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Wildlife Law Enforcement in Indonesia: Why Can't We Enforce Like United States?

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Abstract. Pursuant to Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem, an individual who conducted crimes against protected wildlife is sentenced to a maximum of 5 (five) years imprisonment and a maximum fine of Rp 100,000,000. In the United States, the Endangered Species Act (ESA) charges the perpetrator against wildlife with criminal and civil sanctions. In § 1540 (a) (1) determines that anyone who "take", import, export, transport or sell endangered species can be fined not more than \$ 25,000. If the species in threatened groups, the perpetrator can be subject to a penalty of not more than \$ 12,000. The enforcement of criminal sanctions against perpetrators who violate ESA criminal provisions must fulfill the element of "knowing." An individual who knowingly "taking", entering or importing, issuing or exporting, transporting or selling endangered species prohibited by the ESA are subject to sanctions maximum fine not more than \$ 50,000 and imprisonment for 1 year. If the action against the species under threatened group, the offender may be subject to criminal sanctions of a maximum of \$ 25,000 and imprisonment for a maximum of 6 months. In addition, additional crimes were also applied in the form of revocation of federal permits, rental permits, and hunting permits, as well as confiscation of all equipment and transportation equipment related to these violations. This study analyzed the enforcement of criminal sanctions in criminal cases against protected animals in courts in Indonesia and the United States. The results of the study showed that criminal sanctions against criminals against protected animals in Indonesia have never reached maximum imprisonment or maximum fines so that they are not sufficient to provide a deterrent effect for the perpetrators and become a warning to other communities. While the imprisonment sanction for criminals against protected animals in the United States is still relatively weak. However, in terms of criminal fines and civil sanctions can be categorized as high sanctions.

Keywords: protected wildlife, threatened wildlife, criminal sanctions, civil sanctions.

1 Introduction

Indonesia is one of countries with largest habitat for wildlife which has various fauna species within. According to *The 5th National Biodiversity Report*, about 10% of species in the world inhabit in Indonesia consisted of 8,157 mammal, bird, reptile, fish and 1,900 butterfly species. Unfortunately, the number and diversity of species is slowly decreasing, especially the number of wildlife caused by several factors including: (1) development; (2) legal instruments that have not been strong; (3) protection of animals that have not become a government priority; (4) illegal trading and hunting; (5) climate change, and (6) lack of public knowledge and awareness of the protection of wildlife which ultimately leads to human-wildlife conflict.

Actually, Indonesia has a number of statues and regulations that become the legal framework for protecting animals in Indonesia, namely Law Number 5 of 1990 on Conservation of Natural Resources and Its Ecosystems --which is an organic law of wildlife protection. Also, some others related laws that supported the protection of wildlife such as Law Number 41 of 1999 on Forestry, Law Number 32 of 2009 on Protection and Management of the Environment, Law Number 16 of 1992 on Plant, Fish and Animal Quarantine, Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction, Law Number 5 of 1994 on Ratification of the United Nations Convention on Biological Diversity, Law Number 21 of 2004 on Cartagena Protocol on Biosafety for Conservation about Biodiversity, as well as Law Number 11 of 2013 concerning the Nagoya Protocol on Access to Genetic Resources and Fair and Balanced Benefit Distribution that Arises from its Utilization of Biodiversity Conservation.

At the level of regulation, Indonesia has Government Regulation Number 13 of 1994 on Animal Hunting, Government Regulation Number 68 of 1998 on Natural Reserve Areas and Natural Conservation Areas, Government Regulation Number 7 of 1999 on Preservation of Plant and Animal, Government Regulation Number 8 of 1999 on Utilization of Plants and Wildlife. In addition to the government laws and regulations mentioned above, Indonesia still has Ministerial Regulations and other types of legislation.

From the number of legal instruments above, the number of wildlife species in Indonesia should continue to increase. In fact, wildlife crimes continue to occur. At the beginning of 2018, a headless orangutan was found floating in Kalahien Village, South Hamlet Subdistrict, South Barito District, Central Kalimantan.¹ From the

¹ Indra Nugraha (16 Januari 2018), Menyedihkan, Satu Individu Orangutan Ditemukan Mengambang Tanpa Kepala, <http://www.mongabay.co.id/2018/01/16/menyedihkan-satu-individu-orangutan-ditemukan-mengambang-tanpa-kepala/>,

results of the autopsy, it was found 17 air rifle bullets in the body (heart, lungs and stomach) of the Orangutan and injuries from sharp objects and slash wounds.² At the end of January, the Central Kalimantan police succeeded in arresting two perpetrators who claimed to have shot and severed orangutans because the orangutans entered their plantations and could not be evicted.³ While the headless Orangutan case investigations has not been completed, Indonesia has shocked the international community with the discovery of dead Orangutans with 130 gunshot wounds in its body in East Kutai (TNK) National Park (Kutim), East Kalimantan (February 6, 2018).⁴ police arrested five perpetrators of orangutan killers who argued that the orangutans damaged their gardens located in Kutai National Park.⁵

Based on data from Center for Orangutan Protection (COP) in collaboration with the Orangutan Foundation International (OFI) Pangkalan Bun, and the Borneo Orangutan Survival Foundation (BOSF) Palangka Raya, there are 10 cases of crimes against Orangutans in Central Kalimantan that have not been revealed.⁶ Then, the results of a study carried out by a number of scientists published in the journal *Current Biology* showed that Bornean Orangutans suffered a population loss of 100,000 in the period 1999 - 2015, which is estimated to have a population decline.⁷

In addition to human-wildlife conflicts, the threat of extinction to a number of endemic species in Indonesia is the illegal trade in protected animals. Indonesia is "one of the top 10 countries" mega-diversities "and the largest supplier of wildlife products in Asia, both legally and illegally."⁸ UNODC (The United Nations Convention on Transnational Organized Crime) categorizes wildlife trade as "transnational organized wildlife crime."⁹

² Anendya Nirvana, *Fakta Mengerikan di Balik Kematian Orangutan Tanpa Kepala*, <http://news.liputan6.com/read/3234273/fakta-mengerikan-di-balik-kematian-orangutan-tanpa-kepala>, 22 Jan 2018, 10:54 WIB.

³ Nugroho Budi Baskoro, *Polisi Tangkap Pemenggal Kepala Orangutan di Kalimantan Tengah*, <http://regional.kompas.com/read/2018/01/31/20441161/polisi-tangkap-pemenggal-kepala-orangutan-di-kalimantan-tengah>, 31/01/2018, 20:44 WIB.

⁴ Gusti Nara, *Satu Orangutan Tewas dengan 130 Luka Tembak di TNK Kaltim*, <http://regional.kompas.com/read/2018/02/06/21524771/satu-orangutan-tewas-dengan-130-luka-tembak-di-tnk-kaltim>, 06/02/2018, 21:52 WIB.

⁵ Aditya Mardiasuti, *Polisi Tangkap 5 Orang Pembunuh Orang Utan di Kalimantan Timur* <https://news.detik.com/berita/d-3871404/polisi-tangkap-5-orang-pembunuh-orang-utan-di-kalimantan-timur>, 17 Februari 2018, 09:17.

⁶ Nugroho Budi Baskoro, *Belum Terungkap, 11 Kasus Pembunuhan Orangutan di Kalimantan Tengah*, 18/01/2018, 15:33 WIB.

⁷ Maria Voigt, et.al, Global Demand for Natural Resources Eliminated More Than 100,000 Bornean Orangutans, *Current Biology*, [http://www.cell.com/current-biology/fulltext/S0960-9822\(18\)30086-1](http://www.cell.com/current-biology/fulltext/S0960-9822(18)30086-1), DOI: <https://doi.org/10.1016/j.cub.2018.01.053>, dapat diunduh di <https://sci-hub.tw/https://doi.org/10.1016/j.cub.2018.01.053>.

⁸ USAID, 2015, *Perdagangan satwa liar, Kejahatan terhadap satwa Liar dan perlindungan, Spesies di Indonesia: Konteks kebijakan dan Hukum Changes for justice Project*, page. 4.

⁹ UNODC, *Defining Transnational Organized Wildlife Crime*, Tersedia di https://www.unodc.org/documents/data-and-analysis/wildlife/WLC16_Chapter_1.pdf.

2 Method

This study analyzed the enforcement of criminal sanctions in criminal cases against protected animals in courts in Indonesia and the United States. The type of research in this study is normative legal research, a research carried out by examining the abstraction aspects of legal norms through literature studies and reviewing legislation, court decisions, or other legal documents, as well as research results, assessment results, and other references. In this case, the researcher focused more on analyzing court decisions in Indonesia and America regarding the sentencing of criminals against wildlife. Although it is a normative legal research, this research is still supported by the results of interviews with several parties, especially the Ministry of Forestry and the Natural Resources Conservation Agency and the Ministry of Environment. Interviews were conducted in order to find out the trends in the area of wildlife crime and the causes of the crime, and to determine the effectiveness of the sentences given to the perpetrators.

In this study, the approach method used is the case approach and comparative approach method. Cases approach is a problem approach method by analyzing cases related to crimes against wildlife in Indonesia and America through the study of court decisions on these cases. While the comparative approach or comparison method is used to compare court decisions in Indonesia and America related to criminal acts against animals to see the advantages and disadvantages of each criminal sanction in both countries. From this research, it can be used as material for formulating criminal provisions that are appropriate to be applied in Indonesia.

Source materials of the research were collected in the following ways:

1. Study Documents

Collection of legal materials is carried out by studying court decisions in Indonesia and America related to criminal sanctions against perpetrators of wildlife crime

2. Library Studies

The review of legislation and literature is conducted to analyze the contents of court decisions that have permanent legal force.

3. Interview

Existing legal materials are then supported by the results of interviews with several agencies to strengthen the conclusions obtained.

Legal material analysis carried out in this study is a qualitative descriptive method, namely the analysis formed on an indirect assessment or measure as outlined in the form of statements and writings based on legal material and data obtained. In drawing conclusions, the researcher uses deductive logic which is to draw a conclusion starting from the general problem to be a conclusion whose scope is individual or specific.

The technique of analyzing legal material is carried out by reviewing the application of criminal sanctions in several criminal cases against animals in Indonesia and the United States. Criminal sanctions applied in each country will be compared to then see the effectiveness of the application of the sanctions: whether it has fulfilled a sense of justice and has a deterrent effect on the perpetrators.

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The existing explanation are too long to be in Method section.

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3 Indonesia Legal Protection on Wildlife

Natural Resources in Indonesia are acknowledged to be very large and diverse. However, this potential has long been not protected and protected by the State, this is caused by the absence of specific legislations on this matter. Moreover, Indonesia constitution is not too clear in accommodating the constitutional ideas of legal norms to protect natural resource ecosystems. If only the constitutional rights are stronger recognized by the state, the stronger the bargaining position of the people with nature, and the state with groups who like to exploit natural resources. This could lead to raising awareness to protect Natural Resources and the Ecosystem.

To protect the Natural Resources and Ecosystems, Indonesia legislative branch has enacted Law Number 5 of 1990 on Conservation of Natural Resources and Its Ecosystems. Natural Resources and its Ecosystems must be protected by the State absolutely due to the following reasons:¹⁰

1) Protection of life support system

Protection of life support systems includes efforts and actions related to the protection of springs, cliffs, banks of rivers, lakes and ravines, maintenance of functions of forest hydrology, coastal protection, watershed management, protection against the symptoms of uniqueness and natural beauty, and others. Protection of life support systems is carried out by establishing protected areas. So that if the area for animal and plant maintenance works well then the issue of extinction of flora and fauna will no longer exist. Basically protected areas can be used for utilization, but must comply with the provisions set by the government.

2) Monitoring the diversity of species of animals and plants and their ecosystems

Preservation is an effort and conservation action to ensure species diversity includes safeguards so that these elements are not extinct with the aim that each of these elements can function in nature and is always ready to be used for human welfare at any time. The extinction of one element cannot be replaced by another element. Preservation of plant and animal species can be carried out in the area (in-situ conservation) or outside the area (ex-situ conservation). Komodo National Park is one of wild orchid species conservation of In-situ Preservation is an effort and conservation action to ensure species diversity includes safeguards so that these elements are not extinct with the aim that each of these elements can function in nature and is always ready to be used for human welfare at any time. The extinction of one element cannot be replaced by another element. Preservation of plant and animal species can be carried out in the area (in-situ conservation) or outside the area (ex-situ conservation). Komodo National Park is one of wild orchid species conservation of Insitu Komodo (ex situ conservation).

¹⁰ Koesnadi Hardjosoemantri, 2002, *Hukum Tata Lingkungan*, Cet. Ke-17, Gadjah Mada University Press, Yogyakarta, page.12.

3) Sustainable use of living natural resources and their ecosystems

Sustainable use of biological natural resources and their ecosystem is essentially an effort to control or to limit the use of biological natural resources and their ecosystem so that the utilization can be carried out continuously in the future. The activities carried out are the utilization of environmental conditions of natural conservation areas while maintaining the preservation of the function of the area and the utilization of wild plants and animals while taking into account the continuity of potential, carrying capacity and diversity of wild plants and animals.

Protection of natural resources and their ecosystems is an action to protect from extinction, sustainability and scarcity. Sustainability is a condition where living natural resources in an area will be thereafter. The utilization of natural resources that can be renewed is carried out at a maximum of the rate of growth. If utilization exceeds the growth rate, the resource becomes increasingly scarce and becomes extinct. Utilization of non-renewable natural resources, such as mining, coal, oil, should be managed with the principle of saving use or finding alternative new resources that can replace their functions.¹¹

Status of scarcity of a species is related to three criteria, namely 1) geographical distribution area, 2) local population number, and 3) variation in habitat requirements. If a species as a whole is found in small amounts, then the species is said to be rare. For example: Java eagle (*Spizaetus bartelsi*) is an endemic bird of prey on Java Island which is currently included in the category of endangered and Sumatera Tiger which is categorized as critically endangered tigers; so that if conservation efforts are not carried out immediately they will soon be extinct.

Extinction is a condition in which the last individual of a species really is no longer found in nature, for instance: *trulek jawa*, Java tiger. The causes of scarcity and extinction can be grouped into natural extinction and extinction due to human activities both directly and indirectly. Natural extinction can be due to natural disasters such as earthquakes, tsunamis, volcanic eruptions. While scarcity and extinction due to human activities such as pollution, agricultural land clearing, mining, deforestation, habitat fragmentation.¹²

As stated in the discussion above, conservation is regulated in Law No. 5 of 1990 concerning the conservation of living natural resources and their ecosystems. This law is *lex specialis* from forestry law because the conservation law regulates part of the forest and forest areas that are generally regulated in forestry laws.

Law No. 5 of 1990 groups wildlife into protected species and unprotected animals. The protected species are grouped into two types, namely species in danger of

¹¹ Takdir Rahmadi, 2011, *Hukum Lingkungan Di Indonesia*, Cetakan Ke-1, PT.Raja Grafindo Persada. Jakarta, page.163.

¹² *Ibid.*

extinction and species in rare populations.¹³ The protected species are regulated in Government Regulation Number 7 of 1999 on Preservation of Plants and Animals. Provisions for wildlife that shall be protected if they meet these following criteria:

- a) have a small population;
- b) there is a sharp decline in the number of individuals in nature;
- c) limited (endemic) distribution area.

According to Government Regulation Number 7 of 1999, there are 221 species listed as protected animals.

The Act No. 5 of 1990 also regulates prohibitions action towards wildlife stated in Article 21 Paragraph (2) in which any individual prohibit to:

- a. catch, hurt, killed, keep, possess, pet, transport, and sell protected alive species;
- b. keep, possess, pet, transport, sell protected death species;
- c. exclude protected species from Indonesian region to other region, inside or outside Indonesia;
- d. sell, keep or possess skin, body or others part of protected species bodies, or goods made from this animals parts or exclude them from a region in Indonesia to other regions;
- e. take, destroy, exterminate, sell, keep or possess any eggs and/ or nest of protected species.¹⁴

Pursuant to Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem, an individual who conducted crimes against protected wildlife which mentioned in Article 21 Paragraph (2) is sentenced to a maximum of 5 (five) years imprisonment and a maximum fine of Rp 100,000,000.

In Paragraph (4) of Article 40, prohibition actions against wildlife also applied to any individual because of his negligence violating the provisions referred to in Article 21 paragraph (1) --which is crimes against protected plant/fauna-- and paragraph (2) -- which is crimes against wildlife-- and Article 33 paragraph (3) -- which is prohibition for any individual conducting any activities that are not in accordance with function of utilization zones and other zones of national parks, parks forest highway, and natural tourism park-- shall be punished with the most imprisonment one year old and a maximum fine of Rp 50,000,000.

2.1 Wildlife Law Enforcement

Generally speaking, law enforcement related to activities to make sure laws are obeyed. According to Merriam-Webster Dictionary, law enforcement means “the department of people who enforce laws, investigate crimes, and make arrests: the

¹³ Article 20 Paragraph (1) Law Number 5 of 1990.

¹⁴ Article 21(2). [Law No. 5 of 1990].

police.” In Cambridge dictionary, law enforcement defined as “the activity of making certain that the laws of an area are obeyed.” Bureau of Justice Statistic described law enforcement as “the individuals and agencies responsible for enforcing laws and maintaining public order and public safety including the prevention, detection, and investigation of crime, and the apprehension and detention of individuals suspected of law violation.”¹⁵

Talking about wildlife law enforcement in Indonesia, the authors started analyzing the implementation of criminal sanctions against wildlife. After analyzing some cases, it seems that the courts’ decisions did not favor too much for wildlife interest. It appears that the judges did not seriously give punishment to the perpetrators.

First case studies were conducted toward court’s decision in the headless Orangutan (*Pongo Pygmaeus*) case. As earlier mentioned, a headless death body Orangutan was found in Kalahien Village, South Hamlet Subdistrict, South Barito District, Central Kalimantan, Indonesia. Besides his head was cut off, in the body of the Orangutan was found seventeen gunshot wounds. After several investigations, police has arrested two perpetrators. Then, on April 2018 the case was brought before the Buntok Court. From the court examinations, the court determines the evidences, as follow:

- 17 (seventeen) items of air rifle / bullets;
- 1 (one) Canon brand airgun;
- 1 (one) piece of machete sharp weapon and its coil about 50 cm long;
- 1 (one) U.S.A brand air rifle bullet box made of paper in a torn state;
- 1 (one) fruit of the skull / head bone of an orangutan;
- 1 (one) piece of machete sharp weapon and its coil about 50 cm long;
- 1 (one) U.S.A brand air rifle bullet box made of paper in a torn state;
- 1 (one) piece of orangutan jaw bone;
- 2 (two) segments of the thumb of the toes to the right and left of the carcass of an orangutan;
- A handful of blond orangutan hair / feathers.

Based on the examinations and evidences, the defendants (Mulyadi bin Landes and Tamorang bin Ribin) were found guilty committing a criminal act of killing a protected wildlife in a living condition. The defendants were sentenced imprisonment for six months and a fine of Rp. 500,000.000.¹⁶

Second case the authors studied is Orangutan killing with 130 gunshot wounds case. This Orangutan was found by a villager in Teluk Pandan, Kutai Timur, East Kalimantan. Besides gunshot wounds, the Orangutan body has dozens of stab wounds, even the left leg in a stump condition.¹⁷ One day after investigation, police

¹⁵ <https://www.bjs.gov/index.cfm?ty=tp&tid=7>

¹⁶ Case Number: 27/Pid.B/LH/2018/PN BNT

¹⁷ Bambang Ir, *Sadis, Orangutan Mati Akibat Ditembus 130 Peluru*, <https://news.okezone.com/read/2018/02/07/340/1855928/sadis-orangutan-mati-akibat-ditembus-130-peluru>, 07 Februari 2018 11:45 WIB.

arrested five suspects -- Nasir (54), Rustan (37), Muis (36), Andi (37) dan He (13).¹⁸ Nasir is a grandfather, his son is Rustan, his son-in-law Andi and his grandson He, whereas Muis is a neighbor. They have admitted that they killed the Orangutan because they considered the orangutan as pest since it has disturbed their gardens in the area of Kutai National Park (TNK).

The case was brought before the court (Sangatta) on April 2018. Based on the confession of the defendants in the trial, the defendant I (Muis bin Cembun) heard the voice of an orangutan from the direction of the pineapple garden, then defendant I took the airgun and the bullets in his house and then headed back towards the orangutan's voice and saw an orangutan in on the trees around the pineapple garden, then Defendant I tried to expel the orangutan by firing using an air rifle.

After several shots of the orangutan the defendant I saw the orangutan in an angry state and would attack the defendant I. Then Defendant I asked for help from Defendant II (H. Nasir bin Sakka) and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto by saying there was an orangutan fighting, then the three of them while carrying the airgun and the bullet back to the orangutan who was still in the tree, then Defendant I, Defendant II, and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto immediately shot the orangutan until the orangutan descended from the tree and moved towards Lake. When the orangutan arrived at the lake of Defendant I, Defendant II, and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto again shot him until the orangutan looked very angry. Then the witness came Andi bin Hambali (separate prosecution) and witness Rustan bin H. Nasir (separate prosecution) and immediately borrowed the rifle used by Defendant II and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto then they both took part in shooting the orangutan.

Then Defendant I then left the place because he was summoned by the witness Mariska binti Ma'ruf (wife of Defendant I) to escort Defendant-in-law I. Then, at around 10:00 a.m. the defendant II left the shooting place, while witness Hendri Herdiansya a.k.a Hendri bin Jekrianto witness Andi bin Hambali and witness Rustan bin H. Nasir still at the place and still shooting the orangutan until around 11:00 WITA, the three of them left the place with the condition of the orangutan still on the wood in the middle of the forest.

That later on Sunday, February 4, 2018, at around 6:30 p.m. Wita witness Dede Nurhidayat Als Deden (Officer in KNP) was informed by the TNK Whats App group that there were orangutans who were limp and had wounds on their bodies but still living on logs in the middle of the lake in the district Teluk Pandan. Then the witness Dede Nurhidayat Als Deden was ordered by the Head of the TNK Office to see the condition of the orangutan at that time along with three of his colleagues. Arriving at the crime scene with consideration of safety and evacuation procedures then evacuation cannot be carried out until Monday, February 5, 2018 around 8:00 a.m.

¹⁸ Nur Aditya, *Orangutan mati ditembaki 130 peluru, pelakunya satu keluarga*, <https://www.merdeka.com/peristiwa/orangutan-mati-ditembaki-130-peluru-pelakunya-satu-keluarga.html>, Sabtu, 17 Februari 2018 11:54.

The orangutans were evacuated while still alive but weak and there were many injuries all over their bodies. When he arrived at TNK's office a medical action was taken by Veterinarian Felisitas Flora Sambe Mambela but could not save the orangutan and was declared dead at 1:55 a.m.

For their crimes, the Sangatta court imposed a criminal sentence against the defendants each with a prison sentence of seven months and a fine of Rp. 50,000,000 with the provision that if the fine is not paid then it will be replaced with a sentence of two months.¹⁹

Third case that the authors discussed in this research is the case of illegal trade of wildlife occurred in Banyuasin District, South Sumatera, Indonesia.²⁰ On Wednesday, December 13, 2017 at around 13.00 WIB, the defendant Muhammad Arif bin Sarnubi bought 100 kilograms eggs of Horseshoe Crab (*Belangkas*) from Unggun (still suspect) for Rp 50,000 per kilogram with the total amount for IDR 5,000,000 in the warehouse that the defendant leased from WI in Yunan Village, Sungsang IV Village, Banyuasin II District, Banyuasin District.

Then, on Thursday, December 14, 2017 at 8:30 a.m., a member of the Directorate of Water Police of South Sumatra Regional came to the warehouse and found one fiber containing 100 kilograms of eggs Horseshoe Crab (*Belangkas*) belongs to defendant. The defendant bought three times eggs of Horseshoe Crab (*Belangkas*) from Unggun: (1) in October 2017, 60 kilograms for Rp. 3,000,000; (2) at the end of November 2017, 60 kilograms worth Rp. 3,000,000, and; on Wednesday, December 13, 2017, 100 kilograms for Rp. 5,000,000. After the defendant bought the eggs, then the defendant sold the eggs to Yasa in Medan by means of contact by telephone. The eggs were packaged into a sack which was then sent by expedition. For each sale, the defendant got profit of Rp. 1,800,000.

Horseshoe Crab (*Belangkas*) is one of the protected wildlife in Indonesia. It is listed in Government Regulation Number 7 of 1999 as protected species with species serial number 229 with scientific name (Latin), *Tachypleus gigas*. Added to that, in the area of South Sumatra Province there is no person or business entity that has permission to carry out captivity and circulation of Horseshoe Crab (*Belangkas*).

Based on those facts, the Court (Palembang court) decided that the defendant -- Muhammad Arif bin Sarnubi-- was intentionally taking, damaging, destroying, trading, storing or possessing eggs and or nests of protected animals. For his criminal action, the defendant sentenced to imprisonment for 8 months and a fine of Rp. 2,000,000 provided that if it is not paid it will be replaced with a imprisonment for 4 months.

What can we conclude from the three cases above? The sentences for wildlife crimes determined by the judges tend to weak. The judges did not impose sentences that can

¹⁹ Case Number: 130/Pid.B/LH/2018/PN Sgt.

²⁰ Case Number: 376/Pid.B/LH/2018/PN Plg

cause a deterrent effect on the perpetrators. Since Indonesia is civil law in which the judges cannot make law; thus, the judge only follows the laws and regulations no matter how cruel the defendants crimes. Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem stated an individual who conducted crimes against protected wildlife which mentioned in Article 21 Paragraph (2) is sentenced to a maximum of 5 (five) years imprisonment and a maximum fine of Rp 100,000,000. However, at least the judges could sentence the defendants with maximum sanction stated in statute.

4 U.S.A Legal Protection on Wildlife

Comparing Indonesia law with United States (USA) law and the law enforcement is very ambitious. Nevertheless, Indonesia could learn from USA.

In the United States, prohibited acts against wildlife are regulated in Endangered Species Act (ESA) (US Code: 16 U.S.C § 1531 - 1544) which is a federal law and organic law. In § 1538 ESA the prohibited actions are determined as follows:²¹

16 U.S.C § 1538 (a)(1): “(a) *GENERALLY:*

“(1) *Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—*

(A) *import any such species into, or export any such species from the United States;*

(B) *take any such species within the United States or the territorial sea of the United States;*

(C) *take any such species upon the high seas;*

(D) *possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);*

(E) *deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;*

(F) *sell or offer for sale in interstate or foreign commerce any such species;*
or

(G) *violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter”*

Violations of the above provisions can be subject to criminal or civil sanctions. The application of sanctions is determined by three factors:²² (1) the type of species

²¹ 16 U.S.C § 1538

²² Dale D. Goble & Eric T. Freyefogle, *Wildlife Law: Cases and Materials*, (2d ed. 2010), page 1232

Comment [A2]:

This article deals with an interesting and seasonal topic of academic and practical value. However, the article relies heavily on a limited number of legislations and literature. Even so, there is no lack situation where the author only presented material from law and cases such as in these 4 sections. It would be better if the author adds his views or analysis regarding the results of the comparison at end of this section, before conclusion.

affected, whether violations are committed against endangered or threatened species; (2) the perpetrator's knowledge of the provisions of the ESA; (3) for certain circumstances, the perpetrator's occupation. The application of criminal and civil sanctions will be more severe if the offender harms the species in the endangered category compared to the threatened category.²³ In addition, civil penalties will also be more severe if the perpetrator knows that his action is prohibited by the ESA.²⁴ Criminal sanctions can be imposed on the perpetrator if the perpetrator has knowledge that his action is against the law.²⁵ If the perpetrator is an importer or exporter, the absolute civil liability is applied to the perpetrator.²⁶

Civil sanctions are regulated in § 1540 (a) (1) which determine that the weighting of civil sanctions can be carried out if the perpetrator knows his actions are a violation or the perpetrator is an importer or exporter of the endangered species. Such actions include "taking", importing, exporting, transporting or selling endangered species. For these actions an individual can be fined with no more than \$25,000. If these actions are carried out on species in threatened groups it can be subject to a penalty of maximum \$12,000. However, if the offender carries out the actions without having knowledge of the prohibitions stipulated in the ESA, then a fine is imposed not more than \$500.

The application of criminal sanctions against perpetrators who violate ESA criminal provisions must fulfill the element of "knowing." Actors who have knowledge that "taking", importing, exporting, transporting or trading endangered species prohibited by the ESA are subject to sanctions maximum fine of \$ 50,000 and imprisonment for 1 year. If the action is carried out on species in the threatened group, the offender may be subject to criminal sanctions of a maximum of \$ 25,000 and imprisonment for a maximum of 6 months. In addition, additional crimes were also applied modification, suspension, or revocation each lease of any license, permit, certificate or other agreement, as well as confiscation of all equipment and transportation equipment related to these violations.

The application of criminal and civil sanctions will be more severe if the offender harms the species in the endangered category compared to the threatened category.²⁷ In addition, civil penalties will also be more severe if the perpetrator knows that his action against the ESA.²⁸ Criminal sanctions can be applied to the perpetrator if the perpetrator knows that his actions are contrary to the law.²⁹ If e perpetrator is an importer or exporter, the absolute civil liability shall be applied.³⁰

²³ § 1540 (a), (b) (1)

²⁴ § 1540 (a) (1)

²⁵ § 1540 (b) (1)

²⁶ § 1540 (a) (1)

²⁷ § 1540 (a), (b) (1)

²⁸ § 1540 (a) (1)

²⁹ § 1540 (b) (1)

³⁰ § 1540 (a) (1)

Exceptions to § 1538 (a) (1) (A) and (a) (1) (G) are for fish and wildlife that are in captivity or controlled environment at: (A) December 28, 1973, or (B) at the date of publication on the Federal Register, add the species of fish or wildlife to the list published under paragraph (c) of article 1533. In addition, § 1538 (a) (1) cannot be applied to: (1) any wild animals that are breed or in a controlled environment on November 10, 1978; or (2) the offspring of each wild animal described in point (1) until the wild animal or its offspring is intentionally returned to the wild.

Since 1978, there have been a number of cases of criminal acts against wildlife in the United States that have been processed up to the Supreme Court of the United States. Here are some cases that play an important role in establishing animal protection laws in the United States:

- a) Tennessee Valley Authority v. Hill (TVA v. HILL, 437 U.S. 153 (1978));
- b) The Snail Darter Case Babbitt v. Sweet Home Chapter of Communities for a Better Oregon (BABBITT v. CHAP HOME SWEET., COMS. FOR ORE., 515 U. 687 (1995));
- c) Bennet v. Spear (BENNETT ET AL. V. SPEAR ET AL., 520 U.S. 154 (1997));
- d) National Association of Home Builders v. Defenders of Wildlife (NATIONAL ASSOCIATION OF ET AL. V. DEFENDERS OF WILDLIFE ET AL., 551 U.S. 644 (2007));
- e) Winter v. NRDC: Navy Sonar and Whales (WINTER v. NATURAL RESOURCES DEFENSECOUNCIL, INC., 555 U.S. 7 (2008))

The following cases are some of examples to be compared with wildlife cases in Indonesia.

- a) United States v. Clavette (135 F.d 1308 (1998))

On September 20, 1995, Tim Eicher, officer of the U.S Fish and Wildlife Service, investigated a grizzly bear killed at a campsite southwest of Big Sky, Montana. Eicher found two pine trees which between the two trees were tied to a piece of wood which was thought to have just been used to hang a skinned deer. Eicher also found a dead grizzly bear about 170 yards from the location of the pine tree. The bear is estimated to have been shot dead 4 times. Eicher then looks for bullet marks and sleeves. About 25 yards from where the bear was found, Eicher found 1 7 mm bullet shell and 2 bullets, one 2 inch ground covered under a tree close to the bear's corpse, and one fruit above the ground next to a bear pool of blood. Eicher found two hunters who stopped at the camp on September 17, 1995 with an Oregon man skinning a newly killed deer. The man seemed in a hurry and said nothing about being attacked by a grizzly bear or killing him. But the man asked the two hunters what happened if someone shot a grizzly bear. The hunter said that he should be able to prove if his actions were in order to defend himself. Through these two hunters and records from the Montana hunting permit section, Eicher managed to identify the perpetrator as Paul Clavette as a man who was at the camp on September 17, 1995. Officers from the US Fish and Wildlife Service in Portland, Oregon, received an arrest warrant against the perpetrators who later arrested at his home on

November 2, 1995. After a search and reading of the suspect's rights (Miranda warnings), Clavette admitted killing a grizzly bear for protecting her. After the trial, the court ruled that Clavette was guilty and unlawfully killed a grizzly bear. Clavette was proven to know that killing a grizzly bear was illegal and without asking permission from the U.S Fish & Wildlife Service. In addition, during the trial Clavette and his wife changed the story repeatedly. The story presented by Clavette and his wife did not conform to the evidence found. Keith Aune, laboratory officer at U.S Fish & Wildlife Service Montana testified that the results of the autopsy of the grizzly bear shot did not match what was told by Clavette.

Court decision: Clavette was sentenced to three years of probation and paid a \$ 2,000 fine and \$ 6,250 compensation / recovery fees to the U.S Fish & Wildlife Service department.

b) United States v. McKittrick (142 F.3d 1170 (1998))

Gray Wolf or *Canis Lupus* is a species included in the category of endangered protected species throughout the United States, except in Minnesota, which is listed as a threatened species. While in Canada, there are still many gray wolves. Under Section 10 of the ESA, the Fish & Wildlife Service department captures Canadian gray wolves and releases them in Yellowstone National Park as an "experimental population" to increase the number of wolves in Wyoming and parts of Montana and Idaho. One of the wolves was moved from Yellowstone to Red Lodge, Montana, where the wolf was shot dead by Chad McKittrick. After shooting dead the gray wolf, McKittrick skinned and decapitated the wolf's head. The government charged McKittrick with three counts: (1) "taking" gray wolves in contravention of the provisions in 16 USC §§ 1538 (a) (1) (G), 1540 (b) (1) and 50 CFR §17.84 (i) (3); (2) having a gray wolf which is contrary to the provisions of 16 U.S.C §§ 1538 (a) (1) (G), 1540 (b) (1), and 50 C.F.R. §17.84 (i) (5), and; (3) transporting gray wolves as opposed to the Lacey Act, 16 U.S.C §§ 3372 (a) (1), 3373 (d) (2).

Court decision: Chad McKittrick was sentenced to jail for 6 months after being proven for all charges against him.

c) United States v. Bengis 611 F. App'x. 5 (2d Cir. 2015)

From 1987 to 2001, the defendants jointly harvested South Coast and West Coast rock lobsters from South African waters to be exported to America. Such actions are contrary to the laws of America and South Africa. At the same time, the Department of Marine and Coastal Management regulates the quota for fishing and harvesting seasons and permits to export rock lobster.

The suspects through his company, Hout Bay Fishing Industries Ltd. ("Hout Bay"), has harvested rock lobster in large quantities beyond the stipulated conditions and exported it to America.

In May 2001, South Africa seized a container loaded with rock lobsters which were harvested illegally. The South African court refused to try the suspects because the suspects were outside the jurisdiction of the South African court. But the company Hout Bay was charged with overfishing

South and West Coast Rock Lobster which is in conflict with the Marine Living Resources Act of 1998 in South Africa.

Arnold Bengis returned to South Africa and pleaded guilty to representing his company, Hout Bay. South Africa cooperates with Americans to conduct parallel investigations. Each individual was prosecuted in the Court of the Southern District of New York, and on March 2, 2004, Arnold Bengis and Jeffrey Noll pleaded guilty to violating: (i) Lacey Act Nos. 13-2543 - cr (L), 13-4268 - cr (CON) 1 Act, 16 U.S.C. § 3372 (a) (2) (A), importing fish taken illegally according to foreign law; and (ii) conspiracy to violate the Lacey Act and jointly and illegally commit smuggling as opposed to 18 U.S.C. § 545, 18 U.S.C. § 371.

On April 2, 2004, David Bengis pleaded guilty to committing a violation and conspiracy which was banned by the Lacey Act. The suspects were sentenced to 46 months in prison (Arnold Bengis), 30 months (Jeffrey Noll), and 12 months (David Bengis) a fine of \$ 13,300,000 paid to the Americans. The district court also sentenced the suspect to a compensation sentence that must be paid to South Africa. The amount of compensation is then calculated by Ocean and Land Resource Assessment Consultants ("OLRAC") at the request of the court using two different methods. The first method is to calculate the costs incurred by South Africa to restore the rock lobster to its original amount before the suspect harvests it in African waters (the "catch forfeit" method); based on this method the compensation to be paid is \$ 46,775,150. The second method is to calculate the price of rock lobster on the market (the "market value" method); with this method the amount of compensation is \$ 61,932,630.

The court rejected the government's request to provide two compensation penalties for suspects on the basis of the Mandatory Victims Restitution Act of 3 1996 ("MVRA") and the Victim and Witness Protection Act of 1982 4 ("VWPA") because South Africa was not an actual "victim" the actions of the perpetrators.

Using the market price method, the panel of judges recommended compensation of \$ 54,883,550, according to the price of rock lobster. The suspect has paid \$ 7,049,080 to South Africa.

Court decision: Arnold Bengis and Jeffrey Noll pleaded guilty to smuggling conspiracies and have violated the Pleaded Lacey Act, namely the prohibition of illegally trading protected animals. The district court sentenced restitution or compensation to Bengold, Noll, and David Bengis for \$ 22,446,720 to South Africa and was sentenced to 46 months in prison (Arnold Bengis), 30 months (Jeffrey Noll), and 12 months (David Bengis) a fine of \$ 13,300,000 paid to the Americans.

5 Conclusion

From the discussion of the application of criminal sanctions for criminals against protected animals both in Indonesia and America, it can be concluded that both countries have not implemented high imprisonment sanctions for perpetrators, whereas in terms of criminal penalties Indonesia and America apply differently. Criminal sanctions against perpetrators of crimes against protected animals in Indonesia have never reached the maximum prison sentence or maximum fine so that it is not enough to provide a deterrent effect for the perpetrators and become a warning to other communities. The application of imprisonment sanctions for perpetrators of crimes against protected animals in the United States is still relatively weak. But in the case of criminal fines and civil sanctions, the perpetrators of this type of crime are subject to criminal penalties and high civil penalties.

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ASSESSMENT FORM

Title: Wildlife Law Enforcement in Indonesia: Why Can't We Enforce Like United States?

NO		COMMENT	SUGGESTION
1	Title	The title is enough “marketable” and “eyecatching” so reader will be interested to understand this manuscript. Meanwhile, title, abstract, and the manuscript material are still not suitable due to abstract is too wider.	
2	Abstract	<ol style="list-style-type: none"> 1. Abstract still does not describe the manuscript overall due to it should describe the research purpose, research and approach methods, and the research result simply; 2. Abstract only writes the non-obvious statement and need to write the novelty or the theory development; 3. In relation with the verdict issued by judges, it need to elaborate the relevant legal theory. For example: Author need to elaborate the legal positivism and legal realism theory, you may check the Brian S Tamanaha argument (check “<i>A Realistic Theory of Law</i>” Book) related to the role of judges to issue “finding law” or “only enforcing the law” 	Need to be revised
3	Introduction	<ol style="list-style-type: none"> 1. Introduction does not explain the the merritt problem. Author only figure out the wildlife crimes in Indonesia, but he has not elaborated a legal problem as well; 2. Author may issue the problem based on the judge’s perspective to inquiry or examine the legal problem related to wildlife crimes; 3. And which a legal theory used by almost judges to solve it? Do judges apply legal positivism or legal realism theory to run the law and justice? He need to elaborate the legal theory debate; 4. Author need to update data. He uses the wildlife crime data in 2018. 	Need to be revised
4	Problems	Manuscript does not have the legal problem clearly	Need to be revised

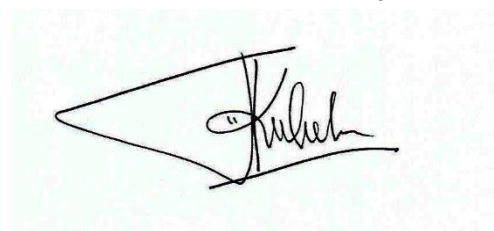
5	Method (If Any)	The type of research in this study is normative legal research (check page 3), author should be prescriptive, but in discussion and analysis chapter, author need to explain the judges's consideration in his verdict. Author can elaborate its consideration and relevant legal theory, thus this manuscript can issue the paradigm shift of judges in examining the case.	Need to be revised
6	Analysis	<ol style="list-style-type: none"> 1. Author need to describe the judge's consideration and elaborated through the relevant legal theory, thus we as reader can understand "Is there a paradigm shift in the examining cases?"; 2. Author need to add the relevant legal theory to strengthen analysis. 	Need to be revised
7	Conclusion and Recommendation	Author may revise according to the revised manuscript	Need to be revised
8	Reference	Author should add the relevant international journals so his analysis can be more comprehensive	Need to be revised
9	Others		

CONCLUSION:

<input type="checkbox"/>	Accepted
<input type="checkbox"/>	Accepted with revision by editorial board

<input checked="" type="checkbox"/>	Accepted with revision by author(s)
<input type="checkbox"/>	Rejected

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Wildlife Law Enforcement in Indonesia: Why Can't We Enforce Like United States?

Article	Abstract
<p>Keywords: Protected wildlife, threatened wildlife, criminal sanctions, civil sanctions.</p> <p>Artikel History Received: Reviewed: Accepted: Published:</p> <p>DOI:</p>	<p>Pursuant to Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem, an individual who conducted crimes against protected wildlife is sentenced to a maximum of 5 (five) years imprisonment and a maximum fine of Rp 100,000,000. In the United States, the Endangered Species Act (ESA) charges the perpetrator against wildlife with criminal and civil sanctions. In § 1540 (a) (1) determines that anyone who "take", import, export, transport or sell endangered species can be fined not more than \$ 25,000. If the species in threatened groups, the perpetrator can be subject to a penalty of not more than \$ 12,000. The enforcement of criminal sanctions against perpetrators who violate ESA criminal provisions must fulfill the element of "knowing." An individual who knowingly "taking", entering or importing, issuing or exporting, transporting or selling endangered species prohibited by the ESA are subject to sanctions maximum fine not more than \$ 50,000 and imprisonment for 1 year. If the action against the species under threatened group, the offender may be subject to criminal sanctions of a maximum of \$ 25,000 and imprisonment for a maximum of 6 months. In addition, additional crimes were also applied in the form of revocation of federal permits, rental permits, and hunting permits, as well as confiscation of all equipment and transportation equipment related to these violations. This study analyzed the enforcement of criminal sanctions in criminal cases against protected animals in courts in Indonesia and the United States. The results of the study showed that criminal sanctions against criminals against protected animals in Indonesia have never reached maximum imprisonment or maximum fines so that they are not sufficient to provide a deterrent effect for the perpetrators and become a warning to other communities. While the imprisonment sanction for criminals against protected animals in the United States is still relatively weak. However, in terms of criminal fines and civil sanctions can be categorized as high sanctions.</p>

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INTRODUCTION

Indonesia is one of countries with largest habitat for wildlife which has various fauna species within. According to *The 5th National Biodiversity Report*, about 10% of species in the world inhabit in Indonesia consisted of 8,157 mammal, bird, reptile, fish and 1,900 butterfly species.

Unfortunately, the number and diversity of species is slowly decreasing, especially the number of wildlife caused by several factors including: (1) development; (2) legal instruments that have not been strong; (3) protection of animals that have not become a government priority; (4) illegal trading and hunting; (5) climate change, and (6) lack of public knowledge and awareness of the protection of wildlife which ultimately leads to human-wildlife conflict.

Actually, Indonesia has a number of statues and regulations that become the legal framework for protecting animals in Indonesia, namely Law Number 5 of 1990 on Conservation of Natural Resources and Its Ecosystems --which is an organic law of wildlife protection. Also, some others related laws that supported the protection of wildlife such as Law Number 41 of 1999 on Forestry, Law Number 32 of 2009 on Protection and Management of the Environment, Law Number 16 of 1992 on Plant, Fish and Animal Quarantine, Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction, Law Number 5 of 1994 on Ratification of the United Nations Convention on Biological Diversity, Law Number 21 of 2004 on Cartagena Protocol on Biosafety for Conservation about Biodiversity, as well as Law Number 11 of 2013 concerning the Nagoya Protocol on Access to Genetic Resources and Fair and Balanced Benefit Distribution that Arises from its Utilization of Biodiversity Conservation.

At the level of regulation, Indonesia has Government Regulation Number 13 of 1994 on Animal Hunting, Government Regulation Number 68 of 1998 on Natural Reserve Areas and Natural Conservation Areas, Government Regulation Number 7 of 1999 on Preservation of Plant and Animal, Government Regulation Number 8 of 1999 on Utilization of Plants and Wildlife. In addition to the government laws and regulations mentioned above, Indonesia still has Ministerial Regulations and other types of legislation.

From the number of legal instruments above, the number of wildlife species in Indonesia should continue to increase. In fact, wildlife crimes continue to occur. At the beginning of 2018, a headless orangutan was found floating in Kalahien Village, South Hamlet Subdistrict, South Barito District, Central Kalimantan.¹ From the results of the autopsy, it was found 17 air rifle bullets in the body (heart, lungs and stomach) of the Orangutan and injuries from sharp objects and slash wounds.² At the end of January, the Central Kalimantan police succeeded in arresting two perpetrators who claimed to have shot and severed orangutans because the orangutans entered their plantations and could not be evicted.³ While the headless Orangutan case investigations has not been completed, Indonesia has shocked the international community with the discovery of dead Orangutans with 130 gunshot wounds in its body in East Kutai (TNK) National Park (Kutim), East Kalimantan (February 6, 2018).⁴ police arrested five perpetrators of

¹ Indra Nugraha, 'Menyedihkan, Satu Individu Orangutan Ditemukan Mengambang Tanpa Kepala', <https://www.mongabay.co.id/2018/01/16/menyedihkan-satu-individu-orangutan-ditemukan-mengambang-tanpa-kepala/>, 2018, p. 1.

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⁴ Gusti Nara, 'Satu Orangutan Tewas Dengan 130 Luka Tembak Di TNK Kaltim', <https://regional.kompas.com/read/2018/02/06/21524771/satu-orangutan-tewas-dengan-130-luka-tembak-di-tnk-kaltim>, 2018, p. 1.

orangutan killers who argued that the orangutans damaged their gardens located in Kutai National Park.⁵

Based on data from Center for Orangutan Protection (COP) in collaboration with the Orangutan Foundation International (OFI) Pangkalan Bun, and the Borneo Orangutan Survival Foundation (BOSF) Palangka Raya, there are 10 cases of crimes against Orangutans in Central Kalimantan that have not been revealed.⁶ Then, the results of a study carried out by a number of scientists published in the journal *Current Biology* showed that Bornean Orangutans suffered a population loss of 100,000 in the period 1999 - 2015, which is estimated to have a population decline.⁷

In addition to human-wildlife conflicts, the threat of extinction to a number of endemic species in Indonesia is the illegal trade in protected animals. Indonesia is "one of the top 10 countries" mega-diversities "and the largest supplier of wildlife products in Asia, both legally and illegally."⁸ UNODC (The United Nations Convention on Transnational Organized Crime) categorizes wildlife trade as "transnational organized wildlife crime."⁹

RESEARCH METHODS

This study analyzed the enforcement of criminal sanctions in criminal cases against protected animals in courts in Indonesia and the United States. The type of research in this study is normative legal research, a research carried out by examining the abstraction aspects of legal norms through literature studies and reviewing legislation, court decisions, or other legal documents, as well as research results, assessment results, and other references. In this case, the researcher focused more on analyzing court decisions in Indonesia and America regarding the sentencing of criminals against wildlife. Although it is a normative legal research, this research is still supported by the results of interviews with several parties, especially the Ministry of Forestry and the Natural Resources Conservation Agency and the Ministry of Environment. Interviews were conducted in order to find out the trends in the area of wildlife crime and the causes of the crime, and to determine the effectiveness of the sentences given to the perpetrators.

In this study, the approach method used is the case approach and comparative approach method. Cases approach is a problem approach method by analyzing cases related to crimes against wildlife in Indonesia and America through the study of court decisions on these cases.

⁵ Aditya Mardiasuti, 'Polisi Tangkap 5 Orang Pembunuh Orang Utan Di Kalimantan Timur', <https://News.Detik.Com/Berita/d-3871404/Polisi-Tangkap-5-Orang-Pembunuh-Orang-Utan-Di-Kalimantan-Timur>, 2018, p. 1.

⁶ <https://sains.kompas.com/read/2018/01/18/15332751/belum-terungkap-11-kasus-pembunuhan-orangutan-di-kalimantan-tengah?page=all>, 'Belum Terungkap, 11 Kasus Pembunuhan Orangutan Di Kalimantan Tengah', Nugroho Budi Baskoro, 2018, p. 1.

⁷ Et.al Maria Voigt, 'Global Demand for Natural Resources Eliminated More Than 100,000 Bornean Orangutans, *Current Biology*', [Http://Www.Cell.Com/Current-Biology/Fulltext/S0960-9822\(18\)30086-1](http://Www.Cell.Com/Current-Biology/Fulltext/S0960-9822(18)30086-1), DOI: <https://doi.org/10.1016/j.cub.2018.01.053>, Dapat Diunduh Di <https://Sci-Hub.Tw/https://doi.org/10.1016/j.cub.2018.01.053>, 2018.

⁸ USAID, 'Perdagangan Satwa Liar, Kejahatan Terhadap Satwa Liar Dan Perlindungan, Spesies Di Indonesia: Konteks Kebijakan Dan Hukum Changes for Justice Project', 2015, p. 4.

⁹ UNODC, 'Defining Transnational Organized Wildlife Crime', https://www.unodc.org/documents/data-and-analysis/wildlife/WLC16_Chapter_1.Pdf, 2016.

While the comparative approach or comparison method is used to compare court decisions in Indonesia and America related to criminal acts against animals to see the advantages and disadvantages of each criminal sanction in both countries. From this research, it can be used as material for formulating criminal provisions that are appropriate to be applied in Indonesia.

Source materials of the research were collected in the following ways:

1. Study Documents

Collection of legal materials is carried out by studying court decisions in Indonesia and America related to criminal sanctions against perpetrators of wildlife crime

2. Library Studies

The review of legislation and literature is conducted to analyze the contents of court decisions that have permanent legal force.

3. Interview

Existing legal materials are then supported by the results of interviews with several agencies to strengthen the conclusions obtained.

Legal material analysis carried out in this study is a qualitative descriptive method, namely the analysis formed on an indirect assessment or measure as outlined in the form of statements and writings based on legal material and data obtained. In drawing conclusions, the researcher uses deductive logic which is to draw a conclusion starting from the general problem to be a conclusion whose scope is individual or specific.

The technique of analyzing legal material is carried out by reviewing the application of criminal sanctions in several criminal cases against animals in Indonesia and the United States. Criminal sanctions applied in each country will be compared to then see the effectiveness of the application of the sanctions: whether it has fulfilled a sense of justice and has a deterrent effect on the perpetrators.

ANALYSIS AND DISCUSSION

1. Indonesia Legal Protection on Wildlife

Natural Resources in Indonesia are acknowledged to be very large and diverse. However, this potential has long been not protected and protected by the State, this is caused by the absence of specific legislations on this matter. Moreover, Indonesia constitution is not too clear in accommodating the constitutional ideas of legal norms to protect natural resource ecosystems. If only the constitutional rights are stronger recognized by the state, the stronger the bargaining position of the people with nature, and the state with groups who like to exploit natural resources. This could lead to raising awareness to protect Natural Resources and the Ecosystem.

To protect the Natural Resources and Ecosystems, Indonesia legislative branch has enacted Law Number 5 of 1990 on Conservation of Natural Resources and Its Ecosystems. Natural Resources and its Ecosystems must be protected by the State absolutely due to the following reasons:¹⁰

1) Protection of life support system

¹⁰ Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, Cet. 17 (Yogyakarta: Gadjah Mada University Press, 2002).

Protection of life support systems includes efforts and actions related to the protection of springs, cliffs, banks of rivers, lakes and ravines, maintenance of functions of forest hydrology, coastal protection, watershed management, protection against the symptoms of uniqueness and natural beauty, and others. Protection of life support systems is carried out by establishing protected areas. So that if the area for animal and plant maintenance works well then the issue of extinction of flora and fauna will no longer exist. Basically protected areas can be used for utilization, but must comply with the provisions set by the government.

2) Monitoring the diversity of species of animals and plants and their ecosystems

Preservation is an effort and conservation action to ensure species diversity includes safeguards so that these elements are not extinct with the aim that each of these elements can function in nature and is always ready to be used for human welfare at any time. The extinction of one element cannot be replaced by another element. Preservation of plant and animal species can be carried out in the area (in-situ conservation) or outside the area (ex-situ conservation). Komodo National Park is one of wild orchid species conservation of In-situ Preservation is an effort and conservation action to ensure species diversity includes safeguards so that these elements are not extinct with the aim that each of these elements can function in nature and is always ready to be used for human welfare at any time. The extinction of one element cannot be replaced by another element. Preservation of plant and animal species can be carried out in the area (in-situ conservation) or outside the area (ex-situ conservation). Komodo National Park is one of wild orchid species conservation of Insitu Komodo (ex situ conservation).

3) Sustainable use of living natural resources and their ecosystems

Sustainable use of biological natural resources and their ecosystem is essentially an effort to control or to limit the use of biological natural resources and their ecosystem so that the utilization can be carried out continuously in the future. The activities carried out are the utilization of environmental conditions of natural conservation areas while maintaining the preservation of the function of the area and the utilization of wild plants and animals while taking into account the continuity of potential, carrying capacity and diversity of wild plants and animals.

Protection of natural resources and their ecosystems is an action to protect from extinction, sustainability and scarcity. Sustainability is a condition where living natural resources in an area will be thereafter. The utilization of natural resources that can be renewed is carried out at a maximum of the rate of growth. If utilization exceeds the growth rate, the resource becomes increasingly scarce and becomes extinct. Utilization of non-renewable natural resources, such as mining, coal, oil, should be managed with the principle of saving use or finding alternative new resources that can replace their functions.¹¹

Status of scarcity of a species is related to three criteria, namely 1) geographical distribution area, 2) local population number, and 3) variation in habitat requirements. If a species as a whole is found in small amounts, then the species is said to be rare. For example: Java eagle (*Spizaetus*

¹¹ Takdir Rahmadi, *Hukum Lingkungan Di Indonesia*, Cetakan 1 (Jakarta: PT. Raja Grafindo Persada, 2011).

bartelsi) is an endemic bird of prey on Java Island which is currently included in the category of endangered and Sumatera Tiger which is categorized as critically endangered tigers; so that if conservation efforts are not carried out immediately they will soon be extinct.

Extinction is a condition in which the last individual of a species really is no longer found in nature, for instance: *trulek jawa*, Java tiger. The causes of scarcity and extinction can be grouped into natural extinction and extinction due to human activities both directly and indirectly. Natural extinction can be due to natural disasters such as earthquakes, tsunamis, volcanic eruptions. While scarcity and extinction due to human activities such as pollution, agricultural land clearing, mining, deforestation, habitat fragmentation.¹²

As stated in the discussion above, conservation is regulated in Law No. 5 of 1990 concerning the conservation of living natural resources and their ecosystems. This law is *lex specialis* from forestry law because the conservation law regulates part of the forest and forest areas that are generally regulated in forestry laws.

Law No. 5 of 1990 groups wildlife into protected species and unprotected animals. The protected species are grouped into two types, namely species in danger of extinction and species in rare populations.¹³ The protected species are regulated in Government Regulation Number 7 of 1999 on Preservation of Plants and Animals. Provisions for wildlife that shall be protected if they meet these following criteria:

- a) have a small population;
- b) there is a sharp decline in the number of individuals in nature;
- c) limited (endemic) distribution area.

According to Government Regulation Number 7 of 1999, there are 221 species listed as protected animals.

The Act No. 5 of 1990 also regulates prohibitions action towards wildlife stated in Article 21 Paragraph (2) in which any individual prohibit to:

- a. catch, hurt, killed, keep, possess, pet, transport, and sell protected alive species;
- b. keep, possess, pet, transport, sell protected death species;
- c. exclude protected species from Indonesian region to other region, inside or outside Indonesia;
- d. sell, keep or possess skin, body or others part of protected species bodies, or goods made from this animals parts or exclude them from a region in Indonesia to other regions;
- e. take, destroy, exterminate, sell, keep or possess any eggs and/ or nest of protected species.¹⁴

Pursuant to Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem, an individual who conducted crimes against protected wildlife which mentioned in Article 21 Paragraph (2) is sentenced to a maximum of 5 (five) years imprisonment and a maximum fine of Rp 100,000,000.

In Paragraph (4) of Article 40, prohibition actions against wildlife also applied to any individual because of his negligence violating the provisions referred to in Article 21 paragraph (1) --which is crimes against protected plant/fauna-- and paragraph (2) -- which is crimes against wildlife-- and Article 33 paragraph (3) -- which is prohibition for any individual conducting any activities that are not in accordance with function of utilization zones and other zones of national

¹² Rahmadi.

¹³ Article 20 Paragraph (1) Law Number 5 of 1990.

¹⁴ Article 21(2). [Law No. 5 of 1990].

parks, parks forest highway, and natural tourism park-- shall be punished with the most imprisonment one year old and a maximum fine of Rp 50,000,000.

2. Wildlife Law Enforcement

Generally speaking, law enforcement related to activities to make sure laws are obeyed. According to Merriam-Webster Dictionary, law enforcement means “the department of people who enforce laws, investigate crimes, and make arrests: the police.” In Cambridge dictionary, law enforcement defined as “the activity of making certain that the laws of an area are obeyed.” Bureau of Justice Statistic described law enforcement as “the individuals and agencies responsible for enforcing laws and maintaining public order and public safety including the prevention, detection, and investigation of crime, and the apprehension and detention of individuals suspected of law violation.”¹⁵

Talking about wildlife law enforcement in Indonesia, the authors started analyzing the implementation of criminal sanctions against wildlife. After analyzing some cases, it seems that the courts' decisions did not favor too much for wildlife interest. It appears that the judges did not seriously give punishment to the perpetrators.

First case studies were conducted toward court's decision in the headless Orangutan (*Pongo Pygmaeus*) case. As earlier mentioned, a headless death body Orangutan was found in Kalahien Village, South Hamlet Subdistrict, South Barito District, Central Kalimantan, Indonesia. Besides his head was cut off, in the body of the Orangutan was found seventeen gunshot wounds. After several investigations, police has arrested two perpetrators. Then, on April 2018 the case was brought before the Buntok Court. From the court examinations, the court determines the evidences, as follow:

- 17 (seventeen) items of air rifle / bullets;
- 1 (one) Canon brand airgun;
- 1 (one) piece of machete sharp weapon and its coil about 50 cm long;
- 1 (one) U.S.A brand air rifle bullet box made of paper in a torn state;
- 1 (one) fruit of the skull / head bone of an orangutan;
- 1 (one) piece of machete sharp weapon and its coil about 50 cm long;
- 1 (one) U.S.A brand air rifle bullet box made of paper in a torn state;
- 1 (one) piece of orangutan jaw bone;
- 2 (two) segments of the thumb of the toes to the right and left of the carcass of an orangutan;
- A handful of blond orangutan hair / feathers.

Based on the examinations and evidences, the defendants (Mulyadi bin Landes and Tamorang bin Ribin) were found guilty committing a criminal act of killing a protected wildlife in a living condition. The defendants were sentenced imprisonment for six months and a fine of Rp. 500,000.000.¹⁶

¹⁵ 'Bureau Justice of Statistics', <https://www.bjs.gov/index.cfm?ty=tp&tid=7>.

¹⁶ Case Number: 27/Pid.B/LH/2018/PN BNT

Second case the authors studied is Orangutan killing with 130 gunshot wounds case. This Orangutan was found by a villager in Teluk Pandan, Kutai Timur, East Kalimantan. Besides gunshot wounds, the Orangutan body has dozens of stab wounds, even the left leg in a stump condition.¹⁷ One day after investigation, police arrested five suspects -- Nasir (54), Rustan (37), Muis (36), Andi (37) dan He (13).¹⁸ Nasir is a grandfather, his son is Rustan, his son-in-law Andi and his grandson He, whereas Muis is a neighbor. They have admitted that they killed the Orangutan because they considered the orangutan as pest since it has disturbed their gardens in the area of Kutai National Park (TNK).

The case was brought before the court (Sanggatta) on April 2018. Based on the confession of the defendants in the trial, the defendant I (Muis bin Cembun) heard the voice of an orangutan from the direction of the pineapple garden, then defendant I took the airgun and the bullets in his house and then headed back towards the orangutan's voice and saw an orangutan in on the trees around the pineapple garden, then Defendant I tried to expel the orangutan by firing using an air rifle.

After several shots of the orangutan the defendant I saw the orangutan in an angry state and would attack the defendant I. Then Defendant I asked for help from Defendant II (H. Nasir bin Sakka) and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto by saying there was an orangutan fighting, then the three of them while carrying the airgun and the bullet back to the orangutan who was still in the tree, then Defendant I, Defendant II, and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto immediately shot the orangutan until the orangutan descended from the tree and moved towards Lake. When the orangutan arrived at the lake of Defendant I, Defendant II, and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto again shot him until the orangutan looked very angry. Then the witness came Andi bin Hambali (separate prosecution) and witness Rustan bin H. Nasir (separate prosecution) and immediately borrowed the rifle used by Defendant II and witness Hendri Herdiansya a.k.a Hendri bin Jekrianto then they both took part in shooting the orangutan.

Then Defendant I then left the place because he was summoned by the witness Mariska binti Ma'ruf (wife of Defendant I) to escort Defendant-in-law I. Then, at around 10:00 a.m. the defendant II left the shooting place, while witness Hendri Herdiansya a.k.a Hendri bin Jekrianto witness Andi bin Hambali and witness Rustan bin H. Nasir still at the place and still shooting the orangutan until around 11:00 WITA, the three of them left the place with the condition of the orangutan still on the wood in the middle of the forest.

That later on Sunday, February 4, 2018, at around 6:30 p.m. Wita witness Dede Nurhidayat Als Deden (Officer in KNP) was informed by the TNK Whats App group that there were orangutans who were limp and had wounds on their bodies but still living on logs in the middle of the lake in the district Teluk Pandan. Then the witness Dede Nurhidayat Als Deden was ordered by the Head of the TNK Office to see the condition of the orangutan at that time along with three of his colleagues. Arriving at the crime scene with consideration of safety and

¹⁷ Bambang Ir, 'Sadis, Orangutan Mati Akibat Ditembus 130 Peluru', <https://News.Okezone.Com/Read/2018/02/07/340/1855928/Sadis-Orangutan-Mati-Akibat-Ditembus-130-Peluru>, 2018, p. 1.

¹⁸ Nur Aditya, 'Orangutan Mati Ditembaki 130 Peluru, Pelakunya Satu Keluarga', <https://Www.Merdeka.Com/Peristiwa/Orangutan-Mati-Ditembaki-130-Peluru-Pelakunya-Satu-Keluarga.Html>, 2018, p. 1.

evacuation procedures then evacuation cannot be carried out until Monday, February 5, 2018 around 8:00 a.m. The orangutans were evacuated while still alive but weak and there were many injuries all over their bodies. When he arrived at TNK's office a medical action was taken by Veterinarian Felisitas Flora Sambe Mambela but could not save the orangutan and was declared dead at 1:55 a.m.

For their crimes, the Sangatta court imposed a criminal sentence against the defendants each with a prison sentence of seven months and a fine of Rp. 50,000,000 with the provision that if the fine is not paid then it will be replaced with a sentence of two months.¹⁹

Third case that the authors discussed in this research is the case of illegal trade of wildlife occurred in Banyuasin District, South Sumatera, Indonesia.²⁰ On Wednesday, December 13, 2017 at around 13.00 WIB, the defendant Muhammad Arif bin Sarnubi bought 100 kilograms eggs of Horseshoe Crab (*Belangkas*) from Unggun (still suspect) for Rp 50,000 per kilogram with the total amount for IDR 5,000,000 in the warehouse that the defendant leased from WI in Yunan Village, Sungsang IV Village, Banyuasin II District, Banyuasin District.

Then, on Thursday, December 14, 2017 at 8:30 a.m., a member of the Directorate of Water Police of South Sumatra Regional came to the warehouse and found one fiber containing 100 kilograms of eggs Horseshoe Crab (*Belangkas*) belongs to defendant. The defendant bought three times eggs of Horseshoe Crab (*Belangkas*) from Unggun: (1) in October 2017, 60 kilograms for Rp. 3,000,000; (2) at the end of November 2017, 60 kilograms worth Rp. 3,000,000, and; on Wednesday, December 13, 2017, 100 kilograms for Rp. 5,000,000. After the defendant bought the eggs, then the defendant sold the eggs to Yasa in Medan by means of contact by telephone. The eggs were packaged into a sack which was then sent by expedition. For each sale, the defendant got profit of Rp. 1,800,000.

Horseshoe Crab (*Belangkas*) is one of the protected wildlife in Indonesia. It is listed in Government Regulation Number 7 of 1999 as protected species with species serial number 229 with scientific name (Latin), *Tachypleus gigas*. Added to that, in the area of South Sumatra Province there is no person or business entity that has permission to carry out captivity and circulation of Horseshoe Crab (*Belangkas*).

Based on those facts, the Court (Palembang court) decided that the defendant --Muhammad Arif bin Sarnubi-- was intentionally taking, damaging, destroying, trading, storing or possessing eggs and or nests of protected animals. For his criminal action, the defendant sentenced to imprisonment for 8 months and a fine of Rp. 2,000,000 provided that if it is not paid it will be replaced with a imprisonment for 4 months.

What can we conclude from the three cases above? The sentences for wildlife crimes determined by the judges tend to weak. The judges did not impose sentences that can cause a deterrent effect on the perpetrators. Since Indonesia is civil law in which the judges cannot make law; thus, the judge only follows the laws and regulations no matter how cruel the defendants crimes. Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem stated an individual who conducted crimes against protected wildlife which mentioned in Article 21 Paragraph (2) is sentenced to a maximum of 5 (five)

¹⁹ Case Number: 130/Pid.B/LH/2018/PN Sgt.

²⁰ Case Number: 376/Pid.B/LH/2018/PN Plg

years imprisonment and a maximum fine of Rp 100,000,000. However, at least the judges could sentence the defendants with maximum sanction stated in statute.

3. U.S.A Legal Protection on Wildlife

Comparing Indonesia law with United States (USA) law and the law enforcement is very ambitious. Nevertheless, Indonesia could learn from USA.

In the United States, prohibited acts against wildlife are regulated in Endangered Species Act (ESA) (US Code: 16 U.S.C § 1531 - 1544) which is a federal law and organic law. In § 1538 ESA the prohibited actions are determined as follows:²¹

16 U.S.C§ 1538 (a)(1): “(a) *GENERALLY:*

“(1) *Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to-*

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter”

Violations of the above provisions can be subject to criminal or civil sanctions. The application of sanctions is determined by three factors:²² (1) the type of species affected, whether violations are committed against endangered or threatened species; (2) the perpetrator's knowledge of the provisions of the ESA; (3) for certain circumstances, the perpetrator's occupation. The application of criminal and civil sanctions will be more severe if the offender harms the species in the endangered category compared to the threatened category.²³ In addition, civil penalties will also be more severe if the perpetrator knows that his action is prohibited by the ESA.²⁴ Criminal sanctions can be imposed to the perpetrator if the perpetrator has knowledge that his action is against the law.²⁵ If the perpetrator is an importer or exporter, the absolute civil liability is applied to the perpetrator.²⁶

Civil sanctions are regulated in § 1540 (a) (1) which determine that the weighting of civil sanctions can be carried out if the perpetrator knows his actions are a violation or the perpetrator is an importer or exporter of the endangered species. Such actions include "taking", importing, exporting, transporting or selling endangered species. For these actions an individual can be fined with no more than \$25,000. If these actions are carried out on species in threatened groups

²¹ 16 U.S.C § 1538

²² Dale D. Goble & Eric T. Freyfogle, , *Wildlife Law: Cases and Materials* (New York: Foundation Press, 2010).

²³ § 1540 (a), (b) (1)

²⁴ § 1540 (a) (1)

²⁵ § 1540 (b) (1)

²⁶ § 1540 (a) (1)

it can be subject to a penalty of maximum \$12,000. However, if the offender carries out the actions without having knowledge of the prohibitions stipulated in the ESA, then a fine is imposed not more than \$500.

The application of criminal sanctions against perpetrators who violate ESA criminal provisions must fulfill the element of "knowing." Actors who have knowledge that "taking", importing, exporting, transporting or trading endangered species prohibited by the ESA are subject to sanctions maximum fine of \$ 50,000 and imprisonment for 1 year. If the action is carried out on species in the threatened group, the offender may be subject to criminal sanctions of a maximum of \$ 25,000 and imprisonment for a maximum of 6 months. In addition, additional crimes were also applied modification, suspension, or revocation each lease of any license, permit, certificate or other agreement, as well as confiscation of all equipment and transportation equipment related to these violations.

The application of criminal and civil sanctions will be more severe if the offender harms the species in the endangered category compared to the threatened category.²⁷

In addition, civil penalties will also be more severe if the perpetrator knows that his action against the ESA.²⁸ Criminal sanctions can be applied to the perpetrator if the perpetrator knows that his actions are contrary to the law.²⁹ If e perpetrator is an importer or exporter, the absolute civil liability shall be applied.³⁰

Exceptions to § 1538 (a) (1) (A) and (a) (1) (G) are for fish and wildlife that are in captivity or controlled environment at: (A) December 28, 1973, or (B) at the date of publication on the Federal Register, add the species of fish or wildlife to the list published under paragraph (c) of article 1533. In addition, § 1538 (a) (1) cannot be applied to: (1) any wild animals that are breed or in a controlled environment on November 10, 1978; or (2) the offspring of each wild animal described in point (1) until the wild animal or its offspring is intentionally returned to the wild.

Since 1978, there have been a number of cases of criminal acts against wildlife in the United States that have been processed up to the Supreme Court of the United States. Here are some cases that play an important role in establishing animal protection laws in the United States:

- a) Tennessee Valley Authority v. Hill (TVA v. HILL, 437 U.S. 153 (1978));
- b) The Snail Darter Case Babbitt v. Sweet Home Chapter of Communities for a Better Oregon (BABBITT v. CHAP HOME SWEET., COMS. FOR ORE., 515 U. 687 (1995));
- c) Bennet v. Spear (BENNETT ET AL. V. SPEAR ET AL., 520 U.S. 154 (1997));
- d) National Association of Home Builders v. Defenders of Wildlife (NATIONAL ASSOCIATION OF ET AL. V. DEFENDERS OF WILDLIFE ET AL., 551 U.S. 644 (2007));
- e) Winter v. NRDC: Navy Sonar and Whales (WINTER v. NATURAL RESOURCES DEFENSECOUNCIL, INC., 555 U.S. 7 (2008))

The following cases are some of examples to be compared with wildlife cases in Indonesia.

- a) United States v. Clavette (135 F.d 1308 (1998)
On September 20, 1995, Tim Eicher, officer of the U.S Fish and Wildlife Service, investigated a grizzly bear killed at a campsite southwest of Big Sky, Montana. Eicher found

²⁷ § 1540 (a), (b) (1)

²⁸ § 1540 (a) (1)

²⁹ § 1540 (b) (1)

³⁰ § 1540 (a) (1)

two pine trees which between the two trees were tied to a piece of wood which was thought to have just been used to hang a skinned deer. Eicher also found a dead grizzly bear about 170 yards from the location of the pine tree. The bear is estimated to have been shot dead 4 times. Eicher then looks for bullet marks and sleeves. About 25 yards from where the bear was found, Eicher found 1 7 mm bullet shell and 2 bullets, one 2 inch ground covered under a tree close to the bear's corpse, and one fruit above the ground next to a bear pool of blood. Eicher found two hunters who stopped at the camp on September 17, 1995 with an Oregon man skinning a newly killed deer. The man seemed in a hurry and said nothing about being attacked by a grizzly bear or killing him. But the man asked the two hunters what happened if someone shot a grizzly bear. The hunter said that he should be able to prove if his actions were in order to defend himself. Through these two hunters and records from the Montana hunting permit section, Eicher managed to identify the perpetrator as Paul Clavette as a man who was at the camp on September 17, 1995. Officers from the US Fish and Wildlife Service in Portland, Oregon, received an arrest warrant against the perpetrators who later arrested at his home on November 2, 1995. After a search and reading of the suspect's rights (Miranda warnings), Clavette admitted killing a grizzly bear for protecting her. After the trial, the court ruled that Clavette was guilty and unlawfully killed a grizzly bear. Clavette was proven to know that killing a grizzly bear was illegal and without asking permission from the U.S Fish & Wildlife Service. In addition, during the trial Clavette and his wife changed the story repeatedly. The story presented by Clavette and his wife did not conform to the evidence found. Keith Aune, laboratory officer at U.S Fish & Wildlife Service Montana testified that the results of the autopsy of the grizzly bear shot did not match what was told by Clavette. *Court decision:* Clavette was sentenced to three years of probation and paid a \$ 2,000 fine and \$ 6,250 compensation / recovery fees to the U.S Fish & Wildlife Service department.

b) United States v. McKittrick (142 F.3d 1170 (1998))

Gray Wolf or Canis Lupus is a species included in the category of endangered protected species throughout the United States, except in Minnesota, which is listed as a threatened species. While in Canada, there are still many gray wolves. Under Section 10 of the ESA, the Fish & Wildlife Service department captures Canadian gray wolves and releases them in Yellowstone National Park as an "experimental population" to increase the number of wolves in Wyoming and parts of Montana and Idaho. One of the wolves was moved from Yellowstone to Red Lodge, Montana, where the wolf was shot dead by Chad McKittrick. After shooting dead the gray wolf, McKittrick skinned and decapitated the wolf's head. The government charged McKittrick with three counts: (1) "taking" gray wolves in contravention of the provisions in 16 USC §§ 1538 (a) (1) (G), 1540 (b) (1) and 50 CFR §17.84 (i) (3); (2) having a gray wolf which is contrary to the provisions of 16 U.S.C §§ 1538 (a) (1) (G), 1540 (b) (1), and 50 C.F.R. §17.84 (i) (5), and; (3) transporting gray wolves as opposed to the Lacey Act, 16 U.S.C §§ 3372 (a) (1), 3373 (d) (2).

Court decision: Chad McKittrick was sentenced to jail for 6 months after being proven for all charges against him.

c) United States v. Bengis 611 F. App'x. 5 (2d Cir. 2015)

From 1987 to 2001, the defendants jointly harvested South Coast and West Coast rock lobsters from South African waters to be exported to America. Such actions are contrary to the laws of America and South Africa. At the same time, the Department of Marine and Coastal Management regulates the quota for fishing and harvesting seasons and permits to export rock lobster.

The suspects through his company, Hout Bay Fishing Industries Ltd. ("Hout Bay"), has harvested rock lobster in large quantities beyond the stipulated conditions and exported it to America.

In May 2001, South Africa seized a container loaded with rock lobsters which were harvested illegally. The South African court refused to try the suspects because the suspects were outside the jurisdiction of the South African court. But the company Hout Bay was charged with overfishing South and West Coast Rock Lobster which is in conflict with the Marine Living Resources Act of 1998 in South Africa.

Arnold Bengis returned to South Africa and pleaded guilty to representing his company, Hout Bay. South Africa cooperates with Americans to conduct parallel investigations. Each individual was prosecuted in the Court of the Southern District of New York, and on March 2, 2004, Arnold Bengis and Jeffrey Noll pleaded guilty to violating: (i) Lacey Act Nos. 13-2543 - cr (L), 13-4268 - cr (CON) 1 Act, 16 U.S.C. § 3372 (a) (2) (A), importing fish taken illegally according to foreign law; and (ii) conspiracy to violate the Lacey Act and jointly and illegally commit smuggling as opposed to 18 U.S.C. § 545, 18 U.S.C. § 371.

On April 2, 2004, David Bengis pleaded guilty to committing a violation and conspiracy which was banned by the Lacey Act. The suspects were sentenced to 46 months in prison (Arnold Bengis), 30 months (Jeffrey Noll), and 12 months (David Bengis) a fine of \$ 13,300,000 paid to the Americans. The district court also sentenced the suspect to a compensation sentence that must be paid to South Africa. The amount of compensation is then calculated by Ocean and Land Resource Assessment Consultants ("OLRAC") at the request of the court using two different methods. The first method is to calculate the costs incurred by South Africa to restore the rock lobster to its original amount before the suspect harvests it in African waters (the "catch forfeit" method); based on this method the compensation to be paid is \$ 46,775,150. The second method is to calculate the price of rock lobster on the market (the "market value" method); with this method the amount of compensation is \$ 61,932,630.

The court rejected the government's request to provide two compensation penalties for suspects on the basis of the Mandatory Victims Restitution Act of 3 1996 ("MVRA") and the Victim and Witness Protection Act of 1982 4 ("VWPA") because South Africa was not an actual "victim" the actions of the perpetrators.

Using the market price method, the panel of judges recommended compensation of \$ 54,883,550, according to the price of rock lobster. The suspect has paid \$ 7,049,080 to South Africa.

Court decision: Arnold Bengis and Jeffrey Noll pleaded guilty to smuggling conspiracies and have violated the Pleaded Lacey Act, namely the prohibition of illegally trading protected animals. The district court sentenced restitution or compensation to Bengold, Noll, and David Bengis for \$ 22,446,720 to South Africa and was sentenced to 46 months in prison (Arnold

Bengis), 30 months (Jeffrey Noll), and 12 months (David Bengis) a fine of \$ 13,300,000 paid to the Americans.

CONCLUSION

From the discussion of the application of criminal sanctions for criminals against protected animals both in Indonesia and America, it can be concluded that both countries have not implemented high imprisonment sanctions for perpetrators, whereas in terms of criminal penalties Indonesia and America apply differently. Criminal sanctions against perpetrators of crimes against protected animals in Indonesia have never reached the maximum prison sentence or maximum fine so that it is not enough to provide a deterrent effect for the perpetrators and become a warning to other communities. The application of imprisonment sanctions for perpetrators of crimes against protected animals in the United States is still relatively weak. But in the case of criminal fines and civil sanctions, the perpetrators of this type of crime are subject to criminal penalties and high civil penalties.

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