires a comprehensive approach that includes stricter and harsher legal penalties that provide a deterrent effect on perpetrators, strengthening law enforcement capacity, improving inter-agency coordination, and increasing public awareness.

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¹³ Said Abdullah, "Penegakan Hukum Terhadap Pelaku Tindak Pidana Perburuan Dan Perdagangan Satwa Liar Yang Dilindungi Di Wilayah Balai Konservasi Sumber Daya Alam Jambi (Analisis Kasus No. 644/Pid. Sus/Pn. Jmb)," *Legalitas: Jurnal Hukum* 8, no. 2 (2016): 9–10.

¹⁴ Lathifah Hanim, Munsharif Abdul Chalim, and Jawade Hafidz, "Pelaksanaan Perlindungan Satwa Liar Yang Dilindungi Menurut Hukum Indonesia Dan Hukum Internasional," in *Prosiding Seminar Nasional Penelitian Dan Pengabdian Kepada Masyarakat*, vol. 1, 2020.

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