

Environmental Civil Liability Towards Protected Wildlife Traders in North Sumatera

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ARTICLE INFO

Keywords: Wildlife Traders, Environmental Civil Liability, North Sumatera

Received : 29, March

Revised : 12, April

Accepted : 29, April

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ABSTRACT

According to Article 1 number 5 of Law Number 32 of 2009 concerning Environmental Protection and Management, an ecosystem is a system of environmental elements that is a complete and mutually influencing unity in forming environmental balance, stability, and productivity. In an ecosystem, not only humans have a role, but there are also other living things such as animals and plants. Wildlife and its ecosystem have a chain of life that influences each other, depends on each other in forming a web of life (caring capacity). Likewise, between animals, plants, humans, the earth, and all its contents and the environment have a reciprocal relationship with each other, so that the extinction of wildlife can result in disruption of the ecosystem. The existence of animals and plants is very important so that attention is needed so that they continue to exist. The goal is that their role in maintaining the balance and stability of the environment continues to run well. Legal liability for wildlife that causes harm to other pets is an unlawful act, where as stated in Article 1368 of the Civil Code that an animal owner, or anyone who uses it, as long as the animal is used is responsible for losses caused by the trade in wildlife. The liability arising in this case is not a contractual liability because the legal consequences do not arise from an agreement, but rather the responsibility for an unlawful act..

INTRODUCTION

Indonesia is one of the countries that has been blessed by God Almighty with very diverse wealth and has abundant natural resources, both on land, in the waters and in the air, which are the basic capital for Indonesia in carrying out national development in all fields. These natural resources consist of plant and animal natural resources which together with the non-living elements around them form an ecosystem.

Wildlife trafficking crimes have a fairly large turnover. This condition makes many people switch professions to hunting wildlife. The hunter game is very controlled so that the relationship between local and international hunters is very well established. This starts from the process of money transactions, shipping goods, and the target of the hunted animals. The most hunted animals in the Sumatran forest area, especially in Aceh, are Sumatran elephants, Sumatran tigers, Sumatran rhinoceroses, bears, hornbills, pangolins, magpie robins, and orangutans.

Referring to mongabya.co.id which cites data from WWF Indonesia in 2015, it states that there is data that 8 tons of elephant ivory, 100 orangutan individuals, 2000 slow lorises, 2000 terengiling and 1,000,000 turtle eggs have been hunted and traded illegally over the past 10 years. In 2017 alone, there were 2500 advertisements on Facebook, 2207 advertisements on Instagram, and 195 advertisements on e-commerce selling wild animals, both alive and preserved. There are many parties involved in the illegal wildlife trade network, ranging from hunters, collectors (middlemen), individuals involved in the distribution process of animals, manufacturing (for products from animal body parts), marketing, to exports and retail businesses. Unconsciously, some of our own people also participate in legalizing this activity.

According to Article 1 number 5 of Law Number 32 of 2009 concerning Environmental Protection and Management, an ecosystem is a system of environmental elements that is a complete and mutually influencing unity in forming environmental balance, stability, and productivity. In an ecosystem, not only humans have a role, but there are also other living things such as animals and plants. Wildlife and its ecosystem have a chain of life that influences each other, depends on each other in forming a web of life (caring capacity). Likewise, between animals, plants, humans, the earth, and all its contents and the environment have a reciprocal relationship with each other, so that the extinction of wildlife can result in disruption of the ecosystem. The existence of animals and plants is very important so that attention is needed so that they continue to exist. The goal is that their role in maintaining the balance and stability of the environment continues to run well.

Indonesia is known as one of the countries with the highest ecosystem diversity in the world. Wildlife is part of the biological diversity that is very important to protect the interests of the current generation and future generations. One of the natural resources in Indonesia that has uniqueness can be seen in the various animals that exist, where each animal has its own uniqueness. In Indonesia itself, at least there are flora and fauna that are

protected by law based on various laws and regulations since before Indonesia's independence until 1999.

Trade in protected wild plants and animals has been regulated in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is the only global agreement that focuses on the protection of wild plants and animals, with the aim of ensuring that international trade in wild animal and plant specimens does not threaten their survival. This international agreement between countries, which was drafted based on a resolution of the International Union for Conservation of Nature (IUCN) member meeting in 1963, is a framework that can be used as a reference by countries in implementing it at the national level.

Who can sue in cases related to wildlife trade is based on civil lawsuits allowing environmental organizations, community groups and individuals to sue and hold perpetrators legally accountable. Anyone who has an interest in the environment and/or interests related to personal losses caused by wildlife trade can file a lawsuit in the form of non-governmental organizations, the Ministry of Environment and Forestry (KLHK), local governments, individuals and/or community groups.

Several cases of civil compensation against wildlife traders protected by the state in the Meulaboh District Court Decision No. 12/Pdt.G/2012/PN.Mbo, Banda Aceh High Court Decision No. 50/PDT/2014/PT.BNA, Supreme Court Decision No. 651 K/PDT/2015 (cassation) and No. 1 PK/PDT/2017 (judicial review) where they have been won by requesting compensation based on the costs required to carry out restoration. For example, in the case of Kallista Alam which carried out forest burning. The Meulaboh District Court granted the government's lawsuit by sentencing the defendant, namely PT Kallista Alam to pay material compensation in cash through the state treasury account of Rp114.31 billion and sentencing the defendant to carry out environmental restoration measures on the burned land area of 1000 ha at a cost of Rp251.76 billion. This decision was upheld by the appellate, cassation, and judicial review courts and has now had permanent legal force. The calculation of losses used in this case refers to the Minister of Environment Regulation No. 13/2011 which has now been revoked and amended through the Minister of Environment Regulation No. 7 of 2014 concerning Environmental Losses Due to Pollution and/or Environmental Damage ("Minister of Environment Regulation No. 7/2014").

The key to the example of the court decision above is the existence of an order to carry out restoration actions along with details of the costs required. If the defendant is unwilling or unable to carry out restoration, then it is sufficient to pay the restoration costs to the state, and the state through its apparatus (such as the Ministry of Environment, Peat Restoration Agency, etc.) will carry out the restoration. Regardless of who will carry out the restoration, whether the perpetrator who has caused the loss, or the government which then files a lawsuit to request compensation for the costs incurred to carry out restoration, civil law enforcement instruments can provide hope for achieving restoration responsibility. There is a high opportunity in civil litigation to demand

restoration accountability for perpetrators who harm conservation areas and natural biological resources and their ecosystems, both in small scopes such as genetic resources, plants, and wildlife, to large scopes such as corporations that cause damage on a large scale.

THEORETICAL REVIEW

One of the substances in a proposal or research report, thesis or dissertation, is the existence of a theoretical framework. In essence, theory studies a phenomenon or is a process or product of activity, or is a system. So that legal theory focuses on legal problems by using other disciplines.

The theoretical framework is used in analyzing the problems that are the focus of the study, whether the research results are in accordance with the theory used or not and/or will change and improve the theory used or applied. The theoretical framework becomes a guideline for the direction of research objectives, the theoretical framework will also help in selecting the concepts needed to form a hypothesis for a written work intended to make predictions or predictions based on findings and present explanations in this case to answer questions.

Legal theory is a theory in the field of law that functions to provide convincing arguments that the things explained are scientific, or at least provide an illustration that the things explained meet theoretical standards. Legal theory is also a whole statement that is interrelated with the conceptual system of legal rules of legal decisions, and the system is partly positive. Legal theory in research is useful as an analytical tool for discussing legal events or facts that are submitted in research problems.

Jan Gisjsels and Mark Van Hoecke explain the usefulness of legal theory:

- a. Theoretical use is as a tool for analysis by reviewing research developed by experts in conducting legal research.
- b. Practical use is as a tool or instrument in studying and analyzing phenomena that arise and develop in society, nation and state.

METHODOLOGY

Method is a way of working or a work procedure to be able to understand the object that is the target of the relevant science. The research method contains a description of the method or way used to obtain data or information. This research method functions as a guideline and basis for procedures in conducting research operations to write a scientific work that researchers do.

The research method used in the study can be explained as follows:

1. Type and Nature of Research

This type of research is normative legal research. Normative legal research is a library legal research. Normative legal research is also a legal research method that is carried out by researching based on literature that uses materials from legal literature, applicable laws and regulations, documents and other media to obtain data or theories related to the product of the research problem.

This research is descriptive analytical, which reveals laws and regulations related to legal theories that are the object of research. Descriptive analytical is a method used to describe a condition or situation that is currently happening or ongoing which aims to provide data as accurately as possible regarding the object of research so that it is able to explore things that are ideal, then analyzed based on legal theory or applicable laws and regulations.

RESULTS AND DISCUSSION

In the case of losses to biodiversity caused by unlawful acts such as wildlife trade or illegal logging, the principle applied is usually liability based on fault. Liability Based on Fault is regulated in Article 1365 of the Civil Code, which determines the elements that must be proven to request liability. Article 1365 of the Civil Code can actually also be used together with Law No. 5 of 1990 concerning Conservation of Biodiversity and its Ecosystem to sue for environmental losses in cases involving protected animals, although this has never been done before. In addition, Article 87 of Law No. 32 of 2009 concerning Protection and Management of the Environment (Law 32/2009) which is also often used to sue for environmental losses explains that unlawful acts in environmental cases must be in the form of pollution and/or environmental damage, where in Law 32/2009 this pollution and/or environmental damage is determined based on exceeding environmental quality standards or environmental damage criteria.

The existing civil law instruments actually provide an opportunity to encourage recovery as part of the accountability in cases of illegal trade in wild plants and animals (Law No. 32/2009 or Article 1365 of the Civil Code in conjunction with Law No. 5/1990). Based on the provisions of Article 36 paragraph (1) of Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems (abbreviated as KSDAHE) that the Utilization of wild plant and animal species can be carried out in the form of (1) studies, research and development (2) breeding (3) hunting (4) trade (5) demonstration (6) exchange (7) cultivation of medicinal plants and (8) maintenance for pleasure. Explanation of paragraph (1) In the utilization of wild plant and animal species, it must be done while maintaining the balance of the population with its habitat.

In Indonesia itself, although there are legal regulations in the KSDAHE Law, which expressly prohibit and provide punishment for perpetrators of illegal trade in protected wildlife, as contained in the provisions of Article 21 paragraph (2) and the threat of criminal law in Article 40 paragraph (2) of the KSDAHE Law, namely:

“Anyone who intentionally captures, injures, kills, keeps, owns, cares for, transports and trades protected animals alive, keeps, owns, cares for, transports and trades protected animals dead, removes protected animals from one place in Indonesia to another place inside or outside Indonesia, trading, storing or possessing the skin, body or other parts of protected animals or goods made from these animal parts or removing them from a place in Indonesia to anywhere else inside or outside Indonesia, taking, damaging, destroying, trading in, keeping or

possessing eggs and/or nests of protected animals, is subject to a criminal penalty with a maximum imprisonment of five years and a maximum fine of one hundred million rupiah."

The occurrence of illegal buying and selling or trading practices against wild animals protected by the government, such as being captured, killed, kept, bred and even traded freely and illegally.

Nowadays, wildlife hunting is not entirely for consumption but to take body parts for crafts, medicines and cosmetics. Wildlife trade has a very large profit potential, especially rare animals, the rarer the animal, the more expensive the price. The price can be higher if the animal can be sold, herbal medicines, cosmetics, zoo pets and personal pets. In Southeast Asia and East Asia, the selling price is higher because of the need for meat and other things on the animal because the people of southern China, more than 100 million people, have been able to buy exotic foods. Vietnam, this country does this illegal business reaching 66.5 million dollars per year to be exported to China.

The high illegal circulation of protected wildlife is because sellers or entrepreneurs only see the economic benefits of the traded animals but pay little attention to the sustainability of the animals. In fact, continuous exploitation without regard to sustainability can threaten the survival of these animals in nature and can result in extinction.

Illegal wildlife trade is known as one of the largest forms of transnational crime in the world after drug trafficking, arms and human trafficking, and involves organized and well-funded criminal networks. The scale of the crime is increasing by 5-7% every year, unfortunately currently the punishment applied is still not comparable to the losses imposed on the environment (low-risks, high-reward crime). The high demand for endangered animals, namely for their body parts both domestically and abroad to be used as pets, medicine, ornaments, traditional medicines, which triggers the continued illegal hunting and trade of protected wildlife.

Wildlife crimes, especially illegal trade in protected animals in Indonesia, are in second place after drug crimes. International Animal Rescue (IAR) noted that more than 80 percent of animals traded online or through bird markets are caught in the wild, which greatly triggers the phenomenon of forests without animals. Even the Ministry of Environment and Forestry stated that the value of state losses due to illegal wildlife trade is estimated to reach 13 trillion per year. The many problems that exist with wildlife due to their existence being threatened with extinction are what show that the issue of illegal trade in protected wildlife in Indonesia is an environmental issue that requires attention from various parties and circles.

Various factors that influence the increasing trade in protected wildlife are very diverse, economic factors and weak law enforcement, and driven by high market demand. Perpetrators of protected wildlife trade are usually charged using Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems. This still does not have a deterrent effect on the perpetrators. Even today, this buying and selling practice is increasing. Not only in the national sector, buying and selling has been carried out between countries and using a

buying and selling system on social media. The wildlife trade business has increasingly large gaps because there are so many hobby communities of animal keepers. This shows that the trade in protected wildlife is a criminal activity that has a large profit value because of the increasing demand from buyers.

Law enforcers in protected wildlife trade practices tend to still use Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems which only lists maximum criminal sanctions without minimum sanctions. Law enforcers are one of the factors that determine the achievement of criminal law enforcement for the conservation of natural resources in terms of professionalism in enforcing the law.

In most countries, legal measures to address illegal acts that endanger endangered species have almost exclusively focused on criminal and administrative legal approaches. These typically take the form of fines and imprisonment, which can be used as punishment and as a deterrent. However, these instruments do not usually address the harm that has already been done. This shortcoming is important because, as discussed in this guide, crimes such as illegal wildlife trade can have significant impacts, including on species survival, economies, government budgets, and socio-cultural issues.

The variety and complexity of potential losses due to crimes against plants and wildlife should be enough to ensnare the perpetrators of the crime with liability for recovery based on the precautionary principle, especially for losses that have definitely occurred. The importance of Compensation in the concept of civil law is due to the existence of unlawful acts. Every unlawful act (PMH), which therefore causes losses to others, requires the person whose fault caused the loss to compensate for the loss.

Civil lawsuits can provide a broad range of remedies for environmental damage. Civil lawsuits in many countries are possible under general civil codes or under specific environmental laws. Civil lawsuits for environmental damage are based on the premise that when a party damages the environment they can be held accountable for the damage they cause. This can be seen as part of an effort to make the public whole, which can include admission of guilt, restoration, reintroduction of species, and financial compensation. As such, this instrument is an important complement to existing efforts under criminal and administrative law.

Even though there are already regulations regarding the trade in protected wildlife, the public cannot distinguish between protected and unprotected animals. This human behavior can be a threat to the extinction of rare animals, because there are certain people who want to own them but do not care about their population in their original habitat. The extinction of these rare animals can be prevented by establishing legal protection for protected rare animals. Rare animals may not be killed, owned, captured, hunted or traded, this is to maintain the sustainability of these animals from extinction. Based on the descriptions above, although the regulations and threats related to the trade in protected animals have been in effect for two decades, it seems meaningless. Some people ignore this prohibition for various reasons such as simply having a hobby of keeping them, or for economic interests. Incidents like this often occur due to a

lack of understanding from the public about the importance of ecosystem balance by maintaining rare flora and fauna, related to the many similar cases that need to be studied from a legal aspect, the author is interested in further researching Civil Compensation for Perpetrators of Illegal Trade in Wildlife Protected by the State Which is Carried Out Without Rights and Without Permits.

CONCLUSION

Legal liability for wildlife that causes harm to other pets is an unlawful act, where as stated in Article 1368 of the Civil Code that an animal owner, or anyone who uses it, as long as the animal is used is responsible for losses caused by the trade in wildlife. The liability arising in this case is not a contractual liability because the legal consequences do not arise from an agreement, but rather the responsibility for an unlawful act.

RECOMMENDATION

Here are some recommendations for wildlife trade protection:

International Regulations

1. CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora): CITES is an international agreement that aims to regulate the trade in endangered wildlife.
2. IUCN (International Union for Conservation of Nature): IUCN is an international organization that works to conserve biodiversity and promote the sustainable use of natural resources.

Protection Strategy

1. Trade Control: Strict wildlife trade control to prevent illegal trade and ensure that legal wildlife trade is carried out in a sustainable manner.
2. Public Education and Awareness: Public education and awareness about the importance of protecting wildlife and their ecosystems.
3. International Cooperation: International cooperation to address illegal wildlife trade and ensure that international regulations on wildlife trade are effectively implemented.

Good Practices

1. Certification and Labeling: Certification and labeling of sustainable and ethical wildlife products to ensure that they do not come from illegal or unsustainable sources.
2. Ecotourism Development: Sustainable ecotourism development to promote awareness and appreciation of wildlife and its ecosystems.
3. Local Community Development: Development of local communities to ensure that they benefit from sustainable and ethical wildlife trade.
4. As such, wildlife trade protection requires international cooperation, public education and awareness, and good practices in wildlife trade.

FURTHER STUDY

Every research is subject to limitations; thus, you can explain them here and briefly provide suggestions to further investigations exp:

1. Illegal Trade: Illegal wildlife trade is still rampant and difficult to overcome.
2. Lack of Resources: Lack of resources and capacity to implement wildlife protection regulations and strategies.
3. Conflict of Interest: Conflict of interest between economic needs and wildlife conservation needs.

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