CRIMINAL LAW ENFORCEMENT TO THE WILD TRADE OF SISIC SHELL TURTLE IN FORM OF HANDYCRAFTS

Aldo Febrianto [1, a)] Jimmy Pello [2,] and Aksi Sinurat [3]

[1]The Law Science Post Graduate Programm, Nusa Cendana University,
[2,3]The Faculty of Law, Nusa Cendana University,
[a)]Android44.ff@gmail.com

ABSTRACT

The Convention of International Trade on Endangered Species (CITES) defines wildlife as all animals and plants, while crime is defined as an act that is contrary to national law and the provisions regarding the protection and management of natural resources (including the provisions of CITES). So the illegal trade of hawksbill turtles that have been managed into accessories is a crime. Every person who hunts for hawksbill carries out a criminal act, as regulated in Law 5/1990 concerning Conservation of Living Natural Resources and Ecosystems, and PP 7/1999 concerning Preservation of Plant and Animal Species. This mixing of empirical and normative juridical research aims to study and analyze law enforcement policies on the free trade of hawksbill shells in the form of accessories in Kupang City, as well as legal protection efforts on hawksbill turtles in order to support turtle conservation in NTT Province through institutions in Kupang City. The police have the authority to enforce the law through Criminal Law, so that every activity in trading, storing and possessing protected animal skins or items made from these parts, in this case hawksbill leather made in the form of accessories is an activity which needs to be upheld by the Criminal Law by the police. Guided by Barda Nawawi Arif's opinion on criminal policy, then criminal and non-penal criminal policies are enforcement actions that need to be done by the police in order to protect hawksbill. Penal policy is carried out through cracking down on every alleged criminal act of trafficking and preservation of hawksbill using the mechanism of Criminal Procedure, while non-penal policy is carried out through repressive efforts, by encouraging community participation in assisting government officials, especially the police in carrying out law enforcement against criminal acts illegal trade in hawksbill turtles. In reality, the enforcement of criminal law against the free trade of hawksbill shells in the form of accessories in Kupang City has not been carried out optimally because it is still limited to investigations on the part of the Prosecutor's Office. It is also known that although the Provincial Government has the authority by law to protect hawksbill, the NTT Provincial Government has not made efforts to protect the sea turtles in order to support the conservation of biological natural resources and their ecosystems.

Keyword: enforcement of criminal law, wild trade

INTRODUCTION

The Convention on International Trade on Endangered Species (CITES) defines wildlife as all animals and plants, while crime is defined as an act that is contrary to national law and the provisions regarding the protection and management of natural resources (including the provisions of CITES). Crimes against wildlife can be in the form of crimes

against protected wildlife, crimes against unprotected animals in protected areas, including violations of CITES provisions. So the illegal trade of hawksbill turtles that have been managed into accessories is a crime.

Every person who hunts for hawksbill carries out a criminal act, as regulated in Law 5/1990 concerning Conservation of Living Natural Resources and Ecosystems, and PP 7/1999 concerning Preservation of Plant and Animal Species. Article 21 paragraph (2) of Law number 5 of 1990[1] states that:

"Everyone is prohibited from:

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

Furthermore Article 40 paragraph (2) of Law number 5 of 1990 emphasizes that criminal sanctions for people who intentionally violate the provisions referred to in Article 21 paragraph (2), namely a maximum imprisonment of 5 (five) years and a maximum fine of Rp 100,000. 000.00 (one hundred million rupiah).[2] Even though Article 21 paragraph 2 formulates thus, based on the description above there are exceptions to the capture of protected animals, which can only be done for research, science, and / or saving the species of plants and animals concerned. In addition, the exemption from the prohibition on capturing

[1] *I* Jatna Supratna, *Melestarikan Alam Indonesia*, Yayasan Obor Indonesia, Jakarta, 2008, hlm, 60.
[2] Ibid.

protected animals can also be done in the case that for some reason protected animals endanger human life. Harm here means not only threaten human life but also cause disturbance or anxiety to the peace of human life, or material loss such as damage to land or crops or agricultural products.[3]

Hawksbill turtle is one of the protected wild animals and is one of the endangered wild animals that live in the waters of the Province of East Nusa Tenggara (NTT). Budi Riyanto stated that many of the habitats and extinctions of these animals have been damaged or deliberately damaged by sharing the actions of a group of irresponsible humans. The activity of exhibiting, storing and possessing protected animal skins or items made from protected animal skin parts is a criminal offense as determined in Article 21 paragraph (2) letter d, jo Article 40 paragraph (2) and or Article 40 Paragraph (4) Law No. 5 of 1990 concerning the Conservation of Biological Nature and its Ecosystems.[4]

This research aims to study and analyze law enforcement policies on the free trade of hawksbill shells in the form of accessories in Kupang City, as well as legal protection efforts on hawksbill turtles in order to support turtle conservation in NTT Province through institutions in Kupang City.

MATERIALS AND METHODS

1. Materials
   a. Animals and wildlife

      Understanding the animal itself according to Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems as stated in Article 1 point 5, namely: "Animals are all types of animal natural resources, both living on land and in water". The description of various notions of protected wildlife as previously

[3]Undang–Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya.
[4]Ibid.

described shows what animal criteria and protection will be given. Based on these various descriptions, it can be concluded that the protection of protected wildlife is a form of protection that does not only cover animals that are still alive, but also includes the whole body parts that are inseparable from such wild animals such as ivory with elephants, horns with rhino, tiger with skin and so on. The trade in protected animals, both living and dead, or parts of their bodies is a criminal offense.

Article 21 paragraph (2) letter d of Law No.5 of 1990 concerning Conservation "Other definitions of wild animals are summarized in Article 1 point 7 of the law namely "Wild animals are all animals that live on land, and / or in water and / or in the air which still possesses wild qualities, both those that live freely and those maintained by humans". Restrictions in the classification or other categorization of these wild animals are also contained in the explanation of Article 1 point 7, which is as follows: "Fish and livestock are not included in the definition of wildlife but included in the understanding of animals" Biological Natural Resources and their Ecosystems also describe the matter, namely:

> Article 21 (2):
> "Everyone is prohibited from: d. Trading, storing or possessing skin, body or other parts of protected animals or items made from these parts or removing them from one place to Indonesia to other places both inside and outside Indonesia ".

b. Criminal Law Policy on Wildlife Protection

Satjipto Raharjo said that law enforcement is an effort to turn ideas and concepts (legal norms) into reality.[5] Soerjono Soekanto describes the five factors that influence law enforcement as follows: a. legal factors, namely legislation. b. law enforcement factors, namely those who form and apply the law. c. facilities and infrastructure factors, namely facilities that support law enforcement. d. community factors, namely the environment in

[5]Satjipto Rahardjo, *Penegakan Hukum:*, *Suatu Tinjauan Sosiologis*, Cetakan ke-2, (Yogyakarta:Genta Publishing, 2011), hlm. 12.

which the law applies or is applied. e. cultural factors, namely as the results of works, inventions, and tastes based on human initiative in the association of life.[6]

One effort to enforce the law in the context of criminal policy is through criminal law policy. The policy itself comes from the word policy (English) or politiek (Dutch). In Indonesian, criminal law policy is often also referred to as the politics of criminal law. [7]

Criminal law politics means making elections to achieve the best results of criminal law. A. Mulder divides the scope of the politics of criminal law (strafrechtpolitiek) into three, namely: (a) how far is necessary to change and update criminal provisions; (b) what is done to prevent criminal offenses; and (c) how the investigation, prosecution, justice, and criminal conduct (in correctional institutions) must be carried out.

In this paper, the author uses the legal factors and law enforcement factors as stated by Soerjono Soekanto, as the main foundation to answer the two issues raised in this paper, namely regarding the weaknesses of Law 5/1990 and the performance of law enforcement officials is not yet optimal.

c. Criminal Justice System

Mardjono gives a limitation regarding the justice system, that what is meant by the criminal justice system is a crime control system consisting of police institutions, prosecutors, courts and prison inmates.[8] While on another occasion, Mardjono stated that the criminal justice system (criminal justice system), is a system in a society to tackle crime problems. Tackling is interpreted as controlling crime so that it is within the limits of community tolerance.

[6]Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: RajaGrafindo Persada,2010), hlm 8.
[7]Ibid, hlm 27.
[8]Marjdono Reksodiputro, 1993, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan dan Penegakan Hukum Dalam Batas-Batas Toleransi)*, Pidato Pengukuhan Penerimaan Jabatan Guru Besar Tetap Dalam Ilmu Hukum Pada Fakultas Universitas Indonesia, hlm. 1.

Based on the description above, the objectives of the criminal justice system can be formulated as follows:

1) Preventing people from becoming victims of crime;
2) Resolve cases of crimes that occur so that the community is satisfied that justice has been upheld and guilty convicted;
3) Getting those who have committed a crime never to repeat the crime again.

Starting from this goal, Mardjono argues that the four components in the criminal justice system (police, prosecutors, courts, and correctional institutions) are expected to work together and can form an "integrated criminal justice system". If there is no integration in working the system, it is estimated that there will be three losses as follows:

1) Difficulties in assessing the success or failure of each agency, in connection with their shared duties;
2) Difficulties in solving their own main problems in each agency (as a subsystem of the criminal justice system);
3) Because the responsibilities of each agency are often less clearly divided, each agency does not pay too much attention to the overall effectiveness of the criminal justice system.[9]

Muladi emphasized that the meaning of integrated justice system was synchronization or harmony and harmony that could be distinguished in:

1) Structural synchronization (structural synchronization), is synchronization and harmony in the framework of relations between law enforcement agencies.
2) Substantial synchronization (substantial synchronization), is synchronization and harmony that are vertical and horizontal in relation to positive law.

[9]Marjdono Reksodiputro, 1993, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan dan Penegakan Hukum Dalam Batas-Batas Toleransi)*, Pidato Pengukuhan Penerimaan Jabatan Guru Besar Tetap Dalam Ilmu Hukum Pada Fakultas Universitas Indonesia, hlm. 1.

3) Substantial cultural (cultural synchronization) is the harmony and harmony in living the views, attitudes and philosophies that all underlie the running of the criminal justice system.[10]

2. Method

This research is a mixture of normative juridical and empirical juridical research, namely research by explaining the provisions in the applicable laws and regulations as well as analyzing the rationale (legal logic) of law enforcers in imposing decisions. Furthermore, an analysis is made and compares between the demands of ideal values in the field as supporters, namely the actualization or realization of values or norms on an empirical level. The results of this study are expected to explain the gap between expectations and reality (*das sollen and das sein*), in this case the researcher describes the implementation or implementation (application) of existing laws and regulations, is it in accordance with the mandate of the norm? Here is a form of a blend of normative and empirical elements. Combining the normative and empirical elements in this case is no other than seeing the workings or effectiveness of law in society, as stated by Barder Johan Nasution.[11]

RESULT AND DISCUSSION

1. Criminal Law Enforcement Against Free Trade in Hawksbill Turtles in the Form of Accessories in Kupang City

Data that obtained from the NTT Regional Police Office then there are violators of Article 21 paragraph (2) letter d jo Article 40 paragraph (2) and or Article 4 paragraph (4) of Law No. 5 of 1990 concerning KSDA Hayati and its ecosystem Jo PP No, 7 of 1999, namely Meri Sentosa and Hendro Thejakusuma and Jhony Kaesmetan.

[10]*Op.Cit*, Madjono Reksodiputro.
[11]Barder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, hlm. 123.

Table 1. Criminal Law Enforcement Against Actors of Trafficking in Protected Wild Animals seen in Chronology of Cases and Indictments

No. Indictment	Actor's name	Article violated	Criminal Threats
LP.A/219/V/2018/SPKTPolda NTT, Tanggal 18 Mei 2018	1. Meri sentosa 2. Hendro Thejakusuma	Article 21 paragraph (2) letter d jo Article 40 paragraph (2) and or Article 4 paragraph (4) of Law no. 5 of 1990 concerning KSDA Hayati and its ecosystem Jo PP No, 7 of 1999	Criminal imprisonment for a maximum of 5 (five) years and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah)
LP.A/218/V/SPKT Polda NTT, Tanggal 18 Mei 2018	Jhony Kaesmetan	Article 21 paragraph (2) letter d jo Article 40 paragraph (2) and or Article 4 paragraph (4) of Law no. 5 of 1990 concerning KSDA Hayati and its ecosystem Jo PP No, 7 of 1999	Criminal imprisonment for a maximum of 5 (five) years and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah)

Data source: NTT Regional Police Office, 2019.

In accordance with the provisions of Law No. 5 of 1990 concerning Sustainability of Living Natural Resources and its ecosystem, Article 40 paragraph (1) Anyone who intentionally violates the provisions referred to in Article 19 paragraph (1) and Article 33 paragraph (1) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).

Furthermore, Law No. 5 of 1990 concerning Sustainability of Living Natural Resources and its ecosystem, Article 40 paragraph (2) Anyone who intentionally violates the provisions referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be liable to a maximum imprisonment of 5 (five) years and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). In addition, Law No. 5 of 1990 concerning Sustainability of Living Natural Resources and its ecosystem, Article 40 paragraph (3) Anyone who for his negligence violates the provisions referred to in Article 19 paragraph (1) and Article 32 paragraph (1) shall be liable to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). (4) Anyone who for his

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

The Law No. 5 of 1990 concerning Sustainability of Living Natural Resources and its ecosystem paragraph (5) explains that the criminal acts referred to in paragraph (1) and paragraph (2) are a crime and the criminal acts as referred to in paragraph (2) and paragraph (4) are violations.

2. Legal Protection Efforts for Hawksbill Turtles in the Context of Supporting Turtle Conservation in East Nusa Tenggara Province

Article 40 paragraph (2) Anyone who intentionally violates the provisions referred to in Article 1 paragraph (1) and paragraph (2) and article 33 paragraph (3) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine Rp. 100,000,000.00 (one hundred million rupiah). The Department of Maritime Affairs and Fisheries which is a leading sector for fisheries resources and coastal communities in 2013 formed a technical implementing unit in the field of Turtle Conservation in order to help achieve the vision and mission of the Office of Maritime Affairs and Fisheries in particular the Turtle Conservation Unit. UPT. Turtle conservation in Kupang City can be seen how sea turtles living in the NTT sea area are kept in captivity, there are various kinds of sea turtles that can be seen such as turtles, green turtles, and hawksbill turtles. Since 2009 this turtle breeding place has bred about 3,000 sea turtles.

According to the results of an interview with the NTT Regional Conservation Council explained that normatively the incomplete legal norms contained in Law No. 5 of 1990 is due to the inconsistency of the weight of punishment with the impact of the crime caused. So far, the maximum threat of criminal wildlife crime is only five years in prison with a maximum

fine of Rp. 200 million, while the ecological loss from the crime is not comparable with existing criminal threats.

Another weakness of existing regulations is that they still regulate the legal subjects of people who commit wildlife crimes. While the formulation of corporate crimes against wildlife is still not regulated. In fact, the opportunities for corporations to commit wildlife crimes are enormous. For example, the extinction of orang-utan primates in Kalimantan because they are considered pests in the oil palm plantations area is eliminated by the company.

The Institute for Criminal Justice Reform (ICJR) arrangements regarding crime against wildlife and corporations as subjects of crime in natural resource crimes have not received serious attention in the Draft Law of the Criminal Code (RUU KUHP). More specifically, the ICJR assesses the context of animal protection in the Criminal Code Bill still refers to the spirit of colonial law which is no longer appropriate to be applied in Indonesia.

According to the draft Penal Code draft proposed by the government to the DPR in February 2018, there are still very few regulations on wildlife crime. This is stated in article paragraph (1) letter, article 369, article 371 paragraph (1) and paragraph (2) of the Criminal Code Bill. If referring to the articles in question, there are several types of wildlife crime that are regulated, namely:

a. Those who hurt or injure an animal or harm their health with an improper purpose or by exceeding the limits necessary to achieve that goal; with a penalty of 6 months imprisonment or a fine of category II. (Article 367 paragraph (1) letter a).
b. Those who use and utilize animals beyond their natural abilities; (Article 369 letter a).
c. Those who provide materials or medicines that can endanger health; (Article 369 letter b).

d. Those who apply modern biotechnology to produce Animals or GMO Animal products that endanger the preservation of Animal resources, safety and peace of mind of the people and the environment; or (Article 369 letter c).
e. Those who make use of animal body parts or organs for purposes other than medical; (Article 369 letter d).
f. Those who set traps, snares, and other tools to catch or kill wild animals in places where people pass can cause danger to people.
g. Those who carry firearms enter the state forest area to hunt.

From the provisions of the Criminal Code Bill it was revealed that the main crimes against wildlife are capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading animals that are protected in life or death are still not regulated. Of course, a number of the provisions above, do not yet reflect the existence of rules that complement the weaknesses or limitations of Law No. 5 of 1990, both in terms of legal subjects and the weight of conviction.

Wenny Adzkia from the Indonesian Center for Environmental Law (ICEL), on the same occasion expressed his criticism of the corporate arrangements in the Criminal Code Bill. In the context of sanctions and objectives of punishment for corporations that commit environmental crimes, according to him, the Criminal Code Bill, is unclear. In the current Criminal Code Bill, instructions for imposing criminal sanctions on corporations are very few and unclear. Types of crimes against corporations that commit environmental crimes are limited to fines. In addition, he highlighted the penal system in the Criminal Code Bill which is different from Law No. 32 of 2009 concerning Environmental Protection and Management. According to him the difference between the two is, in the Criminal Code Bill, the criminal system for corporations does not use a minimum crime and is formulated alternatively. This

is not in line with serious efforts to protect the sustainability of the environment which so far has such great challenges.

University of Indonesia (UI) Criminal Law Expert, Ganjar Laksamana Bonaparta historically explained the emergence of corporations as legal subjects since the beginning of independence. Corporations are subject to criminal law in the Republic of Indonesia's independence era since 1951 through Law No. Drt. 17 of 1951 concerning Stockpiling of Goods. Corporations as subjects of criminal law are increasingly popular as the Law on Economic Crimes No. 7 / Drt. / 1955 although this law still uses the term 'agency'.

Ginanjar explained, in the development of modern criminal law, criminal acts became more widespread so that offense became even more diverse. The view that we see, happens criminalization and decriminalization is a result of changing people's sense of justice. The development of offense has given rise to an expansion of criminal responsibility so that the subject of criminal law is no longer only a person but also includes *rechtsperson*. The entry of *rechtsperson* into the subject of criminal law is not without debate.

Criminal liability by corporations needs to be limited given the limitations of the actions that can be done by corporations. The reason that corporations can carry out legal actions is an entry point to corporate criminal liability. Ginanjar further explained, that when referring to criminal and criminal principles (criminal liability), corporations can be held liable if they have committed a corporate crime, namely a crime that can only be committed by a corporation and / or its management. Personally, a person cannot be held liable if a criminal act is committed in a position as an administrator".

CONCLUSION

Based on research relating to the enforcement of criminal law on the rise of crime in the free trade of hawksbill sea turtles in the form of handicrafts in Kupang City, it can be concluded, as follows:

1. Criminal Law Enforcement on the free trade of hawksbill shells in the form of accessories in Kupang City, even though they have been carried out through criminal channels, but only limited to investigations by the East Nusa Tenggara (NTT) regional police and the results of the study indicate that prosecution has not yet reached prosecution by the prosecutor. So that the law enforcement has not been optimal.
2. Even though the NTT province has the authority to protect the sea turtles by law, the NTT provincial government has not made legal protection efforts on the sea turtles in order to support the conservation of sea turtles in the NTT province properly.

RECOMMENDATION

Referring to the conclusions above, the researcher can recommend several things, as follows:

1. The NTT Regional Police needs to increase cooperation (coordination) with the prosecutor's office which is more accurate and serious in conducting law enforcement efforts through the penalties in the form of repressive actions and in addition the NTT regional police are expected to collaborate with related parties to carry out preventive actions in the form of socialization legal awareness (non-penal) in order to prevent the occurrence of crimes in the free trade of hawksbill sea turtles in the form of handicrafts in Kupang City.
2. The legislative party (DPRD) and the NTT provincial executive are expected to be able to make regional policies in the context of legal protection both in the form of Regional Regulations and in the form of Governor Decrees or NTT Governor Instruction and other NTT Provincial level regional policies which are certainly more directed towards public awareness about the importance of protecting endangered wildlife in the East Nusa Tenggara waters.

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