

# ANIMAL RESIDENTIALS PROTECTED STILL PROTECTED

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## ABSTRACT

*The view that criminal sanctions are something that makes deterrent perpetrators of crimes (premium remedium) still relevant, if applied to a crime of protected wildlife trade, and it turns out that protected animal trade in Indonesia is linked to the international animal trade network. from this background, a legal research was conducted using the normative legal research method, by reviewing the statutory approach and examining cases in several district courts in Indonesia, using the Descriptive Analytical method, in order to obtain the results of the analysis that the application of the law in the form of imposing criminal sanctions on perpetrators (recidivists) according to the KSDAHE Law will be able to entrap perpetrators of protected wildlife trafficking in accordance with the decision of the Surabaya District Court and the Palangkaraya District Court's Decision, with mild sanctions it will encourage the perpetrators to commit acts of animal trafficking protected in other words, criminal sanctions in the KSDAHE Law have not been able to entrap wildlife traffickers, and must be amended immediately so that they do not become guarantees of protection for protected traffickers.*

**Keywords:** Criminal Sanctions, Wildlife Protected, Deterrent Effect

## INTRODUCTION

Biodiversity in Indonesia is the proudest asset for a country because its existence is one of the attractions and a national identity. Indonesia ranks second in the world after Brazil in terms of biodiversity. As many as 5,131,100 biodiversity exist in the world, 15.3% of which is in Indonesia, although the area of Indonesia is only 1.3% of the world's land area (Hanggono, 2020). It is estimated that there are 300,000 species of wild animals with 1,539 species of birds, 515 species of mammals and 45% of fish species in the world, living in Indonesia.

This makes Indonesia called a mega-biodiversity country. The term mega-biodiversity country refers to an area that is home to most species on earth and a high number of endemic species. Biological natural resources have a very important position and role for the lives of the inhabitants of the Unitary Republic of Indonesia (NKRI), therefore it needs to be managed and utilized sustainably, in harmony, in harmony and in balance for the welfare of the Indonesian people in particular and humanity in general, both present and future are in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution "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" (Syahni, 2018). Article 33 paragraph (3) of the 1945 Constitution confirms that the use of natural resources by the community and the state is carried out in the context of utilizing natural resources to create prosperity for the community. The state as an organization of power controls all the natural resources contained in Indonesian territory (Madonna, 2019).

In maintaining that the utilization of biological natural resources can take place in the best possible way, it is necessary to take conservation measures so that the living natural resources and its ecosystem are always maintained and able to realize the balance and are attached to the development itself. Therefore, the Indonesian government enacted Law No. 5 of 1990 concerning Conservation of Biological Resources and their Ecosystems (hereinafter referred to as the KSDAHE Law) as a regulation that accommodates and regulates thoroughly

the conservation of biological natural resources and their ecosystems and also regulates criminal provisions for anyone who commits an offense in accordance with the provisions in the said law. There are three forms of criminal sanctions that can be imposed on violators of the article, namely imprisonment, confinement and fines.

In addition to avoiding the extinction of certain species, on March 3, 1973, around 80 countries agreed on an International Trade in Endangered Species of Wild Fauna and Flora trade convention. Where this international trade agreement regulates the prohibition of trading protected plants and animals. Indonesia as one of the countries that has ratified this agreement has the right to attend the Conference of the Parties (Conference of the Parties or COP) which is held every two or three years.

Although there is already protection through the law and several government policies, but illegal wildlife trade is still ongoing. This is certainly a very serious threat to extinction of various species of animals, especially those found in Indonesia. Currently according to the International Union for Conservation of Nature (IUCN or International Union for Conservation of Nature and Natural Resources) the number of endangered wildlife species is 184 species of mammals, 119 species of birds, 32 species of reptiles, 32 species of amphibians. The total number of critically endangered Indonesian species threatened with extinction is 69 species, 197 species are endangered and 539 species are vulnerable (<https://www.profauna.net/id/fakta-satwa-liar-di-indonesia#.Xvw0UKaNS1s> accessed on July 1, 2020).

The illegal trade in protected animals in Indonesia is very complex and involves many parties ranging from hunters, collectors, buyers to exporters. The perpetrators of the trade in animals usually start from their love of animals and make them into pets, besides the perpetrators usually preserve it to make it a decoration, collection, and the worst is to maintain the animal only for pride (prestige). The high profits that can be obtained are inversely proportional to the small risk of punishment that must be faced making the protected wildlife trade an attraction for perpetrators to commit these crimes (<https://www.mongabay.co.id/2015/06/27/penegakan-hukum-perdagangan-satwa-liar-dilindungi-itu-terus-terjadi/> accessed on July 1, 2020)

Even the perpetrators are willing to do everything they can to do illegal hunting, which in turn will be bought and sold for most of the living conditions. This activity is driven by the demand for animal body parts to be used as medicines and consumer goods, as well as the social status obtained from ownership of these items. Like the pangolin bile which is effective to prevent heart disease. These animals continue to be hunted apart because they are useful for the treatment of heart, skin and scales can be used for cosmetic ingredients and can also be used as raw material for making bags of high economic value (Herlianto, 2019).

This protected wildlife trade takes place directly or online through social media networks. Even though technological developments have progressed, it is not uncommon to find many protected wildlife traffickers dealing by meeting directly with sellers and buyers in traditional markets. This they do to achieve personal gain without knowing the legal basis and the consequences caused by the impact on the smaller number of protected wildlife species.

As conducted by Andika Wibisono, in December 2014, Central Java BKSDA officers were arrested for trading endangered animals in the form of pangolins, Javan slow loris, and mouse deer. "However, Andika was only sentenced to 3 months by a judge at the Ungaran District Court, Central Java." And in October 2015, Andika was again arrested by DKI Jakarta Police officers for the same case, where he was arrested along with 5 other people and had served sentences for 11 (eleven) months, including Libyan citizens and quarantine officers at Soekarno Hatta Airport (<https://www.tribunnews.com/tribunners/2015/12/11/perdagangan-hewan-langka-marak-gara-gara-sanksi-tak-tegas>, accessed June 24, 2020, 21.55).

Evidence confiscated from these arrests is sun bears, clouded leopards, Javan gibbons and peacocks, and in the sale and purchase of these endangered species, Wibisono does not have a permit or is not accompanied by a letter or document from the competent official, and in 2019

Wibisono underwent a hearing at the Surabaya District Court in the same case, the Panel of Judges who handled the case with Register Number 1467/Pid.B/LH/2019/PN Sby, after observing the case files, heard the statements of witnesses and paid attention to the evidence. The verdict given by the Surabaya district court judge, which is 2.5 years (two years, six months) and a fine of IDR 10 million uta.

Next with the same case carried out by Asrani alias Aas. "Aas was arrested by the Central Kalimantan Regional Police in 2016, the case was the same, the wildlife trade was protected," Previously, the Director of the Special Criminal Investigation of the Central Kalimantan Regional Police succeeded in securing Aas along with evidence of 8 Forest Cats, 1 Bondol Eagle and 1 Weasel in the Jalan area PiereTendean, Taman Siring, Banjarmasin, South Kalimantan, Tuesday, October 18, 2016 night.

For these crimes, Asrani alias Aas was sentenced in the form of a four-month prison sentence and a fine of Rp. 100 million in one month by the Chair of the panel of judges at the Palangkaraya District Court, on Wednesday, January 25, 2017. Now Asrani alias Aas, is undergoing a hearing, " The defendant is guilty of committing the crime of participating in arresting, injuring, killing, storing, possessing, maintaining, transporting and trading protected animals while alive, "said the public prosecutor before the Panel of Judges led by Rosmawatiin the Candra room on Wednesday (6/24) afternoon.

When the reading of the claim was read out, the defendant only nodded and submitted the decision to the panel of judges. The chairman of the panel of judges then decided to close the trial and schedule a hearing to be held next week on Monday, July 6, 2020 at 10:00 WITA (<https://gardaanimalia.com/residivis-perdagangan-kucing-hutan-dituntut-3-tahun-penjara/> accessed June 26, 2020, 09.31).

With the still light criminal sanctions, it is felt that it has not given a deterrent effect to the two perpetrators of the above cases, the author examines through the legal issues namely, "Protected animal recidivists are still protected". From this legal issue the writer wants to identify the problem of the rise of people who trade protected animals from the point of regulation/norms and law enforcement.

## LITERATURE REVIEW

As the following theoretical basis, a review of the literature used is derived, both derived from textbooks, published scientific journals, legislation, and articles from the internet, in this study there are two theories to be elaborated, namely the rule of law theory and the theory of punishment.

Indonesia as a state based on law, as mandated in Article 1 paragraph (3) of the 1945 Constitution of Indonesia. This article requires that the administration of government be based on legal principles to limit government power and this means that state power through its apparatus is limited by law (*rechtsstaat*), not based on power (*machtsstaat*). A country can be said as a rule of law if it meets the elements of the rule of law. According to Friedrich Julius Stahl, the characteristics of the rule of law are (Adji, 2009):

1. Recognition of basic human rights.
2. The distribution of power.
3. Government based on regulations.
4. The existence of a State Administrative Court.

Even though various theories of the rule of law require that state authority institutions exercise their power under legal control, history has noted that the limits of the breadth and function of the state are determined by the types of state they hold.

The rule of law has different characteristics for each country, so that in Indonesia the concept of the Pancasila Law State is known (JuniarsoRidwan & Ahmad SodikSudrajat, 2009).

PadmoWahyono said that the pattern taken did not deviate from the concept of the rule of law in general, but was codified with the Indonesian situation or used with the size of our country's outlook on life or outlook. This concept of a welfare state inspires and becomes an obsession with the activities of the Indonesian independence movement, Pancasila is the state philosophy and view of life of the Indonesian people, therefore all legal systems that apply in Indonesia must refer to Pancasila.

Pancasila as the basis of the state also has a big influence on the laws in force in Indonesia. (Philipus, 1987) gave an opinion on the characteristics of the Pancasila legal state, namely:

- a. Harmony of relations between the government and the people based on the principle of harmony.
- b. A proportional functional relationship between the powers of the State.
- c. The principle of deliberation and judicial dispute resolution is the last resort.
- d. Balance between rights and obligations.

The Republic of Indonesia, based on the 1945 Constitution, is a welfare type country. In accordance with the 1945 Constitution the functions of the Republic of Indonesia can be described as follows:

1. Security, defense and order functions of this function The state must maintain when there is an external attack and undermining or rebellion from within, preventing theft of wealth at sea and other natural resources, both at sea and at air, territory violations by foreign armies, and so on. Also included in this function is the protection of property rights and other rights as will be regulated in legislation.
2. The welfare state or welfare state function of this task is also in the broadest sense including social service and social welfare, such as natural disaster assistance, poverty, unemployment, and determination of minimum wages, health assistance, orphanages and others. What is clear is that all activities aimed at the realization of community welfare and justice for all the people of Indonesia.
3. This educational function must also be interpreted in the broadest sense. Included in this function, for example tasks for public lighting, nation character building, cultural improvement and others. The task of realizing world order and welfare (world peace and human welfare) in the broadest sense.

Next is the theory of punishment, this theory is a supporting theory in legal research on the recidivation of protected animals that are still protected, which is based on the theory of punishment in accordance with the Pancasila state. In punishment it has a theory, namely the Theory of objectives as Theological Theory and the combined theory as an integrative view of the purpose of punishment, which assumes that punishment has a plural objective, where both theories combine Utilitarians' views with Retributivist views.

Basically, the criminal always protects the community and retaliation for legal actions. In addition, Roeslan Saleh, (MuladidanBardaNawawiArief, 2005) also stated that the criminal contains other things, namely that the criminal is expected as something that will bring harmony and as an educational process to make people acceptable again in society. So it is fitting that the criminal objective is to establish the welfare of the state and society that is not in conflict with the norms of decency and humanity in accordance with Pancasila. Furthermore, the integrative theory was also introduced by (Muladi, 2002) a professor from the Faculty of Law of Diponegoro University, who holds that:

Today the problem of punishment is very complex as a result of efforts to pay more attention to the factors concerning human rights, and to make criminal operational and functional. For this reason, a multi-dimensional approach that is fundamental to the impact of criminalization is needed, both concerning individual impacts and social impacts. Such an approach results in the necessity to choose an integrative theory about the purpose of punishment, which can fulfill its function in order to overcome the damage caused by criminal acts (individual and social damages). The selection of integrative theories about the purpose of punishment is based on reasons, both sociological, ideological, and juridical.

Sociological reasons can be referred to the opinion put forward by Stanley Grupp, that the feasibility of a criminal theory depends on one's assumptions about human nature, information

that a person accepts as useful knowledge, the type and extent of knowledge that might be achieved and an assessment of the requirements the requirements to apply certain theories and the possibilities that can be done to find these requirements.

The ideological reason, by quoting Notonagoro's opinion, states: Based on Pancasila, human beings are placed on their whole dignity and status as creatures of God Almighty consciousness to develop their nature as personal and social creatures. The round and complete Pancasila gives confidence to the people and people of Indonesia that the happiness of life will be achieved if it is based on harmony and balance, both in human life with nature, in relation to other nations, in human relations with God, and in the pursuit of progress spiritual happiness.

Furthermore, the legal reasons Muladi agreed with Herbert L. Packer's opinion as follows: There are only two main objectives of punishment, namely the imposition of suffering worthy of criminals and prevention of crime.

The integrative theory of punishment requires an integrated approach to the objectives of punishment, based on the recognition that the tensions that occur between the goals of punishment cannot be completely resolved.

Based on the recognition that none of the objectives of punishment are definitive, this integrative theory of punishment reviews the purpose of punishment from all perspectives. Criminal is a necessity, but it is a form of social control that is resolved, because it imposes suffering in the name of goals whose attainment is a possibility.

Based on the sociological, ideological and juridical reasons above, Muladi concluded as follows: Thus, the purpose of punishment is to repair individual and social damage caused by criminal acts. It consists of a set of criminal objectives that must be fulfilled, with a note that which goals are the focus of the kasuitis nature. The purposes of criminal punishment referred to above are:

1. Prevention (general and special);
2. Community Protection;
3. Maintaining Community Solidarity, and
4. Raising/Offsetting.

## **RESEARCH METHODS**

To collect the materials in this release a step or method is used, namely:

### **Type of Research**

This type of research is normative legal research, which is a type of research that studies a statutory regulation or norm contained in legislation and court decisions that have legal force.

### **Problem Approach**

In connection with the type of research used is normative law, the approach used in this study is the statute approach, namely Law Number 5 of 1990 concerning Conservation of Biological Resources and Their Ecosystems and Minister of Forestry Decree Number 227/Kpts-II/2003 of 2003 concerning Administration of Collection or Capture of Plant and Wildlife Displacement. and the case approach, namely the Surabaya District Court decision number. 1467/Pid.B/LH/2019/PN Sby and Palangkaraya Court Decision number: 713/Pid.B.LH/2016/PN.Plk dated January 25, 2017

### **Sources of Legal Materials**

Sources of legal materials used in this study are composed of primary legal materials and secondary legal materials.

### **a. Primary Legal Materials**

The primary legal material used for this study is the legislation and decisions of court judges who have permanent legal force related to the matter to be reviewed

### **b. Secondary Legal Material**

Legal material that will explain the primary legal material or as an additional covering: literature in the form of books, journals, papers, and internet references relating to the problem to be studied.

## **Procedure for Collection of Legal Materials**

The collection of legal materials in this study were obtained from various sources both offline and online. Legal materials obtained offline include through literature study by collecting literature in the form of books, documents, papers, and other library materials that are relevant to research problems, while online legal materials that are suitable for research needs are obtained through internet media.

## **Processing and Analysis of Legal Materials**

Legal material obtained from research activities, then analyzed appropriately to solve a legal problem that has been studied. Explanation of the analysis (description analysis), namely the legal material obtained is then compiled systematically and subsequently analyzed qualitatively to achieve clarity of the problems discussed in this study.

## **DISCUSSION AND ANALYSIS**

### **Scope of Animal Trade**

At the beginning of the discussion the author will identify the factors that cause and the modus operandi of someone interested in trading protected animals. a protected wildlife trader is willing to do everything possible such as carrying out poaching which in turn will most be traded with the condition of animals that are still alive, even if the animal is seen to have high economic value sellers can only take part of the limbs of these animals, such as as well as pangolin bile which is effective in preventing heart disease. These animals continue to be hunted apart because they are useful for the treatment of heart, skin and scales can be used for cosmetic ingredients and can also be used as raw material for making bags of high economic value (Herlianto, 2018).

Protection of animals is becoming a worldwide concern, through international agreements aimed at protecting wild plants and animals against international trade, there are also International Organizations (IUCN is the International Union for Conservation of Nature) which aims to provide information, and analysis on the status, trends, and threats to species to inform, and accelerate actions in biodiversity conservation efforts, namely the IUCN Red List or also called the IUCN red list. IUCN Red List is a list that discusses the conservation status of various types of living things such as animals released by IUCN.

This list was first issued in 1948 and is the most influential guide to the status of biodiversity. The purpose of IUCN is to warn the importance of conservation issues to the public and policy makers to improve the rarity status of a species. The animals are classified into Nine Groups and arranged based on criteria such as population size, distribution and risk of extinction, as follows: (Haerlianto, 2019).

1. Extinct (Extinct; EX),
2. Extinct in the wild (EX),

3. Critical (Critically Endangered; CR),
4. Genting (Endangered; EN),
5. Vulnerable (Vulnerable; VU),
6. Almost threatened (Near Threatened; NT),
7. Low risk (Least Concern; LC),
8. Lack of Information (Data Deficient; DD) &
9. Not evaluated (Not Evaluated; NE).

The Indonesian government has also agreed to the agreement with Presidential Decree No. 43 of 1987 concerning Ratification of the 1979 Amendment to the Convention on International Trade in Endangered Species of Wild. In addition to being regulated in international treaties, the government also issued legislation to protect these endangered wildlife populations as regulated in Law Number 5 of 1990 concerning Conservation of Biological Resources and Their Ecosystems (KSDAHE Law)

In the KSDAHE Law explains that there are some actions that are prohibited to be done. This is contained in several articles, namely:

#### Article 19

1. Every person is prohibited from carrying out activities which may result in changes to the integrity of the nature reserve area.
2. The provisions referred to in paragraph (1) do not include the activities of fostering habitats for the benefit of animals within the animal clan sanctuary.
3. Changes to the integrity of the nature reserve as referred to in paragraph (1) include reducing, eliminating the function and area of the nature reserve, as well as adding species of plants and other animals that are not native.

#### Article 21

(2) Everyone is prohibited from:

- a. Capture, injure, kill, store, own, maintain, transport, and trade animals that are protected in living conditions
- b. Storing, possessing, maintaining, transporting and trading protected animals in a dead condition
- c. Removing protected animals from one place in Indonesia to other places inside or outside Indonesia
- d. Trading, storing, or possessing skin, body or other parts of protected animals or items made from animal parts or removing them from a place in Indonesia to other places inside or outside Indonesia
- e. Take, destroy, destroy, trade, store or own eggs and/or nests of protected animals.

Related to the descriptions of the articles mentioned above which entirely explain the actions that are considered a crime. However, it can be seen that specifically for the crime of animal trafficking outlined directly in Article 21 Paragraph (2), where this article there are 5 (five) forms of conduct that are categorized as an animal trafficking crime.

The illegal trade action is in the form of not having official permits and procedures for ownership of protected wild animals that should be owned by each prospective owner of such wildlife based on Article 30 paragraph 2 of the Decree of the Minister of Forestry (Kepmenhut) No. 277/Kpts-II/2003 of 2003 concerning Administration Collection or Capture and Distribution of Wild Plants and Animals as follows:

- a. Can only be done for the purpose of assessment, research and development and breeding
- b. The application is submitted by the applicant to the Minister of Forestry which includes information on the type, number, sex, age or size and area of collection and is accompanied by a work plan or proposal with a copy to the Director General and scientific authorities.
- c. In the case that the application is not accompanied by a recommendation from the scientific authority, the Director General requests a recommendation from the scientific authority that the requested capture or capture will not damage the population in the natural habitat.
- d. Based on the request and assessment for completeness as referred to in letters b and c, the minister may approve or refuse to issue permits based on the advice from the director general and recommendations from the authority of the Decree of the Minister of Forestry Number 227/Kpts-II/2003 of 2003 concerning Administration of

Taking or Arresting of Circulation Wild plants and animals know that the collection or capture requested will not damage populations in natural habitats.

In this article, it is emphasized that to preserve protected animals, every person is prohibited from carrying out activities that can threaten the presence of protected animals either capturing, injuring, trading them in a state of life or death even if carried out by generations from generation to generation still categorized as crime. Because in that article applies to everyone. The object of the crime mentioned in the KSDAHE Law is protected wildlife. Regarding protected wildlife groups, the categories of animals can be seen in the Appendix 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 Protected Plant and Animal Types, this Ministerial Regulation revokes Attachment of Government Regulation Number 7 of 1999 concerning Preservation of Plant and Animal Species.

The subject of criminal acts in the KSDAHE Law as mentioned above is only intended for individuals or humans. This can be seen in the criminal provisions which only mention "everyone" in the article above. But seeing the current development of the perpetrators of criminal acts against protected wildlife has also been developed, among others carried out also by a syndicate/legal entity. A criminal act is a human act that is prohibited by laws or other legislation in force where the act is threatened with criminal penalties. To impose a criminal must meet certain conditions.

These specific conditions are commonly referred to as elements of a criminal offense. So a person can be subject to a criminal offense if the act carried out fulfills the elements of a criminal act (strafbaarfeit). According to Lamintang, that: (FuadUsfadanTongat, 2004). "Every criminal offense in the Criminal Code in general can be elaborated into two kinds of elements, namely subjective elements and objective elements. What is meant by subjective elements are elements that are inherent in the offender or which are related to the offender and are included in that is everything contained in his heart. Whereas what is meant by the objective element are the elements that have to do with conditions, that is, the conditions under which the actions of the offender must be carried out".

The formulation of criminal acts which are prohibited in the protected wildlife trade crime basically refers to the laws and regulations governing efforts to preserve and protect protected wild animals namely the KSDAHE Law which has offensive elements including (LedenMarpaung, 1995):

a. "Capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading animals that are protected in a living condition" Observing the formula, it is better to kill, injure, and exhibit higher levels of danger of extinction than other acts. The act of trade has aroused stimulation to capture (hunt) with the aim of gaining profit.

Prohibited acts in part a consist of 8 acts against animals that are protected while alive, namely:

- a. Capture
- b. Hurt
- c. Kill
- d. Save
- e. Have
- f. Maintain
- g. Transport
- h. Commercialize.

b. "Saving, possessing, maintaining, transporting and trading animals that are protected in death". Not only trade animals in a state of life which is a crime against protected animals but also includes trade in animals that are protected in death.

- c. "Removing protected animals from one place in Indonesia to other places inside or outside Indonesia". The crime is a crime committed by the perpetrators of both the export import and trade of protected animals in Indonesia's own jurisdiction.
- d. "Exhibiting, storing or possessing skin, body or other parts of protected animals or items made from animal parts or removing from a place in Indonesia or other places inside or outside Indonesia".

This was formulated in Article 21 paragraph (2) letter d, namely "Taking, damaging, destroying, trading, storing or possessing eggs and/or nests of protected animals" So that it is clear that all parts of the body or members of the protected animal cannot be owned, traded, stored or removed from a place in Indonesia or outside Indonesia

This crime is related to taking, destroying, storing or possessing eggs or nests of protected animals. Like taking or marketing turtle eggs. The prohibition in Article 21 paragraph (2) above does not apply to the purposes of research, science and/or saving of animal species Included in the rescue is the gift or exchange of species of animals to other parties abroad with government permission.

Regarding criminal provisions in the Law on Biological Conservation, this is contained in Article 40 of the KSDAHE Law, for offenders who are subject to criminal sanctions with qualifications in paragraphs (2) and (4), namely:

Paragraph (2) Whoever intentionally violates the provisions referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). (underline by the author)

Paragraph (4) Anyone who for his negligence violates the provisions referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be liable to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

In the article which shows the criminal provisions there are differences where paragraph (2) conviction is based on the element "on purpose" and paragraph (4) there is an element of "negligence" which is the basis for the conviction.

Types of criminal sanctions stipulated in the KSDAHE Law are in the form of imprisonment and fines, imprisonment and fines, plus confiscation of all objects obtained and all tools or objects used to commit criminal acts, with statements confiscated for the state.

The basic reasons for incriminating a criminal according to Jonkers are the position as a civil servant, recidive (repetition of offense), and samenloop (combined or concurrent with two or more offenses) or can also be formed by concursus.

## **DISCUSSION AND ANALYSIS**

### **Case of AndikaWibisono's position**

At first the defendant AndikaWibisonoals. Amir als. ThalitaJuliar and ArfandiNugraha, Mohammad Rizal SatriaLagi, VekkiSubun, RizkiRosdiansyahBudionoals. Ocik (separate file), respectively as those who did, participated in carrying out or ordered, around 2017 to 2018 or at least at other times in February 2019 located around the North Mulyosari Highway Kel. KalisariKec. Mulyorejo City of Surabaya or at least in another place which is still included in the jurisdiction of the Surabaya District Court, has captured, injured, killed, stored, maintained, transported and traded protected animals in a state of life and removed from one place in Indonesia to another place inside or outside Indonesia with the type of Komodo (Komodoensis), which is carried out by the defendant in the following manner:

On Monday, February 25, 2019 at around 10:00 WIB West Java East Java Police Ditreskrimsus officers received information from the public about the sale and purchase of

protected animals in the form of Komodo dragons (*Komodoensis*) located on Jalan Mulyosari Utara Kel. Kalisari Kec. Mulyorejo, Surabaya City, then the officers followed up by searching for a person named Vekki Subun around Jalan Mulyosari Utara Kel. Kalisari Kec. Mulyorejo City of Surabaya, on March 1, 2019 around 00.30 West Indonesian Time the officers succeeded in capturing Vekki Subun (in a separate file), then carried out the development of Arfandi Nugraha, Riski Rosdiansyah Budionoals. Ocik and obtained information from Vekki Subun that previously had sold 10 (ten) Komodo dragons through defendant Andika Wibisonoals. Amir als. Thalita Juliar, Riski Rosdiansyah Budionoals. Ocik totaling 4 (four) Komodo tails.

Based on Vekki Subun's statement and supported by evidence in the form of a checking account from Vekki Subun, on March 10, 2019 around 23:00 WIB the defendant Andika Wibisonoals. Amir als. Thalita Juliar was arrested at his rented house in Ngampin Ngentak RT.003 RW.002 Kel. Ngamping Kec. Ambarawa District Semarang Prov. Central Java at the time together with the defendant's friends.

At the time the defendant Andika Wibisonoals. Amir als. Thalita Juliar was arrested, officers conducted a search and found evidence of:

a. 1 (one) BCA savings book Account Number 3200662104 in the name of Maria Hesti Valensia Aryani.

b. 1 (one) BCA ATM card Register Number 3200662104.

c. 1 (one) BCA savings book Account Number 3200640852 in the name of Andika Wibisono.

d. 1 (one) BCA ATM card Register Number 3200640852.

- Vekki Subun and the defendant Andika Wibisonoals. Amir als. Thalita Juliar when purchasing Komodo as many as 10 (ten) tails using a *Via* BCA account transfer in the name of Maria Hesti Valensia Aryani, a personal account in the name of Andika Wibisono at a price of Rp. 17,000,000 to Rp. 20,000,000 million per animal *via* the *Via* Railway.

- Defendant Andika Wibisono obtained a profit from the sale of the Komodo dragon in the amount of ± Rp. 2,500,000 to Rp. 3,000,000 per animal. At the time of sending the animal is placed in a modified paralon after it is sent. In the sale and purchase of the Komodo dragon the defendant Andika Wibisono did not have a permit or was not accompanied by a letter or document from the authorized official. the defendant was sentenced in the sale and purchase of protected animals in 2014 at the Ambarawa Regional Police Station and has served a sentence of months and in 2015 was detained in the sale and purchase of protected animals at the Metro Jaya Regional Police and has served a sentence of 11 (eleven) months .

The Panel of Judges who handled the case with Register Number 1467/Pid.B/LH/2019/PN Sby after observing the case files, heard the witnesses' statements and paid attention to the evidence.

On Thursday, July 25, 2019 convicted with the following ruling:

1. State the defendant Andika Wibisonoals. Amir als. Thalita Juliar has been proven legally and convincingly guilty of committing a crime "participating in carrying out or ordering to do has captured, stored, maintained, transported and traded protected animals in a state of life and issued from one place in Indonesia to other places inside or outside Indonesia with the type of Komodo (*Veranus Komodoensis*).

2. Impose the criminal for the defendant Andika Wibisonoals. Amir als. Thalita Juliar with imprisonment for 2 (two) years and 6 (six) months, a fine of Rp. 10,000,000, - (ten million rupiah) provided that the fine is not paid and replaced with a sentence of imprisonment for 1 (one) month.

Against criminal rulings with case number 1467/Pid.B/LH/2019/PN.SBY with defendants Andika Wibisonoals Amir als Thalita Juliar the judge handed down the Prison Criminal verdict for 2 (two) years and 6 (six) months and a fine of Rp. 10,000,000.00 (ten million rupiah) provided

that if the defendant does not pay it, then it will be replaced with imprisonment for 1 (one) month in prison.

In this case the panel of judges in making decisions is in accordance with the applicable provisions because they have properly considered matters that are legally relevant and have decided the case in accordance with applicable provisions ie the judge has considered all the evidence and facts at the hearing as intended in Articles 183, 184 through Article 189 as well as aggravating circumstances and mitigating circumstances for the defendant in accordance with the provisions of Article 197 Paragraph (1) of the Criminal Procedure Code (KUHAP).

But according to the author, the verdict handed down to the defendant in a sentence of imprisonment and fines imposed by the judge is too light for the perpetrator who intentionally committed the act, it should be more severe and even can be adjusted to the sentence contained in Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems in Article 40 paragraph (2), moreover the accused Andika Wibisonoals. Amir als. Thalita Juliar has been convicted in the same case, namely the trade in protected animals (recidivists).

### **Case of Asrani Position**

The same case was carried out by Asrani alias Aas. "Aas was arrested by the Central Kalimantan Regional Police in 2016, the case was the same, the wildlife trade was protected," Previously, the Director of the Special Criminal Investigation of the Central Kalimantan Regional Police succeeded in securing Aas along with evidence of 8 Forest Cats, 1 Bondol Eagle and 1 Weasel in the Jalan area PiereTendean, Taman Siring, Banjarmasin, South Kalimantan, Tuesday, October 18, 2016 night. For these crimes, Asrani alias Aas was sentenced in the form of a four-month prison sentence and a fine of Rp. 100 million in one month by the Chair of the panel of judges at the Palangkaraya District Court, on Wednesday, January 25, 2017.

In the same case, Asrani alias Aan, on Tuesday, March 17, 2020, Asrani alias Aan, as the offender, served the animal buyer and then sold the animal to the buyer, while Muhammad Rizky was responsible for taking the animal to be bought, raising the animal until it was resold and sending the animal is to prospective buyers when it has been sold, "Asrani alias Aan with Muhammad Rizky is secured with evidence in the form of 17 kuwuk cats, 1 southern Kuskus and 1 black Kengkareng bird in a state of life on Jalan Sulawesi No. 1 RT 016 RW 002 Pasar Lama Village, Central Banjarmasin District, Banjarmasin City. Both of them have been conducting buying and selling protected animals since December 2019. These protected animals were obtained from the Barabai area, Kab. Hulu Sungai Tengah, bought from an initial E through WhatsApp contact and taken at the KM 6 Terminal Banjarmasin.

Currently Asrani, aka Aas, is undergoing a hearing, "The defendant is guilty of committing a crime of participating in capturing, injuring, killing, storing, possessing, maintaining, transporting and trading protected animals in a state of life," he said led by Rosmawati, in the Candra room on Wednesday, June 24, 2020, afternoon. When the reading of the claim was read out, the defendant only nodded and submitted the decision to the panel of judges.

Seeing the fact that the punishment given is felt to be less effective in preventing the occurrence of trade in protected animals so that it will make other people without thinking about doing the same thing as carried out by the perpetrator. And the punishment given is not considered proportional to the impact arising from the trade in protected animals. As for one of the impacts that will result from these actions is that the traded animals will sooner or later experience extinction.

How the effectiveness of punishment/punishment so that the perpetrator can regret and not repeat his actions, following the theory of punishment according to W.A. Bonger, who stated criminal proceedings as follows:

"Punishing is wearing suffering. To punish is tantamount to reproach of decency" which arises from that crime, which is also suffering. Punishment is essentially an act carried out by the community (in this case the state) consciously. Punishment does not come from one or several people, but must be a group, a collectivity that acts consciously and according to reason calculations. So the new "constituent element" of punishment, is the "opposition consciously expressed by collectivity".

Criminalization is an act against a person who commits a crime, can be justified normally not because the conviction contains positive consequences for the criminal, victim or community. Criminal punishment is not because someone has done evil but the crime is handed down so that the perpetrators of crimes no longer do evil and others are afraid to commit crimes.

Meanwhile, according to (BardaNawawiArief, 2005) msaid that the criminal punishment system can be interpreted as a criminal giving or imposing system, it can be viewed from two angles, namely the functional angle of the criminal justice system can be interpreted as the whole system (legislation) for the criminal functionalization/operationalization/concretization and constitutes the whole system which regulates how criminal law is enforced or operationally concretely so that a person is given a criminal sanction. From the point of view of substantive norms, the system of punishment can be interpreted as: the whole system of rules/norms of material criminal law for granting/imposing and carrying out criminal acts.

Whereas in imposing sanctions/punishment according to (Muladi, 1985) that objective theory as teleological theories and combined theory is referred to as an integrative view of theological retributivism which assumes that punishment has a plural purpose, which is a combination of utilitarian views which states that the goal of punishment must have proven beneficial consequences, justice must not be through the imposition of suffering that is acceptable for the purpose of suffering itself and the retributivist view which states that justice can be achieved if theological objectives are carried out using measures based on the principles of justice, for example that criminal suffering the said offense must not exceed the reward obtained by the criminal offender.

A description of the theories regarding the purpose of punishment will be described below, using the two terms together as follows:

### **Absolute/Retributive Theory**

According to this theory the crime was imposed solely because people have committed a crime or a crime (quiapeccatumest). Criminal is an absolute result that must exist as a retaliation to the person who commits a crime. So the basis of justification of a crime lies in the existence or occurrence of the crime itself. Thus it can be said that the theory considers as the legal basis of criminal or criminal purpose is the nature of mind for retaliation (vergeldings)

### **Objective/Relative Theory**

Adherents of this theory see the criminal as something that can be used to achieve benefits, both relating to the guilty person, for example, making him a better person, as well as relating to the world, for example by isolating and correcting criminals or preventing potential criminals, will make world of a better place. According to this theory punishment is not to satisfy the absolute demands of justice. Vengeance itself has no value, but only as a means to protect the interests of society. Criminal is not just to retaliate or reward people who have committed a crime, but it has certain objectives that are useful, so that the basis for justification of this theory lies in its purpose. Criminal punishment is not quiapeccatumest (because people make crime) but ne peccetur (so people don't commit crimes) (<http://digilib.unila.ac.id/10452/14/BAB%20II.pdf> accessed on 9 July 2020).

In connection with the two cases above and the current situation and conditions, the author does not agree with the judge's decision in the case that the sentence handed down to the defendant is far from a sense of justice, because with the lightness of the sentence given to the defendant so that it has not given a deterrent effect then after serving the sentence has the tendency to repeat his actions, namely to trade protected and protected wildlife. This means that for the animal trafficking recidivist, the criminal sanctions imposed by the Judge have not provided anything meaningful, compared to the profits from the acts of animal trafficking, then they will repeat again.

From the perspective of law enforcement/police AsepAdiSaputra, said that Law number 5 of 1990 or the KSDAHE Law has been too long, the law accommodates criminal snares for parties trading wildlife in Article 21 paragraph 2 and Article 40 paragraph (2). However, the sanctions are not proportional to the profits of the perpetrators so they do not cause a deterrent effect, so the sanctions contained in the Article need to be immediately amended.

In line with the writer's opinion, according to Zakia Angelia Rica, the maximum sentence of 5 years in prison is deemed to not provide a deterrent effect on the perpetrators who intentionally committed such acts so that the maximum sentence that should be determined in Article 40 paragraph (2) of the KSDAHE Law is a maximum prison sentence of 10 year. In addition, there is a need for the provision of a minimum sentence of 5 years for a person or group of people who intentionally committed the act, this aims to prevent the occurrence of trade in protected animals so that a person or group of people who want to commit the act think twice about committing a crime.

As the end of the discussion, the author is of the opinion that there are 2 (two) things that need to be addressed, namely renewing the sanctions contained in Article 40 paragraph (2) of the KSDAHE Law, namely by providing minimal sanctions of imprisonment and fines tailored to the current situation and conditions, and the judges, to pay special attention to the illegal trade cases of protected animals and protected wildlife, as an effort to prevent such acts from being repeated (residue).

## CONCLUSION

The legal provisions against animal traffickers and criminal provisions according to the KSDAHE Law are very clear and firm, as can be seen in Article 20 paragraph (2) and Article 40 paragraph (2) by giving strict sanctions expected to be able to protect animals in Indonesia.

The application of the law against animal traffickers as carried out by AndikaWibisono and Asrani, according to the author, the verdict handed down to the perpetrators/defendants sentenced to imprisonment and criminal fines, by the judge is too light, when compared to losses due to damage to the ecosystem.

## SUGGESTION

Suggestions in this paper are for the government (legislators) to immediately make changes to the KSDAHE Law, especially against sanctions imprisonment and fines, and the judges to be motivated to eradicate the crime of animal trafficking, as well as for perpetrators so that there is guidance and assistance so that acts of trafficking animals have permission, so that the deeds done are measurable.

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