



Criminal Liability Against Persons Capturing Protected Wildlife

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ABSTRAK

Maraknya perilaku masyarakat yang bermula dengan kecintaannya terhadap satwa dan ingin memilikinya namun tak jarang hanya sekedar untuk meng koleksi dan melihat dari sisi keindahannya saja. Dilain sisi jika dilihat dari segi ekonomisnya, seorang pedagang satwa liar yang dilindungi tersebut rela melakukan segala cara seperti melakukan perburuan liar yang selanjutnya sebagian besar akan diperjual belikan dengan kondisi satwa yang masih hidup. Tujuan dilakukannya penelitian ini, untuk mengetahui pertanggungjawaban pidana terhadap pelaku penangkapan satwa liar yang dilindungi. Jenis penelitian ini menggunakan penelitian *yuridis empiris* Menggunakan sumber data primer dan data sekunder yang diperoleh dari bahan hukum primer, sekunder dan tersier. Cara analisis data diolah dalam bentuk analisis deskriptif kualitatif. Hasil penelitian penulisan skripsi ini menjelaskan bahwa, pertanggungjawaban pidana terhadap pelaku penangkapan satwa liar yang dilindungi, belum pernah ada penangkapan terhadap pelaku pemburuan atau penangkapan satwa lindung diwilayah Kabupaten Aceh Tengah, karena masih adanya rasa kasihan dan pertimbangan kemanusiaan, sehingga pelaku tidak ditangkap dan dilakukan proses hukum, mereka hanya menanda tangani surat pernyataan diatas materai untuk tidak akan lagi melakukan perburuan di kawasan Balai Konservasi Sumber Daya Alam.

Kata Kunci: Pertanggungjawaban; pidana; satwa; dilindungi.

ABSTRACT

The rise in people's behavior begins with their love for animals and wanting to own them, but often just to collect them and see their beauty. On the other hand, if we look at it from an economic perspective, a trader of protected wild animals is willing to do anything, such as carrying out illegal hunting, most of which will then be bought and sold while the animals are still alive. The aim of this research is to determine the criminal liability of perpetrators of catching protected wild animals. This type of research uses empirical juridical research using primary data sources and secondary data obtained from primary, secondary and tertiary legal materials. The way the data is analyzed is processed in the form of qualitative descriptive analysis. The results of this thesis writing research explain that, criminal accountability for perpetrators of catching protected wild animals, there has never been an arrest of perpetrators of poaching or catching protected wild animals in the Central Aceh Regency area, because there is still a feeling of pity and humanitarian considerations, so that the perpetrators are not arrested and the process is carried out By law, they only sign a statement on a stamp to no longer carry out hunting in the Natural Resources Conservation Center area.

Keywords: Accountability; criminal; animals; protected.



I. Introduction

Article 33 paragraph (3) of the 1945 Constitution states that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Indonesia is a country that is rich in culture, natural charm and of course its biodiversity consisting of flora and fauna, which can be seen from the various types of plants and animals that exist throughout Indonesia, becoming a characteristic and icon of a region (Herliyanto, 2019). As a country with a high level of biodiversity, Indonesia is known as Mega Biodiversity Country. The high level of biodiversity is shown by the large percentage of flora and fauna species that live in Indonesia compared to the total number of species in the world. Therefore, it needs to be managed and utilized in a sustainable, harmonious, harmonious and balanced manner for the welfare of the Indonesian people in particular and humanity in general, both now and in the future.

Provisions regarding protected animals are regulated in Article 20 of Law Number 5 of 1990 concerning Conservation of Living Natural Resources and Ecosystems, animals that are classified as protected species are divided into animals in danger of extinction and animals whose populations are rare. Furthermore, the types of protected animals are emphasized in the Attachment to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.20/Menlhk/Setjen/Kum.1/6/2018 concerning Types of Protected Plants and Animals. Specifically in Aceh, protected animal types are regulated in Article 6 of Aceh Qanun Number 11 of 2019 concerning Wild Animal Management.

The rise in people's behavior begins with their love for animals and wanting to own them, but often just to collect them and see their beauty. On the other hand, if we look at it from an economic perspective, a trader of protected wild animals is willing to do anything, such as carrying out illegal hunting, which then will mostly be sold while the animals are still alive, even



if the animals appear to have high economic value, the seller has the heart to just take them. part of the animal's body parts (Herliyanto, 2019).

This is not permitted by law, as explained in Article 21 paragraph (2) of Law Number 5 of 1990 concerning Conservation of Living Natural Resources and Their Ecosystems, which states that, every person is prohibited from:

- a) Take, injure, kill, store, own, care for, transport and trade protected wild animals alive;
- b) Storing, maintaining, transporting and trading in dead protected animals;
- c) Removing protected animals from one place in Indonesia to another place either inside or outside Indonesia.
- d) Trading, storing or possessing skin, body or other parts of protected animals or goods made from these parts or removing them from one place in Indonesia to another place inside or outside Indonesia
- e) Taking, damaging, destroying, trading, storing or possessing eggs and/or nests of protected animals.

Even though it has been emphasized that the prohibition on catching protected animals as intended in Article 21 paragraph (2) of Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems has been confirmed above, in reality there are animals protected by the government that are caught, killed, kept, bred. , and even bought and sold. As is the case in Central Aceh Regency, there are still widespread arrests of protected animals being caught and traded.

This is one of the criminal acts whose perpetrators can be subject to criminal penalties in accordance with Article 40 Paragraph (2) of Law Number 5 of 1990 concerning Conservation of Living Natural Resources and their Ecosystems, which states "Anyone who intentionally violates the provisions as intended in Article 21 paragraph (1) is punishable by a



maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Based on the description above, the problems that will be researched and discussed in this research can be formulated as follows:

1. What is the criminal liability for perpetrators of catching protected wild animals?
2. What are the obstacles faced by investigators from the Central Aceh District Police in determining suspects for protected wild animals?

II. Methode

This type of research is normative juridical research, namely the methods or procedures used to solve research problems by examining library data (secondary data). The data sources used in this research are secondary data sourced from primary materials, secondary legal materials, tertiary materials. Data collection was carried out by means of interviews and document study. The method of analyzing the data that has been collected is processed in the form of qualitative analysis, namely describing the data in a quality manner in the form of sentences that are orderly, coherent, logical, non-overlapping and effective, making it easier to interpret the data and understand the results of the analysis. After the data is analyzed one by one, it is then arranged systematically so that it can answer the problems that arise in writing this thesis.

III. Discussion and Analysis

Criminal Responsibility for Perpetrators of Capturing Protected Wild Animals

Biodiversity, both flora and fauna, is a natural wealth that Indonesia has whose existence is very special, because several species of flora and fauna in this country are endemic or in other words can only be found in Indonesia on a world scale. Therefore, there is a need for good management



and regulation so that diversity can be well maintained and of course provide great benefits for the country and society in general. It is common knowledge and it is not surprising if you see the news in the mass media, internet media or can be seen directly in the surrounding environment where the existence of protected and unprotected animals is very worrying, the rampant illegal logging, hunting and illegal land use. uncontrolled, which causes damage to the ecosystem and habitat of these animals.

One of the reasons why animal hunting is rampant is because of the culture that grows and develops in society, where our people generally enjoy or even have a hobby of keeping pets, and sometimes these animals are protected for their existence in the wild. Therefore, trade in protected animals is rampant, which leads to criminal acts of illegal possession of protected animals.

Irresponsible actions that can cause damage to natural reserve areas and nature conservation areas, as well as actions that violate provisions regarding the protection of protected plants and animals, are threatened with serious penalties in the form of corporal punishment and fines. This serious punishment is deemed necessary because damage or extinction of one of the elements of biological natural resources and its ecosystem will result in huge losses for society that cannot be measured in material terms, while its restoration to its original state will no longer be possible (Abdullah, 2016).

The criminal act of catching protected animals is stated in Article 21 paragraph (2) letters a, b, d and e of Law Number 5 of 1990 concerning Conservation of Living Natural Resources and Their Ecosystems, stating that every person is prohibited from:

- 1) Capture, injure, kill, store, own, care for, transport and trade protected animals alive;
- 2) Storing, possessing, maintaining, transporting and trading protected animals in dead condition;



- 3) Removing protected animals from one place in Indonesia to another place inside or outside Indonesia;
- 4) Trading, storing or possessing the skin, body or other parts of protected animals or goods made from these animal parts or removing them from one place in Indonesia to another place inside or outside Indonesia;
- 5) Taking, damaging, destroying, trading, storing or possessing eggs and/or nests of protected animals.

When referring to these elements, the criminal act of ownership of protected animals in question is very broad, and does not only mean literally, namely in terms of storing, owning and maintaining protected animals in a living condition as stated in Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems Article 21 paragraph (2) letter a, but more than that which is also stated in letters b, d and e, namely storing, owning and caring for protected animals in a dead state or only skin, body and parts. How.

Apart from that, storing or possessing eggs and/or nests of protected animals is also part of the criminal act of ownership of protected animals, all of which have strict and clear sanctions for violators as stated in article 40 paragraph (2), namely by threat a maximum prison sentence of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

According to Saidi, in terms of enforcing conservation laws, especially in terms of capturing and owning protected animals, it sometimes clashes with the culture that lives, grows and develops in society. The habit of people who like to keep animals has an impact on hunting of animals which sometimes goes too far which has an impact on animal populations in the wild, including hunting of animals which are classified as protected. The rarer the animal, the higher its economic value and the more people want to own it.

The application of punishment in criminal accountability aims to prevent the commission of criminal acts by enforcing legal norms for the sake



of protecting society, resolving conflicts, restoring balance, bringing a sense of peace in society, socializing convicts by providing guidance so that they become better people or human beings. In criminal law, the principle of "nullum delictum nulla poena sine pravia legea" or what is often called the principle of legality is contained, this principle is the main unwritten basis for imposing a crime on a person who has committed a criminal act "not punished if there is no mistake". This basis is about holding someone accountable for the actions they have committed.

This means that someone can only be held accountable if that person makes a mistake or commits an act that violates statutory regulations. This principle of legality implies that no action is prohibited or punishable if this has not been previously stated in a statutory regulation. Amran Mukhtar stated that the police themselves are still trying to tackle the criminal act of catching protected wild animals, if there is a report or is caught red-handed by the police then action will be taken immediately, but up to now there are no reports of arrests or trade in protected animals. caught.

Saidi, as the Head of Enforcement for the Center for Natural Resources Conservation in Central Aceh Regency, said that up to now there have been no arrests of the perpetrators of the capture of protected animals in the Central Aceh Regency area, because there is still a feeling of pity and humanitarian considerations and this is their first time hunting in the area. Natural Resources Conservation Center so that they are not arrested and subject to legal proceedings, they only sign a statement on a stamp to no longer hunt in the Natural Resources Conservation Center area, evidence in the form of birds is confiscated and immediately released back into the wild in the Hall area. Natural Resources Conservation.

From this interview it can be concluded that there is no seriousness on the part of the Police and the Natural Resources Conservation Center (BKSDA) in tackling criminal acts of trade in protected wild animals,



because the police or the Natural Resources Conservation Agency (BKSDA) do not carry out raids as they should, in The meaning of law enforcement against perpetrators of protected animal trafficking is still far from expectations. The police and BKSDA have never taken repressive action against perpetrators of catching protected wild animals because the police and BKSDA have never arrested the perpetrators. Therefore, it is very worrying to see the facts that occur in the field regarding violations of ownership of protected animals, considering that this country is truly rich in biodiversity if violations continue to occur without any firm and real action that provides a deterrent effect for perpetrators and potential perpetrators. what is the fate of protected animals whose populations have dwindled.

Obstacles for Central Aceh District Police Investigators in Determining Protected Wildlife Suspects

Law enforcement is a form of relationship between law and society, where the law works and influences people's social behavior. In law enforcement, known as the law enforcement system or criminal law enforcement, as part of criminal policy or crime prevention efforts, two means are needed, namely penal and non-penal means. Law enforcement in its implementation is not an independent matter but is related to various aspects. According to Laurence M. Friedman's concept, there are three elements of a legal system, namely legal structure, legal substance, and legal culture. Talking about the legal structure or agencies that determine law enforcement such as the police, prosecutor's office and courts (Sunarso, 2005). Law enforcement in its implementation is not an independent matter but is related to various aspects. According to Laurence M. Friedman's concept, there are three elements of a legal system, namely legal structure, legal substance, and legal culture. Talking about the legal structure or agencies that determine law enforcement such as the police, prosecutor's office and courts.



The essential problem in law enforcement in Indonesia is not only due to unresponsive legal products, but also comes from law enforcement officers. To lay the foundation for law enforcement, the main pillar is law enforcers who are able to carry out their duties with integrity and dedication. Because as long as the dirty broom is not cleaned, any talk of justice will be empty (Ali, 2001).

The investigation process is one of the law enforcement processes in Indonesia. This law enforcement is carried out so that there is legal order. This law enforcement process is influenced by five factors. These factors have a neutral meaning, so their positive or negative impact lies in the content of these factors. Factors that influence law enforcement are: a). The legal factors themselves; b). Law enforcement factors; c). Facilities or facilities factors that support law enforcement; d). Community factors; e). Cultural factors. These five factors are the essence of law enforcement and also benchmarks for the effectiveness of law enforcement (Soekanto, 2007).

The obstacles experienced by investigators in investigating criminal acts of catching protected wild animals are:

- 1) There is no competent investigation in the field of specific crimes

Investigation in the Indonesian criminal justice system is defined as a series of investigative actions in terms and according to the methods regulated in this law to search for and collect evidence that will shed light on the criminal act that occurred and in order to find the suspect. In Article 6 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) it is stated that investigators are officials of the state police of the Republic of Indonesia and certain civil servant officials (PPNS) who are given special authority by law.

The quality of investigators at the Central Aceh District Police is inadequate, meaning that there are no investigative personnel or police



officers who have Human Resources (HR) or investigators who are competent in handling oil, gas and natural gas crime cases.

The inadequate quantity and quality of investigative personnel in certain crime units could be an inhibiting factor in the investigation process into cases of illegal capture or poaching of protected wild animals in Central Aceh Regency.

- 2) There has been no handling of criminal acts in the conservation of biological natural resources and their ecosystems

Article 39 paragraph (1) of Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems, confirms that apart from "In addition to the Investigating Officers of the Indonesian National Police, there are also certain Civil Servant Officials within the department whose scope of duties and responsibilities includes fostering conservation of biological natural resources and their ecosystems, given special authority as an investigator as intended in Law Number 8 of 1981 concerning Criminal Procedure Law, to carry out investigations of criminal acts in the field of conservation of biological natural resources and their ecosystems."

The law confirms that apart from police investigators, Civil Servant Investigators (PPNS) of the Natural Resources Conservation Center are authorized to prevent and eradicate perpetrators who violate the law on the conservation of biological natural resources and their ecosystems.

An explanation from Amran Muktar as Head of the Central Aceh Regency Police Tipiter Unit, was that the obstacle was the lack of integrated handling so that cases of catching and poaching of protected animals in Central Aceh Regency could be handled more optimally. Currently, the handling is still independent, between the Natural



Resources Conservation Center and the Police, they are working on their own.

Based on the description above, it can be concluded that the obstacles for police investigators in determining suspects for protected wild animals are: First, there are no investigators who are competent in the field of special crimes. Second, there has been no handling of criminal acts for the conservation of biological natural resources and their ecosystems.

IV. Conclusion

1. Criminal liability for perpetrators of catching protected wild animals. There has never been an arrest of perpetrators of poaching or catching protected wild animals in the Central Aceh Regency area, because there is still a sense of pity and humanitarian considerations, so the perpetrators are not arrested and legal proceedings are carried out, they only sign a statement letter on a stamp that will no longer carry out hunting in the Natural Resources Conservation Center area.
2. Obstacles for investigators from the Central Aceh District Police in determining suspects for protected wildlife. First, there are no investigators who are competent in the field of special crimes. Second, there has been no handling of criminal acts for the conservation of biological natural resources and their ecosystems.



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