
Adrianus Eryan

University of Melbourne, adrianuseryan@gmail.com

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Illegal wildlife trade is a crime that is rarely systematically exposed and difficult to investigate but generates extraordinary profits. As a one of mega biodiversity country in the world, Indonesia is an easy target for illegal wildlife trade. Unfortunately, existing law enforcement practices still need to be improved. There are at least two supporting factors enabling the wildlife crime: inadequate normative legal basis and weak law enforcement resulting from the high cost of crimes. The research is carried out through a series of theoretical frameworks of cost-benefit analysis and criticisms regarding ideal law enforcement practices through various court decisions. At the time of this writing, the Conservation of Biodiversity and Ecosystems Act Number 5 Year 1990 is also in the revision process in the parliament. Thus, this article argues three crucial revision points: promoting the recognition of illegal wildlife trade as a transnational organized crime, increasing the cost of the crime, and proposing restoration-oriented law enforcement to promote concrete and positive impacts to the sustainability of wildlife, ecosystems, and biodiversity.

Keywords: Biodiversity, conservation, illegal wildlife trade.
occurring, all lead to global warming and biodiversity loss. Furthermore, research on the targets and strategies prepared by the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC) to stop biodiversity loss simultaneously shows a positive impact on slowing climate change. It is a causal relationship in between.

If finding a relationship between the two is still challenging, the trophic cascade could be a simple example. Ripple et.al. defined trophic cascade as “indirect species interactions that originate with predators and spread downward through food webs.” One widely known example is the reintroduction of wolves in Yellowstone National Park. The wolves that disappeared since the 1920s caused an explosion in the moose population, leading to overgrazing of vegetation and dry rivers. However, the reintroduction of wolves in 1995 slowly rebalanced the food webs and ecosystem, even helping to change the physical landscape of the national park.

CBD categorizes Indonesia as one of 17 countries with mega biodiversity. Its role in protecting the world’s biodiversity is very important. However, the vastness of Indonesia’s territory, coupled with various crimes that target biodiversity, especially poaching of wild plants and animals (illegal wildlife trade or IWT), makes protecting biodiversity very difficult. Referring to Outforia’s research based on data from the CITES, Indonesia has been ranked 9th out of 80 countries with exports of 7.7 million live animals since 1975. Some of these exports were illegal. For example, research from Nijman et.al. shows that Indonesia is the centre of the Asian Songbird Crisis including a trade in a substantial number of species that are legally protected. In recent years it has become clear that Indonesia Wildlife markets are real biodiversity sinks and both society and authorities are underestimating the mid and long-term effects of the situation.

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6 Ibid.
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term damage these markets are causing.\textsuperscript{10} Although not all of these trade are necessarily “illegal” until proven, it shows a very high risk of illegal wildlife trade.

These findings align with the Organization for Economic Cooperation and Development (OECD) report, which states that Southeast Asian countries are a source, both transit and destination, for illegal wildlife trade.\textsuperscript{11} Cooperation between countries is considered the key to effective law enforcement. However, there has yet to be much coordination and cooperation across countries. There are still many legal loopholes and gaps in implementing laws to promote the effective prosecution of illegal wildlife trade.

One example of these loophole is permit given to the individuals to captive and breed exotic, often endangered, animals. Many influencers and public figures possess this permit and proudly display their rare collection of protected animals.\textsuperscript{12} Their position provides a bad example for the public, especially those who do not fully understand that these animals cannot be kept freely. Even if they have a permit, the maintenance of such wildlife gives the illusion that they are doing well. Even though these expectations may conflict with the realities of captivity, and can create an idealized view of captivity and how wild animals adapt to an environment that cannot fully meet their complex physical, social and psychological needs.\textsuperscript{13}

In addition, there are still corruption problems, and there is no system to block the flow of money from illegal wildlife trade.\textsuperscript{14} According to calculations by the Financial Action Task Force (FATF), illegal wildlife trade causes losses of up to 7-23 billion USD per year globally.\textsuperscript{15} Meanwhile, according to the United Nations Development Program (UNDP) specifically for Indonesia,

\begin{itemize}
  \item \textsuperscript{10} Ibid., 19.
  \item \textsuperscript{12} From social media influencer who pet extremely rare abino tiger to smuggling using warship to Head of People’s Consultative Assembly (MPR) using tiger skin as his tablecloths (even though later on it is claimed to be replica). See: Annisa Firdausi, “Heboh Taplak Meja Kulit Harimau Bamsoet, Ini Aturan Kepemilikan Satwa Dilindungi [Surprised by Bamsoet Tiger Skin Tablecloth, These are the Rules for Ownership of Protected Animals],” Tempo, 12 February 2023, https://nasional.tempo.co/read/1690433/heboh-taplak-mea-kulit-harimau-bamsoet-ini-aturan-kepemilikan-satwa-dilindungi, accessed on 1 July 2023; and Riky Ferdianto, “Kapal Perang Pengangkut Cenderawasih [Warship Carrying Cenderawasih],” Tempo, 10 September 2022, https://majalah.tempo.co/read/hukum/166907/penyelundupan-satwa-langka-papua-memakai-kapal-perang, accessed on 1 July 2023.
  \item \textsuperscript{13} Catherine Doyle, “Captive Wildlife Sanctuaries: Definition, Ethical Considerations, and Public Perception”, Animal Studies Journal 6, no. 2 (2017): 56.
  \item \textsuperscript{14} OECD, “The Illegal Wildlife Trade in Southeast Asia,” 12.
  \item \textsuperscript{15} FATF, Money Laundering and the Illegal Wildlife Trade, (Paris: FATF, 2020), 13.
\end{itemize}
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Based on 2017 calculations, illegal wildlife trade loss reached 1 billion USD per year.\textsuperscript{16} These various phenomena may still be considered trivial and less familiar in Indonesia. Even though it seems paranoid, this does not rule out the possibility that biodiversity loss will occur slowly but surely. Environmental law recognizes the principles of preventive action and precautionary principles, which are relevant in regulating policies and law enforcement against illegal wildlife trade, especially in Indonesia.\textsuperscript{17}

Currently, within the Indonesian national regulatory framework, there is Law Number 5 Year 1990 regarding Conservation of the Biodiversity and its Ecosystem as the primary regulation for the protection and utilization of biodiversity. However, at the time of writing this paper, the regulation is 33 years old and needs to be revised. Some of the reasons include (1) the sanctions are too light, (2) no adequate civil law and administrative law enforcement, (3) no restoration and recovery mechanism to affected wildlife, and (4) illegal wildlife trade has not been recognized as a transnational organized crime.

Meanwhile, in the international legal framework, there are at least four instruments related to illegal wildlife trade in which Indonesia has participated as a binding party, namely Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),\textsuperscript{18} United Nations Convention Against Corruption (UNCAC),\textsuperscript{19} United Nations Convention against Transnational Organized Crime (UNTOC),\textsuperscript{20} and ASEAN Treaty on Mutual Legal Assistance for Criminal Matters (ATMLA).\textsuperscript{21} However, the implementation of various international laws also encountered obstacles.

These conditions encourage two problems to be answered in this paper, namely (1) How are the existing conditions of regulations and the application of law enforcement against illegal wildlife trade in Indonesia? and (2) How


\textsuperscript{17} Indonesia. Undang-Undang tentang Perlindungan dan Pengelolaan Lingkungan Hidup. UU No. 32 Tahun 2009. (Law on the Environment Protection and Management. Law No. 32 Year 2009). Article 2f recognized the precautionary principle and the preamble section emphasis the importance of the preventive measures.


transnational organized crime and restoration-oriented law enforcement approach can have a positive impact on handling of illegal wildlife trade in Indonesia? These problem underlie the proposed thesis statement on this paper: illegal wildlife trade in Indonesia needs to be regulated as a transnational organized crime with restoration-oriented law enforcement in order to ensure the security of wildlife, ecosystem, and biodiversity. If the problem of illegal wildlife trade are ignored systematically, then a trophic cascade up to biodiversity loss may occur in Indonesia. This paper seeks to address the problems and explore alternative solutions.

The approach used in this paper is through reviewing existing regulations and conducting a cost-benefit analysis of the law enforcement that has been implemented. The research is based on data from 150 legally binding court decisions between 2009-2019 regarding illegal wildlife trade in Indonesia, which could be accessed freely, and other supporting data regarding law enforcement from public officials.

This paper is written in the following order. First part is the introduction containing the background problems and thesis statement. Second part describes a review of national and international regulations regarding biodiversity. Third part analyzes law enforcement data using a cost-benefit analysis approach. Fourth part emphasizes the problems that arise and explains various suggestions for improvement. And the last part is the conclusion.

II. A GLANCE OF BIODIVERSITY CONSERVATION PROVISIONS IN INDONESIA

A. NATIONAL LEVEL

Illegal wildlife trade provisions in Indonesia centralized in the Conservation of Biodiversity and Ecosystem Act No. 5 Year 1990 (CBEA) which was 33 years old at the time of this writing. From 1990 to 2023, the method of crime and science have increasingly developed and could no longer be accommodated by the same provisions. The context regarding the specific legal regulations reviewed in this paper can be read in the following five main articles: 19, 20, 21, 33, and 40. Commentaries as follows.

22 Indonesia. Undang-Undang tentang Konservasi Sumber Daya Alam Hayati dan Ekosistem-nya. UU No. 5 Tahun 1990. (Law on the Conservation of Biodiversity and Ecosystem. Law No. 5 Year 1990).
Article 19

(1) Any and all persons are prohibited from doing any activity which leads to a change of natural integrity of a sanctuary reserve.

(2) The provision defined in paragraph (1) of this article shall not include prohibition of habitat management activities conducted for maintaining wildlife populations within life sanctuaries.

(3) A change of nature integrity of a sanctuary reserve as defined in paragraph (1) shall include decreasing or deteriorating of function and area of a sanctuary reserve, as well as introduction of exotic plant and animal species.

At first glance, Article 19 might not contain significant problems. However, from the point of view of criminal law, the phrase “...leads to a change of natural integrity of a sanctuary reserve…” indicates that consequences must be generated to activate the offense. In other words, making this criminal offense as a material offense. This provision is different, for example, from the phrase “...catch, transfer, possess...” where one can immediately be punished without seeing the consequences after the act has been committed. This provision is closely related with Article 33 as follows:

Article 33

(1) Any and all persons are prohibited to do activities which may modify the natural integrity of the National Park's Core Zone.

(2) Activities considered a modifying the natural integrity of the Core Zone pertaining to Paragraph (1) include to diminish or to degrade, the function and area of the Core Zone, as well as introduce exotic species of plants and animals.

(3) Any and all persons are prohibited to do activities which are inconsistent with the function of utilization and other zones of the National Park, Grand Forest Park, and Natural Recreation Park.

In the discourse that proposes crimes against wildlife as financial crimes, Article 19 needs to be revised in a simpler form similar to Article 33. It should provide the explanation of what actions are prohibited. Evidence should be made simple and easy to prove, as long as animals are caught and traded, then

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24 Jan Remmelink, Hukum Pidana [Criminal Law], (Jakarta: Gramedia Pustaka Utama, 2003), p. 70. Material offenses (delik materiil) are actions that cause inevitable consequences, where these actions are sometimes included and sometimes not included as elements in the formulation of criminal acts. In contrast, formal offenses (delik formil) are criminal acts that refer to specific acts or omissions without the need to consider the consequences.
the flow of money can be tracked.\textsuperscript{25} Within this construction, we do not have to wait the negative effect to the environment to prosecute offender based on Article 19.

\textbf{Article 20}

(1) \textit{Plants and animal are classified into}:
\begin{enumerate}
  \item[a.] Protected plant and animal species.
  \item[b.] Unprotected plant and animal species.
\end{enumerate}

(2) \textit{Protected plant and animal species, pertaining to paragraph (1), are classified into}:
\begin{enumerate}
  \item[a.] Endangered species.
  \item[b.] Rare species.
\end{enumerate}

(3) \textit{Further provisions pertaining to Paragraph (2) shall be regulated by a Government Regulation.}

This is the primary framework for protecting wildlife—plants and animals species—based on whether their status are protected or not. This provision is further regulated in implementing regulations. Within this drafting method, policymaker could set the protection framework for the principal regulations at the statutory level, then manage the changes through derivative regulations, which—should be—easier and quicker to revise according to circumstances.

However, the facts say otherwise. During the period from 1999 when the implementing regulation was first issued to 2023, there were only three changes. The first is Government Regulation Number 7 Year 1999 regarding the Preservation of Plant and Animal Species,\textsuperscript{26} which lasted for 19 years before being added with the Ministry of Environment and Forestry Regulation Number 20 Year 2018 regarding Protected Plant and Animal Species (MoEF Regulation 20/2018).\textsuperscript{27}

However, there was controversy over the release of specific bird species that were previously protected to becoming unprotected, causing two revisions to MoEF Regulation 20/2018 in a short period through MoEF Regulation 92/2018 and MoEF Regulation 106/2018.\textsuperscript{28} Can these regulations that are

\textsuperscript{25} Marbun, “Kejahatan Konservasi Sebagai Kejahatan Terorganisasi Transnational,” 81.


\textsuperscript{27} Indonesia. \textit{Peraturan Menteri Lingkungan Hidup dan Kehutanan tentang Jenis Tumbuhan dan Satwa Dilindungi}. PermenLHK No. 20 Tahun 2018. (Minister of Environment and Forestry Regulation regarding Types of Protected Plants and Animals. No. 20 Year 2018)

issued reactively guarantee the proper protection of wild plants and animals? A little less convincing. In addition, there are several reasons why this form of regulation needs to be revised.

First, it does not include newly discovered species. If there is research and the discovery of new species, then the status of these species will not immediately be protected and will not be prohibited from being traded. It has the potential to increase poaching of these animals, especially since they have just been discovered and are mostly extremely rare. Example of this case is the newly discovered *Pongo tapanuliensis*, a recently identified a new orangutan species in Northern Sumatra.\(^29\) Luckily, the timeline of identification match with the plan of MoEF to revise the implementing regulation of protected species, so it is safe and included in the revised list.\(^30\)

Second, the phrase “not protected” seems to make the plant or animal allowed to be utilized as much as possible without adequate legal protection.\(^31\) The omission of these actions can accelerate the reduction of wild animal populations. Coupled with a high level of trade, it can accelerate the reduction of its population until it is threatened with extinction. Trade controls need to be strictly enforced, which CITES also mandates.\(^32\) There is a potential legal void and loophole here.

Third, it has not regulated restoration for endangered animals (both in protected status and not protected by regulations). Restoration, including reintroduction, captivity, and artificial breeding of, should be held, both ex-ante and ex-post. Where endangered species are concerned, the most critical need is often to provide suitable habitat for a population to survive, whether the site is natural or not.\(^33\) This is increasingly relevant in law enforcement, where perpetrators should be held accountable for recovering the animals they have harmed.

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32 CITES, Article IV.
Fourth, within the legal framework, each “protected” species need specific protection and restoration plan. Currently there are 906 protected species on the list.\textsuperscript{34} It would be troublesome, resource-intensive, and nearly impossible to tailor-made specific plan for each species. It might be easier for a species to made into a protected list. But surely it is a lot harder to do anything to protect it without sufficient resources and political will.

Fifth, the necessity of revising regulations from time to time. It is not partially wrong because it can provide flexibility. However, it will give much broader discretion to the authorized official, in this case Ministry of Environment and Forestry, without any other body that can provide scientific basis. In addition, there were risk that the process is taking too much time, not transparent, and not accountable. The relevant aspects is not only the science behind it, but also the political agendas within.

\textbf{Article 21}

(1) \textit{Any and all persons are prohibited to:}
\begin{itemize}
\item[a.] Take, fell, destroy, extirminate, care for, transport, and trade in protected plants or parts thereof in live or dead condition.
\item[b.] Transfer protected plants or parts thereof in live or dead condition from one place to another, within or outside Indonesia.
\end{itemize}

(2) \textit{Any and all persons are prohibited to:}
\begin{itemize}
\item[a.] Catch, injure, kill, keep, possess, care for, transport, and trade in a protected animal in live condition.
\item[b.] Keep, possess, care for, transport, and trade in a protected animal in dead condition.
\item[c.] Transfer a protected animal from one place to another, within or outside Indonesia.
\item[d.] Trade, keep or possess skin, bodies or other parts of a protected animal, or goods made of parts of the animal, or transfer from one place in Indonesia to another, within or outside Indonesia.
\item[e.] Take, destroy, exterminate, trade, keep, or possess an egg, and/or a nest of a protected animal.
\end{itemize}

This provision has considered various actions that harm wild animals, including regulating illegal wildlife trade. However, no regulations exist for transnational organized crime and corporate law subjects. Whereas within the framework of illegal wildlife trade as transnational organized crime, national legislation is crucial to become an adequate legal basis for law enforcement.

Article 40

(1) Whosoever intentionally violates the provisions pertaining to Paragraph (1) or Article 19 and Paragraph (1) of Article 33 shall be liable to punishment by imprisonment up to a maximum of 10 years and a fine up to a maximum of Rp200,000,000,-

(2) Whosoever intentionally violates the provisions pertaining to Paragraph (1) and Paragraph (2) of Article 21 and Paragraph (3) or Article 33 shall be liable to punishment by imprisonment up to a maximum of 5 years and a fine up to maximum Rp100,000,000.-

(3) Whosoever, through negligence, violates the provisions pertaining to Paragraph (1) or Article 19 and Paragraph (1) of Article 33 shall be liable to punishment by imprisonment up to a maximum of 1 year and a fine up to a maximum of Rp100,000,000.-

(4) Whosoever, through negligence, violates the provisions pertaining to Paragraph (1) and Paragraph (2) of Article 21 and Paragraph (3) or Article 33 shall be liable to punishment by imprisonment up to a maximum of 1 year and a fine up to maximum Rp50,000,000.-

(5) Actions pertaining to Paragraph (1) and Paragraph (2) shall be regulated as a Criminal whereas actions pertaining to Paragraph (3) and (4) of this Article shall be established as a Violation.

Based on the description of these regulations, acts such as illegal wildlife trade are only punishable by a maximum prison sentence of 5 years or a maximum fine of Rp100,000,000 if committed intentionally, as well as a maximum imprisonment of 1 year or a maximum fine of Rp50,000,000 if committed due to negligence. The sentence can be increased to a maximum of 10 years in prison or a maximum fine of Rp200,000,000. However, these provisions must prove further that illegal wildlife caused damage to conservation areas.

Based on this review, the provisions at the national level are inadequate and have many deficiencies, especially in the legal void of illegal wildlife trade as transnational organized crime and corporate criminal liability. Can arrangements at the international level fill this void?
B. INTERNATIONAL LEVEL

Talking about the international legal framework, there are four instruments that can be used, CITES, UNTOC, UNCAC, and AMLAT. All of them have been ratified by Indonesia. But are all four really applied effectively?

1. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

CITES talks about the protection of flora and fauna, which are considered irreplaceable parts of the natural systems. It has values from aesthetic, scientific, to economics. People and states should be the best protectors, and international cooperation is vital for the protection of animals from illegal wildlife trade. Unfortunately, CITES does not provide specific provisions regarding sanctions applied when violations occur. Sanctions are left to each member country to determine for themselves, both for the form (criminal, civil, administrative) and the period of the sanctions. Nonetheless, the 11th COP held in 2000 concluded that “Parties should advocate sanctions for infringements that are appropriate to their nature and gravity.”

However, Indonesia cannot be fully compliant with CITES provisions. One example is regulation regarding protected and unprotected wild plants and animals. Indonesia has also been reprimanded for not having adequate national legislation regarding compliance with CITES standards. In order to comply, at least Indonesia can regulate the distribution of species based on the three CITES appendix categories, namely (1) species that are the most endangered, (2) species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled, and (3) species included in the request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation.

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36 Ratified based on Presidential Decree Number 43 Year 1978 for CITES, Law Number 7 Year 2006 for UNCAC, and Law Number 5 Year 2009 for UNTOC.
37 CITES, preamble.
38 CITES Resolution Conf. 11.3 (Rev. CoP17)
40 Samedi, p. 23. CITES Secretariat in 1993-1998 based on the national legislation project to assess the legislation of CITES member countries positioned Indonesia with legislation that is able to implement CITES effectively.
41 CITES, Article 2.
This paper argues that, if Indonesia will still use the dichotomy of “protected” and “non-protected” species, then at least pragmatically it should follow CITES’ categorization, which has begun to be shown by the draft revision of CBEA in the parliament. Even though slightly different from CITES, the division based on the draft law is slightly better because it divides into three categories, namely Category I for strictly protected and/or fully protected plants and animals, Category II for limited protected plants and animals and/or controlled utilization, and Category III for plants and animals whose use is monitored. It appears that there is no longer the term “unprotected” which is a good news.

2. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (UNTOC)

UNTOC aims to promote cooperation to prevent and combat transnational organized crime more effectively. It also contributed on defining an organized criminal group, structured with three or more person for a period of time, acting in concert to commit one or more severe crimes or offenses, in order to obtain, directly or indirectly, a financial or other material benefit. Even on its preamble, UNTOC clearly stated the need to constitute an effective tool and the necessary legal framework for, inter alia, illicit trafficking in endangered species of wild flora and fauna.

If the Indonesian government seriously tackles illegal wildlife trade, this definition can be embedded in the draft revision of CBPA. Moreover, regarding the further requirements of serious crime, UNTOC only requires acts that can be sentenced to at least four years of prison or more. Thus, CBPA meets the requirements. Besides, similar provisions have also been applied in other regulations in Indonesia, such as preventing and eradicating forest destruction and money laundering crimes. So there is no reason not to applying it in illegal wildlife trade cases too.

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43 UNTOC, Article 2a.
44 Ibid.
In addition, for a crime to be categorized as a transnational organized crime, one of these conditions must be met according to UNTOC. These requirements include being carried out in more than one country, being carried out in one country but part of the preparation is being carried out in another country, being carried out in one country but involving an organized criminal group that engages in criminal activities in more than one state, or is committed in one state but has substantial effects in another state.\(^{46}\)

3. UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

Regarding the UNCAC, the text of the convention does not explicitly mention or order actions that must be taken by state parties to prevent illegal wildlife trade. However, the link between illegal wildlife trade and corruption-related crimes, such as money laundering, has been facilitated as a predicate crime in Indonesia’s Prevention and Eradication of Money Laundering Act Number 8 Year 2010 (PEMLA).\(^{47}\) Another related case in Indonesia is wildlife trafficking of Teluk Lada 521 warship. Tempo’s investigation into illegal wildlife trade transported using the warship shows the importance of transnational organized crime regulation and linkages with corruption issues.\(^{48}\)

According to UNODC, corruption has become an enabler and facilitator for implementing illegal wildlife trade.\(^{49}\) Uhm and Moreto’s research in China, Morocco, Russia, and Uganda also supports this claim.\(^{50}\) In the case of Teluk Lada 521, wild animals caught from Papua and Maluku were to be exported via the Batam route but were caught first in Surabaya. It is strongly suspected that the illegal wildlife trade cartel is also playing with the authorities because it is impossible to transport wild animals using warships legally. Without linkages to transnational organized crime and corruption regulations, investigations will only stop at field actors but will never target the intermediaries and cartels that control them, both domestically and abroad.

\(^{46}\) UNTOC, Article 3(2).
\(^{47}\) Indonesia. Undang-Undang tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, UU No. 8 Tahun 2010. (Law on the Prevention and Eradication of Money Laundering Crime. Law No. 8 Year 2010), Article 2(w, x, z).
4. ASEAN TREATY ON MUTUAL LEGAL ASSISTANCE FOR CRIMINAL MATTERS (ATMLA)

The last one is ATMLA. The aim is to improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation, and prosecution of offenses through cooperation and mutual legal assistance in criminal matters. This should be put to good use, especially since this initiative has been around for a long time, where Southeast Asia has become a hub for illegal wildlife trade. CITES COP-13 shows the successful implementation of mutual legal assistance among ASEAN countries because it succeeded in committing to eradicate illegal wildlife trade.

This paper argues that if Indonesia want to start eradicating illegal wildlife trade, the best kickstart is with ASEAN countries as its closest relative. The legal basis and mutual understanding have been formed. Even though Indonesia has yet to ensnare comprehensively due to the absence of transnational organized crime provision for illegal wildlife trade, cooperation with other ASEAN countries can help encourage law enforcement in destination countries of the trade.

In conclusion, regulations at the international level already have some excellent capital and initiatives to start dealing with illegal wildlife trade and transnational organized crime seriously. All that remains is the will of each country to work on and coordinate accordingly.

III. ANALYSIS OF ILLEGAL WILDLIFE TRADE LAW ENFORCEMENT

After providing comments on normative provisions at the national and international levels, this section will discuss the law enforcement that Indonesia has carried out. The analysis will be based on data of 150 legally binding court decisions regarding illegal wildlife trade. The research findings will be processed using a cost-benefit analysis approach to see the effectiveness of law enforcement compared to the existing normative provisions.

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A. DATA FROM COURT DECISIONS

Based on data from the Directorate General of Law Enforcement of MoEF, during 2015-2022, the MoEF carried out 453 operations on the circulation of wildlife. The result is that 376 case files have been declared complete P-21 and are just waiting for the trial process. Cases of wild flora and fauna handled by the MoEF are the second highest cases after the illegal logging of 720 operations, with the result of 677 case files pending trial.\textsuperscript{53} From the results of this operation, MoEF claims to have rescued 239,897 and secured 16,049 animal body parts.\textsuperscript{54}

Even though the number of cases claimed is very high, the court decision data said otherwise. Based on research conducted by Indonesian Center for Environmental Law (ICEL), between 2009-2019, there were around 150 legally binding court decisions regarding illegal wildlife trade, accounting for 195 defendants.\textsuperscript{55} The data from MoEF supports the disclaimer submitted by ICEL in their research that the data produced by court decisions analysis does not necessarily show an accurate portrait of law enforcement in the field because there may be many cases or decisions that have not been completed or cannot be accessed freely.\textsuperscript{56} The following is the summary of the findings.

First, regarding imprisonment. The Public Prosecutor prosecutes 11,3 months in prison for the defendants on average. Judges then pass down sentences in verdicts with an average of 8,1 months in prison. The heaviest charge in the decision was 120 months or 10 years imprisonment in the case of trade in 37 protected hedgehogs, which resulted in only 7 months of imprisonment. In comparison, the sentence with the most extended imprisonment is 48 months or 4 years in prison for trade in Sumatran tiger skin and bones.\textsuperscript{57} When coupled with the threat of imprisonment for a maximum of 5 years, the disparity between normative provisions and the execution of sentences shows a wide gap, 8,1 months versus 60 months maximum.

\textsuperscript{54} \textit{Ibid.}, 117.
\textsuperscript{56} \textit{Ibid.}, 26.
\textsuperscript{57} \textit{Ibid.}, 17.
Second, related to fines. The Public Prosecutor charges Rp18,640,000 (US$1,246) on average. Judges then pass down sentences in verdicts with an average of Rp14,310,000 (US$957). The heaviest charge found in the judgment was Rp500,000,000 (US$33,420), which was eventually awarded Rp10,000,000 (US$668) for ownership of protected porcupines. Meanwhile, the verdict with the largest fine is Rp100,000,000 (US$6,684). When coupled with the threat of criminal sanctions with a maximum fine of Rp100,000,000, the disparity between normative provisions and the implementation of punishment shows a vast gap, Rp14,310,000 compared to Rp100,000,000 maximum.

Third, related to the distribution of cases based on major islands. Based on data from the same 150 decisions, it was found that 48% of IWT cases occurred in Sumatra, 28.7% in Java, 10% in Kalimantan, 9.3% in Bali, 2% in Maluku and Papua, 1.3% in Nusa Tenggara, and 0.7% in Sulawesi. This data shows that Sumatra and Java have become the basis of illegal wildlife trade cases with a total of 76.7% compared to Indonesia in a whole. However, there is a potential bias where data is only obtained from court decisions, namely cases that have already been processed from the level of investigation, prosecution, to judiciary trial. The potential cases or cases in other areas have yet to be discovered but cannot be resolved through a judicial mechanism. Further research is needed to get a better picture and magnitude of illegal wildlife trade crimes and reduce the bias. Bearing in mind that the infrastructure for publication of decisions outside Java is not completely evenly distributed too.

Fourth, out of the 150 court decisions, there were a total of 195 defendants, of which there were also 3 foreigners from Australia, Japan, and China. In addition, even though they were not charged as defendants, there were also cases involving another foreigners. For example, court decision number 707/Pid.Sus/2011/PN.Jkt.Utr with the defendant Hari Gunawan alias Ayung bin Mochtar who owns and sells several protected species, including pangolins, turtles, shellfish, deer heads, and Sumatran forest goat heads. During the trial, the defendant stated that all of his actions were ordered by Mr. Ou Weixuan and Mr. Choi, a foreign citizen whose country of origin was not mentioned, and it was not further explained whether they were also charged or not. This decision shows that illegal wildlife trade is closely related to transnational organized crime, in line with scoping review conducted by Anagnostou and Doberstein regarding linkages of illegal wildlife trade with other organized

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58 Ibid., 18.
59 Ibid., 16.
60 Ibid., 12.
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However, because CBEA has not regulated transnational organized crime, this is likely the reason why the two foreigners are not further processed.

Fifth, all of 150 court decisions do not depict corporate behavior or organized crime. One of the possible causes is that the provisions regarding corporate crime and transnational organized crime have not been regulated in CBEA.

In conclusion, the data shows a range of punishments far from the maximum threat that can be given. The judicial decision given was relatively low, for both imprisonment and fines. Even though the criminal punishment does not guarantee a deterrent effect or fulfill the objectives of enforcing biodiversity laws, the results can serve as preliminary data to show that the costs of conducting illegal wildlife trade are still very cheap compared to the potential benefits from the criminal proceeds. Lastly there are indications of the involvement of transnational organized crime and foreigners in other countries.

B. COST-BENEFIT ANALYSIS ON LAW ENFORCEMENT

This paper argues that illegal wildlife trade crimes in Indonesia occur because there are more benefits to be gained than the costs or risks to be faced. This idea derives, among other things, from rational choice theory, which refers to ideas about the relationship between people’s preferences and their choices. It explains that when a man commits a crime, it gives him the highest advantage (benefit), and he feels he can still avoid being punished (cost). This perspective is based on the neoclassical economics school of thought, with assumptions that humans are rational economic beings. Many criticisms are against it that people who commit crimes are not necessarily rational because there are many differences between “economic man” and “real people”. It could be because of emotional factors or irrationality in their actions, thus traditional law and economics based on the standard assumptions of neoclassical economics often false, but sometimes are useful. However,

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this paper will not review these criticisms, but will still admit the flaw and bias that might occur.

Using the previously presented data, we can see a rough calculation of the cost-benefit of engaging in illegal wildlife trade in Indonesia. To reduce crime rates, costs must be greater than benefits, which I propose using this formula:

\[
\text{Cost} < \text{Benefit} = \text{More Crimes} \\
\text{Cost} > \text{Benefit} = \text{Less Crimes}
\]

Whereas:

\[
\text{Cost} = (\text{Punishment} \times \text{Probability of Enforcement}) \\
\text{Benefit}: \text{Monetary}
\]

This formula is adapted from Becker’s proposal regarding developing optimal public and private policies to combat illegal behavior, including the variables on expenditures of police and courts. Optimal decisions minimize the social loss in income from offenses.\(^6^6\) This argument is in line with Mitchell and Shavell, who stated that the optimal fine equals harm, adequately inflated for the chance of not being detected, plus the variable enforcement cost of imposing the fine.\(^6^7\)

From the data on the 150 court decisions analyzed, the average fine imposed by the judge was Rp14.310.000. Assuming that all 150 decisions have been paid in full—which is realistically very unlikely—the fines will result in a state income of Rp2.146.500.000 (Rp2,15 billion).

How much is the loss due to wildlife trade per year in Indonesia? According to the MoEF, based on calculations for 2015-2021, it is Rp806.830.000.000 (Rp806,83 billion).\(^6^8\) Meanwhile, according to PPATK and UNDP, the value soar up to a billion USD a year or around Rp14.000.000.000.000 (Rp14
tempted and take steps to overcome limitations, and bounded self-interest.


trillion) annually.\textsuperscript{69}

On a side note, the valuation method for the loss of this wildlife cannot be ascertained, whether it comes from the wildlife’s economic value on the black market or includes other values, such as the function of the wildlife in the ecosystem.\textsuperscript{70} But it is clearly a bridge too far in between two values of fines collected and losses occurred.

Apart from that, the fines money went directly to the state treasury, counted as non-tax state income belonging to the Attorney as the public prosecutor.\textsuperscript{71} There are no earmarking mechanisms to guarantee that the money from the fine will be used to restoration of the wildlife.\textsuperscript{72}

Regarding imprisonment, the average prison term decided by judges is around 8,1 months. This figure is also deducted from the detention period while the case is being processed in court. Furthermore, the convict only needs to serve 2/3 of their prison term to apply for parole.\textsuperscript{73} It means in reality the average convict only needs to serve 5,4 months of imprisonment before applying for parole.

How much a convict lost income over those 5,4 months? If their daily income is greater than the opportunity lost in prison, they will think twice before doing the crimes as the cost will soar high compared to its benefit. However, if their daily income is less for 5.4 months than committing illegal wildlife trade and enjoying profits from criminal proceeds, as a rational


\textsuperscript{72} Even though Indonesia has Indonesian Environment Fund (Badan Pengelola Dana Lingkungan Hidup), the mechanism of earmarking has not been developed yet at the time of this writing.

economic man they are likelier to commit the crime.

From an economic analysis of law perspective, it is enough to see that there are more significant benefits than costs, resulted in a tendency to commit crimes. In theory, crime can be suppressed by increasing the cost and reducing the benefit. Even better if we can divert the cost to recovery for affected wildlife. Furthermore, it is crucial to see the purpose of this illegal wildlife trade crime as financial gain so that it can be seen as a financial crime. Thus it makes more sense if the penalty or cost is also applied from a financial perspective.

This argument is in line with Posner’s statement, which also quoted Becker, that typical white-collar criminals are more appropriately punished using financial penalties such as fines than imprisonment. Further calculating the cost-benefit analysis of the choice between fining and imprisoning the white-collar criminal, the cost side of the analysis favors financing because, as we shall see, the cost of collecting a fine from one who can pay it is lower than the cost of imprisonment.\(^\text{74}\)

The cost of this crime is not only from imprisonment but can also be from paying a certain amount of money, such as a fine—through criminal fines, civil lawsuits, or administrative fines. It is necessary to rethink the objective of enforcing the law on biodiversity conservation, especially against wildlife trafficking crimes. Is it only to punish the perpetrators? It should not be because wild animals are victims and need to be compensated with restoration so that the ecosystem returns to how it was before.

Increasing the threat of imprisonment and fines for illegal wildlife trade alone is insufficient. It must be accompanied by adequate and concrete law enforcement to increase the probability or compliance towards a right objective.

IV. PROPOSED SOLUTIONS TO STRENGTHEN THE BIODIVERSITY CONSERVATION LAW

A. PROMOTING RESTORATION-ORIENTED LAW ENFORCEMENT

The introductory part of this article discusses the dangers of trophic cascades, which lead to biodiversity loss. Suppose there is anything the law can do to prevent this. In that case, it is none other than establishing

a legal framework that supports the actual restoration of biodiversity, also known as restoration-oriented law enforcement or ecological restoration laws. While it is essential to avoid further environmental destruction, sustaining what remains may be illusionary if prevailing conditions are too degraded. Thus, we need to improve the environment, as against merely sustaining it.\textsuperscript{75} According to Richardson, four criteria need to be considered for the success of eco-restoration, namely (1) biological feasibility, (2) social acceptability, (3) financial viability, and (4) institutional tractability.\textsuperscript{76}

What instrument is most appropriate to accommodate the four criteria? Law, specifically CBEA and EPMA in Indonesia. As Fisher stated, environmental problems have a socio-political aspect. However, they are also genuine collective action problems that require collective responses. It is difficult for rational individuals to act independently from each other to stop the behavior causing environmental problems. Law is the most legitimate and stable medium through which to foster and maintain collective responses to environmental problems.\textsuperscript{77}

The four criteria can be met and implemented if the rules are clear.\textsuperscript{78} First, biological feasibility requires a scientist. Second, the law can assign their authority to oversee all scientific aspects needed, while social acceptability is obtained from community participation, which is also guaranteed by the law. Third, financial viability comes not only from the state budget but also from law enforcement money like fines, which has generally entered the state treasury but has yet to be earmarked in Indonesia. Finally, institutional tractability can only be regulated if the division of authority from each state institution is clear from the regulations.

Unfortunately, CBEA does not regulate restoration tasks or sanctions to restore affected wildlife. Thus there are three suggestions to promote restoration-oriented law enforcement:

\begin{itemize}
  \item Ibid., 290.
  \item Richardson, “The Emerging Age of Ecological Restoration Law,” 278.
\end{itemize}
1. Set it as an obligation for everyone who causes harm to wildlife. A similar provision can be found in Article 119c EPMA which provides additional criminal sanction in the form of reparation for the consequences of a crime.\textsuperscript{79}

2. Give the government and environmental organizations the legal standing to perpetuate biodiversity litigation to seek restoration from. Similar provision already recognized in EPMA too.\textsuperscript{80} Furthermore the MoEF since 2015-2022 has won a forest firest lawsuit worth more than Rp20,71 trillion using this provision.\textsuperscript{81}

3. Regulate earmarking of the results of wildlife litigation and environmental litigation so that they can be specifically used for restoration. This kind of earmarking is already common in other countries, for example in the United States with Federal Aid in Wildlife Restoration Act 1937 in which taxes on firearms were earmarked for the restoration of wildlife.

This paradigm is in line with the opinion of Soemarwoto, who stated that the “currency” that wildlife can enjoy is ecology in the form of materials, energy, and information in a community that provides reciprocity and balance.\textsuperscript{82} If someone experiences an economic loss, then the loss can be recovered by returning the amount of money lost. However, in the case of the environment, it will not be completed by simply paying a sum of money. Instead, there must be specific actions to convert the money in the form of materials, energy, and information to the ecosystems so that it can return to its original state.

**B. REGULATING ILLEGAL WILDLIFE TRADE AS A TRANSNATIONAL ORGANIZED CRIME**

Illegal wildlife trade has fulfilled UNTOC requirements to be considered a transnational organized crime. At least 191 countries, including Indonesia, have ratified UNTOC. The cooperation in eradicating illegal wildlife trade should have been carried out properly by these countries, especially in investigating related criminal acts such as corruption and money laundering, which are included in financial crimes. Indonesia need to be proactive in this


\textsuperscript{81} KLHK, *Laporan Kinerja Tahun 2022*, 98.

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Moreover, there are two important reasons to justify illegal wildlife trade crimes as transnational organized crime. First, categorizing illegal wildlife trade as a transnational organized crime that aims to seek financial gain will form a formulation of offense that is easier to prove by law enforcement officials by elaborating on prohibited acts without including the impact. This is also a criticism of the formulation of Article 19, which was previously mentioned. Second, the protection of wild animals will be guaranteed if the approach uses financial disincentives, for example, increasing the threat of fines or orders to recover.\(^8^4\)

Nevertheless, the objective of law enforcement in the field of conservation should be aimed at protecting wildlife and their ecosystems and recovering if losses do occur. However, this goal has the side effect of making the criminal provisions as a material offense, which in turn makes it difficult to prove the offense and enforce the law. Pragmatically it is up to the each state to use which legal provisions, as long as there is a guarantee that wildlife and ecosystems can fully recover, even though that means emphasizing punishment on fines.

C. INCREASING PRISON SENTENCES AND FINES

When the cost-benefit analysis results show that the costs are very low while the benefits are very high, a simple solution would be to increase costs and decrease benefits. Both must go hand in hand with a high probability of enforcement to promote effective compliance. In revising laws, increasing the maximum punishment, whether imprisonment or fines, is easy, even if necessary, using a particular minimum sentence.\(^8^5\) This view cannot be separated from criticism that the high threat of imprisonment does not necessarily have a deterrent effect.\(^8^6\)

However, if a heavy prison sentence could not guarantee compliance, how about a low prison sentence? At least between the maximum sentence of 5 years in prison versus 20 years in prison, or between a fine of Rp100 million versus a fine of Rp100 billion, there are a few limits that make people—who are assumed to be rational—to hold themselves back. Increasing criminal punishment must also be accompanied by massive law enforcement so that

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\(^8^4\) Marbun, “Kejahatan Konservasi Sebagai Kejahatan Terorganisasi Transnational,” 78-80.

\(^8^5\) Indonesia already has example in a Corruption Law (31/1999 jo. 20/2021)

the probability of cases being prosecuted also increases, therefore increasing the cost of committing a crime effectively.

In addition to increasing costs, reducing benefits is also necessary. Education and massive campaigns are needed to stop the consumption of wild animals, both the use of particular body parts for collection and the literal consumption of wildlife. For example, debunking that rhino horn does not provide any benefit, or informing shark fins’ high heavy metal content to stop consuming them. If the campaign is successful, then indirectly, the demand will decrease, and the benefits obtained by poachers will also decrease, thus becoming a disincentive for them to do illegal wildlife trade.

In the event of uncertainty about which actions are truly successful in reducing the number of illegal wildlife trade to the consumption of endangered wildlife, legal instruments must be able to lock in very high transaction costs for these various actions. As stated by Posner, punishment through fines will be more effective than imprisonment, especially for financially capable perpetrators, where the proceeds from fines can be used for various wildlife and ecosystem recovery projects. Further research is needed to see which action is easier and cheaper to implement.

D. DISCOURAGING MULTIDOOR APPROACH UNLESS FOR A RESTORATION PURPOSE

This part may be controversial, considering that during the last 10 years, many efforts to support environmental law enforcement in Indonesia have used a multidoor approach. However, more clarity are needed on its implementation. If the multidoor approach in question uses criminal instruments from various criminal laws to ensnare the same act, it is not certain that the action is appropriate, effective, and efficient. Becker shows that actions like this actually increase the law enforcement costs to the level of very expensive while the value that can be obtained, such as fines, is not

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comparable or even far less.\textsuperscript{91} Several other criticisms as follows.

First, it assumes that every law enforcer must use criminal instruments as a condition for a deterrent effect. This is not always the case, especially if the perpetrators are corporations or cartels. In the economic analysis of law, what needs to be increased is transaction costs—and this is in line with the argument of this paper that the cost of a crime is not only from corporal punishment but also from fines—mainly if the proceeds from these fines can be used for the recovery of wildlife.\textsuperscript{92}

Second, using all the punitive instruments from various criminal laws. This will impact on high costs of law enforcement costs especially if there is a demand that law enforcement should not discriminate.\textsuperscript{93} Another hard pill to swallow is law enforcement inevitably has to be selective because enforcement resources are limited. Without adequate funding, law enforcement will not be able to operate. It is better to get a few cases until it is done well, rather than forcing something big but failing and not “returning on investment.”

Third, it is not necessarily in accordance with the objectives of law enforcement in the field of biodiversity conservation. In short, it can be argued that the objectives of law enforcement in Indonesia can be divided into three according to the path used:

a. Administrative: preventive, preventing, restoring without the need for a judiciary
b. Civil: returns to its original state, needs to be judicial
c. Criminal: punitive, punishing, giving a deterrent effect

Nevertheless, if the multidoor approach in question does not only use criminal instruments but other instruments such as civil or administrative ones, it can be a reasonable solution. This choice of law enforcement can be adapted to the objectives of enforcing the law on wildlife conservation itself, namely for recovery which can also be achieved through enforcing civil law and imposing administrative sanctions according to the type of actions committed by the perpetrator.

V. CONCLUSION

All of these discussions are meaningless without real action to revise the regulations that become the root of the problem. The House of Representatives has begun the discussion and trial period on the draft revision of CBEA. It is a great moment to propose improvements and reform. Such crucial points discussed in the problem statement in this paper can be answered with the following conclusion.

First, the cost-benefit analysis shows that the cost of committing a crime is very low compared to the benefits of crime which are very high. It is necessary to revise regulations with the following strengthening points. Sets restoration-oriented law enforcement as the goal, includes illegal wildlife trade as a transnational organized crime, increases the maximum threat of imprisonment and fines, and seeks cheaper civil and administrative law enforcement that provides more financial results to finance the restoration of the wildlife.

Second, transforming illegal wildlife trade into transnational organized crime with restoration-oriented law enforcement will make it easier for law enforcement officials to investigate cases. The focus on making illegal wildlife trade a financial crime will also make it easier to prove and increase the criminal proceeds that can be obtained, especially from fines, to fill the state treasury, which can be used for restoration. After all, without concrete action to heal the wildlife and ecosystems, the danger of trophic cascade to biodiversity collapse is only a matter of counting down the time.
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