Criminal Sanctions for Unauthorized Transportation of Protected Animals: Perspective of the Purpose of Punishment

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<td><strong>keywords:</strong></td>
<td>The trade of protected wildlife has a detrimental impact on the sustainability of endangered wildlife populations in Indonesia. Criminal punishment against the perpetrators of the crime of transportation of animals for the purpose of trade must be able to provide a deterrent effect and benefits for the protection of animals. The imposition of punishment in the criminal act of transportation of protected wildlife needs to be examined further from the aspect of the purpose of punishment, which is to prevent criminal acts by enforcing legal norms for the protection of society. This article will discuss the basic considerations of judges in punishing perpetrators of criminal acts without the right to transport protected animals alive. And the imposition of punishment by the judge against the perpetrator of the crime is in accordance with the purpose of punishment or not. The research method uses normative research methods, with literature studies in the form of laws and regulations related to the issues discussed. Based on the results of the research, as in Decision Number: 77/Pid.B/LH/2020/PN.Tjk, the punishment of the perpetrators of the criminal act of transporting protected wildlife in a live state is based on juridical, sociological, and philosophical considerations. The author recommends that perpetrators of protected wildlife trade be sentenced to heavy fines because their actions are economically motivated. In addition, it is necessary to regulate social work sanctions for convicted poachers and protected</td>
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A. Introduction

Indonesia is an archipelago with vast forests and varied flora. It is famous for its diversity of protected endangered animals and is home to millions of endemic animals with certain characteristics in each region. The Indonesian government has ratified various international treaties related to animal protection. These include the Convention on Biological Diversity and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Indonesia acceded to these conventions on December 28, 1978 and came into force on March 28, 1979. Enforcement of norms in the convention is returned to national law enforcement. This has been followed up by the President and the Indonesian House of Representatives by enacting Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems (KSDAHE Law).

Subsequent developments, the protection of protected animals is carried out through the enactment of Minister of Environment and Forestry Regulation Number: P.20/MENLHK/SETJEN/KUM.1/6/2018 on Protected Plant and Animal Species, which explains that the status of protected plant and animal species can change (dynamically), thus allowing changes in the status of species that were originally protected from becoming unprotected, and vice versa. The determination of protected plant and animal species must meet the criteria:

1. Has a small population;
2. A sharp decline in the number of individuals in nature;
3. Limited distribution area (endemic).

When the population growth of a species reaches a threshold, the species can be removed from the status of protected species or endangered species. In reality, the act of transporting protected animals still occurs even though the government has issued regulations on animal protection. According to Article 21, paragraph (2) of the KSDAHE Law, every person is prohibited from:

1. Capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a live condition;
2. Storing, possessing, maintaining, transporting, and trading protected animals that are dead; and
3. Removing protected animals from one place in Indonesia to another place within or outside the country.

The criminal penalties for the above actions are regulated in “Article 40 paragraph (2) of the KSDAHE Law, namely imprisonment for a maximum of 5 (five) years and a maximum fine of Rp 100,000,000 (one hundred million rupiah). One of the crimes without the right to transport protected animals is as in Decision Number: 77/Pid.B/LH/2020/PN.Tjk with the

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defendant named Susanto Setiawan Bin Setiawan”. The Panel of Judges sentenced the defendant with the following verdict:

1. Stating that the defendant Susanto Setiawan Bin Setiawan, has been proven legally and convincingly guilty of committing the crime of unlawfully transporting protected wildlife in a live condition as charged in the single indictment.

2. Sentencing the defendant Susanto Setiawan Bin Setiawan to 1 (one) year and 2 (two) months imprisonment and a fine of Rp10,000,000 (ten million rupiahs) provided that if the fine is not paid, it shall be substituted with confinement for 2 (two) months.

3. Determine that the period of arrest and detention the defendant has served shall be deducted in full from the sentence imposed.

4. Stipulate that the defendant shall remain in custody.

5. Stating that the evidence in the form of:
   a. 1 (one) unit of four-wheeled vehicle brand Wuling Type Confero Police Number (Nopol) BG 1370 HG, 1 (one) Vehicle Registration Certificate (STNK) sheet in the name of Wedi Wijaya serial number 03783945 B, 1 (one) car ignition key and remote returned to the rightful owner through the defendant;
   b. 1 (one) Android mobile phone unit Xiomi brand white color Imei 867451024492743. Confiscated for destruction, 6 (six) Sumatran blue-winged lizards, 9 (nine) small-winged lizards, 23 (twenty-three) large-winged lizards, 2 (two) gelling lizards, 7 (seven) live Sumatran poksay were released to their habitat through the Bengkulu Natural Resources Conservation Center (BKSDA), Region III Lampung Conservation Section.

6. Order the defendant to pay court costs of Rp 2,000 (two thousand rupiahs).

The judge's decision can be one way to see whether or not justice, legal certainty and expediency have been fulfilled. Judges are expected to uphold justice and truth in carrying out their duties. This is because the implementation of the duties and functions of judges determines the court's dignity in upholding law and justice. Article 10 of the Criminal Code, which outlines the punishment system, essentially aligns with the retributive paradigm in the form of imprisonment and fines. Criminal sanctions for the perpetrators of protected wildlife trade need to be strengthened and aggravated for the purpose of deterrent effect while preventing the extinction of protected endangered wildlife. The success of criminalization is highly dependent on the formulation of criminal sanctions as a benchmark in imposing punishment. Punishment aims to maintain social order and create a deterrent effect, not to degrade human dignity.

Looking at the provisions of the KSDAHE Law, criminal sanctions for perpetrators of protected wildlife transportation are relatively light compared to the impact of their actions on the sustainability of animals and their ecosystems. The light sanctions are also not enough to deter the perpetrators. Therefore, the imposition of punishment against the perpetrators of protected wildlife transportation needs to be viewed from the aspect of the purpose of punishment. This needs to be done considering the magnitude of the impact on the sustainability of animals for future generations. From the perspective of the purpose of punishment, animal protection is expected to ensure the sustainability of animals in the future.\(^4\)


Based on the description above, the novelty of this research will contribute to the effectiveness of the imposition of punishment based on the judge’s decision in accordance with the objectives of punishment. This can be seen in consideration of judges in imposing punishment against perpetrators of criminal acts without the right to transport protected animals alive. Then, the imposition of punishment against perpetrators of criminal acts without the right to transport protected animals in a state of life is reviewed from the purpose of punishment.

The research method used is the normative research method. Normative legal research analyzes the mutual relationship between legal facts and social facts where the law is seen as an independent variable and social facts are seen as dependent variables. The approach used is a case approach. This is intended to study how the application of legal norms or rules is carried out in practice. The data used in the form of literature review includes laws and regulations, court decisions and interviews with resource persons at the Tanjung Karang District Court. Then the data is analyzed descriptively and qualitatively.

The novelty in this research will contribute to the concept of the purpose of punishment against perpetrators of protected wildlife trade. This article provides an overview of the purpose of punishment against perpetrators of transportation of protected wildlife in a live condition as in Decision Number: 77/Pid.B/LH/2020/PN.Tjk, which is based on juridical, sociological and philosophical considerations. And provide recommendations on the ideal punishment for perpetrators of transportation of protected animals based on the causes and consequences of criminal acts committed.

B. Discussion

1. Basic Considerations of Judges in Imposing Punishment on Perpetrators of Criminal Acts Without the Right to Transport Protected Animals in a Living Condition

The effectiveness of legal norms is largely determined by law enforcement itself. It is not uncommon for rules to be difficult to apply in society and only black on white. To realize effective law enforcement, the collaboration between law enforcement officials and the community is needed as one of the pillars of law enforcement. Judicial power, as one of the pillars of law enforcement, consists of various entities that determine the process of concretizing the substance of the law itself through its decisions. Judges as executors of judicial power through their decisions, have the competence to provide the strength of legal norms manifested in regulations. Gerhard Robbers stated that contextually, the independence of judges in exercising their authority contains three important elements:

a. Judges are only subject to law and justice;

b. No one, including the government, can influence or direct the decision to be rendered by the judge; and

c. There should be no consequences to the judge’s person in carrying out his/her judicial duties and functions.

Judges as law enforcers as well as providers of justice are also obliged to explore the value of law that lives in society. Therefore, judges must be able to dive, feel and live the feeling of law in society. Thus, judges will be able to produce decisions that are in harmony with the law.

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and the community's sense of justice. Theoretically, the judge's decision contains three components: justice, expediency and legal certainty. While normatively, the judge's decision contains procedural and substantial justice aspects. Procedural justice relates to procedural law and evidence, while substantial justice relates to the dictum of the decision.

The judge's consideration largely determines the realization of justice and legal certainty for the litigants. Therefore, a judge is required to be wise and careful in making considerations. Sudarto argued that the culmination of a criminal case is the judge's verdict, which contains philosophical, sociological and juridical considerations. Referring to Sudarto's opinion, the imposition of punishment on the perpetrators of transporting protected wildlife in Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk is based on the following considerations:

a. Juridical Considerations

Juridical considerations are the judge's considerations based on the trial facts which must be contained in the decision. In other words, juridical considerations are the judge's considerations based on the legal facts revealed at trial. The juridical considerations include:

1) Public Prosecutor's Indictment

Based on “Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, the public prosecutor charged with a single charge, namely Article 40 paragraph (2) Jo. Article 21 paragraph (2) letter an of the KSDAHE Law. Based on this indictment, the Panel of Judges considered that the actions of the defendant had fulfilled the elements of the article charged by the Public Prosecutor, namely that the actions of the defendant were regulated and threatened in accordance with Article 40 paragraph (2) Jo. Article 21 paragraph (2) letter an of Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems”.

According to the facts of the trial, “the defendant was legally and convincingly proven to have committed the crime of unlawfully transporting protected wildlife in a live condition. The sentence imposed by the judge on the defendant is imprisonment for 1 (one) year and 2 (two) months and a fine of Rp. 10,000,000 (ten million rupiahs) with the provision that if the fine is not paid, it will be replaced by imprisonment for 2 (two) months. Due to all elements of Article 40 paragraph (2) Jo. Article 21 paragraph (2) letter an of the KSDAHE Law has been fulfilled, then the defendant must be declared legally and convincingly proven guilty of committing the crime of unlawfully transporting protected wildlife in a live condition as charged in the single indictment”.

2) Statement of The Defendant

According to the Code of Criminal Procedure (KUHAP), the defendant's statement is one of the pieces of evidence. According to Hendri Irawan, “In practice, the defendant's statement is often expressed in the form of acknowledgment or rejection, either in part or in whole, of the prosecutor's charges and the testimony presented by the witnesses. The defendant's statement

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15 Hasil wawancara dengan Hendri Irawan selaku Hakim pada Pengadilan Negeri Tanjungkarang, pada tanggal 2 Maret 2023.
is also an answer to questions the public prosecutor, judge, or legal counsel asks. The defendant's statement presented in court is generally an answer to questions posed by the judge or the public prosecutor”.

3) Witness Statement

As Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, the Panel of Judges has considered the testimony of 6 (six) sanctions and 1 (one) expert submitted by the public prosecutor. It is natural for judges to consider witness statements because witness statements will reveal criminal acts that occur and identify the perpetrators. In other words, this witness statement will show whether the public prosecutor's charges are proven or not so that the judge will have an overview of the public prosecutor's charges based on the witness statement.

4) Evidence

As for the evidence of the crime without the right to transport protected animals as Decision Number: 77/Pid.B/LH/2020/PN. Tjk, namely in the form of 1 (one) unit of four-wheeled vehicle brand Wuling Type Confero Nopol BG 1370 HG, 1 (one) STNK sheet in the name of Wedi Wijaya serial number 03783945 B, 1 (one) car ignition key and remote returned to the rightful owner through the defendant, 1 (one) unit of Android cellphone brand Xiomi white color Imei 867451024492743 Confiscated for destruction, 6 (six) Sumatran blue-winged lizards, 9 (nine) small-winged lizards, 23 (twenty-three) large-winged lizards, 2 (two) geling lizards, 7 (seven) live Sumatran poksays were released to their habitat through the Bengkulu BKSDA, Region III Lampung Conservation Section.

b. Sociological Considerations

The crime of unlawfully transporting protected wildlife in a live condition, as stated in Decision Number: 77/Pid.B/LH/2020/PN.Tjk, the aggravating factors are that the defendant's actions can lead to wildlife extinction and harm the ecosystem. The mitigating circumstances include the defendant's frank confession of his actions, his politeness in court, and his regret for his actions and promise not to repeat them. In addition to legal certainty, punishment must guarantee the fulfillment of justice and truth for everyone. Therefore, the judge must consider the aggravating and mitigating circumstances of the defendant before making a decision.

c. Philosophical Considerations

According to Erna Dewi, the philosophical aspect is whether the verdict fulfills the values of justice or not. This means that The Panel of Judges considers that imprisonment and fines imposed on the defendant in the form of imprisonment and fines are a form of punishment that is expected to have a deterrent effect on the defendant so that the defendant does not repeat the mistake or criminal act in the future after completing his sentence and returning to the midst of society.

Before making a decision in a criminal case, the judge must carefully consider every relevant aspect of the trial. The judge assesses a criminal offense committed by a person by considering subjective requirements, such as the existence of guilt and the ability to be responsible for others, and there is no justification to pardon him. In addition, the judge must

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16 Hasil wawancara dengan Hendri Irawan selaku Hakim pada Pengadilan Negeri Tanjungkarang, pada tanggal 2 Maret 2023.
18 Hasil wawancara dengan Erna Dewi selaku akademisi hukum pidana Fakultas Hukum Universitas Lampung, pada 9 Maret 2023.
19 Hasil wawancara dengan Hendri Irawan selaku Hakim pada Pengadilan Negeri Tanjungkarang, pada tanggal 2 Maret 2023.
show objective conditions, including that the criminal offense committed is in accordance with the definition of the offense, is illegal, and cannot be justified. If these conditions are met, the judge will then evaluate the mitigating and aggravating circumstances.20

Based on the description above, the fundamental factors that become the consideration of judges in imposing crimes against perpetrators of criminal acts without the right to transport protected animals in a live state include juridical, sociological and philosophical aspects. The juridical aspect is based on the juridical facts revealed in the trial and, by law has been determined as a matter that must be contained in the decision.21 The sociological aspect includes the aggravating and mitigating circumstances of the defendant. Then the philosophical aspect includes the purpose of punishment, in this case providing a deterrent effect to perpetrators of criminal acts without the right to transport protected animals alive. Of these three aspects, judges' decisions generally emphasize the juridical aspect more because most judges in Indonesia still have a positivistic view (glorifying the principle of legality).

2. The Perspective of the Purpose of Punishment Towards the Imposition of Punishment for Perpetrators of Criminal Acts Without the Right to Transport Protected Animals in a Living Condition.

Regarding the purpose of punishment, according to Herbert L. Packer, “There are two conceptual views, each of which has different moral implications from one another, namely the retributive view and the utilitarian view. The retributive view presupposes punishment as a negative reward for deviant behavior committed by citizens of society, so this view sees punishment only as retaliation for mistakes made on the basis of their respective moral responsibilities.22 There is no break in the chain of protected wildlife trade and poaching. The transition from poaching to black market trade begins with live/dead animals and their organs. The increase in poaching and trade of protected wildlife is a result of high market demand. The public’s desire to own protected wildlife drives the high market demand, as owners of protected wildlife feel more alive and have a higher status. High prestige because it is not available to everyone”.

As well as Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, the defendant Susanto Setiawan Bin Setiawan was found legally and convincingly guilty of committing a criminal offense without the right to transport protected wildlife in a living condition as regulated in Article 40 paragraph (2) jo. Article 21 paragraph (2) letter an of the KSDAHE Law. Therefore, the defendant Susanto Setiawan Bin Setiawan, was sentenced to 1 (one) year and 2 (two) months imprisonment and a fine of Rp. 10,000,000 (ten million rupiahs) in lieu of 2 (two) months of confinement.

Transporting protected wildlife is categorized as an environmental crime as, administrative penal law or public welfare offenses, which gives the impression of the lightness of the act. Therefore, before resorting to criminal law, administrative law measures should first be taken because criminal law is the last resort.23 Looking at the impact caused, animal trafficking crimes are generally resolved with criminal law instruments even though they fall into the realm of administrative, criminal law.24 In order to see whether the imposition of punishment against the

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perpetrators of protected wildlife transportation has fulfilled the purpose of punishment or not, the theory of the purpose of punishment is used.\textsuperscript{25}

When viewed from the way the judge formulated the sanctions in Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, the judge formulated them cumulatively, namely imprisonment and fines in accordance with the KSDAHE Law. However, when viewed from the decreasing sanctions, the objective of absolute punishment is not achieved in the imposition of decisions made by judges. This can be seen from Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, the defendant was only sentenced to 1 (one) year and 2 (two) months and a fine of Rp. 10,000,000 (ten million rupiah). From the sentence, the length of arrest and detention was also deducted. This is not in accordance with the fundamental theory. Apart from that, the fine which can be used as an effective punishment in providing a deterrent effect, is also reduced from the original 100 million rupiah.

Referring to the purpose of punishment, criminal law does not only look at the aspect of deterrent effect but also must look at the effectiveness of the punishment imposed. The purpose or function of law in general, is to protect. One thing that can measure the effectiveness of punishment is the number of repetitions of cases by the defendant (recidivist). Considering that in the jurisdiction of the Tanjungkarang District Court, there are no recidivists in the crime of transportation of protected animals, the purpose of punishment in Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, according to relative theory, has been achieved.

In addition, perpetrators of illegal activities without the authority to transport protected animals are charged with Article 40 paragraph (2) of the KSDAHE Law with a maximum imprisonment of 5 years and a maximum fine of Rp 1,000,000,000,000. This 33-year-old law is considered ineffective because it does not impose a minimum period of time, so in reality, the perpetrators of criminal acts are only punished for a few months. Regarding the sanctions imposed for violations in Article 21, written in Article 40 paragraph (2) of the KSDAHE Law, it is felt that it is no longer in accordance with its development at this time, where at this time the dispute resolution mechanism prioritizes settlement through non-punitive means. Looking at the provisions of Article 40, the existing conflict resolution is still very limited, as well as the provisions of criminal sanctions that do not include the minimum penalty and fine that can be imposed on the perpetrators of poaching and trade in protected animals, which can cause a disparity in judges' decisions.

Based on this description, law enforcement against poaching and trade of protected wildlife has not been effective. The fines imposed are still insufficient to deter the perpetrators of poaching and trade of protected species. There are still many examples of poaching and trade of protected species. Viewed from the perspective of the purpose of punishment, the imposition of punishment on perpetrators of criminal acts without the right to transport protected animals in a state of life can be compared from 3 (three) theories, namely absolute, relative and combined theories. However, in the imposition of punishment as in Decision Number: 77/Pid.B/LH/ 2020/PN.Tjk, the fundamental theory is not fulfilled, the relative theory is fulfilled and the combined theory is fulfilled. According to Erna Dewi, when viewed from the theory of punishment, it tends to use a combined theory. In the future, it is expected that judges in deciding cases will use the objective theory or relative theory.\textsuperscript{26} The fundamental theory cannot be fulfilled because there is a yearly decrease in sanctions. This can reduce the deterrent effect for the perpetrator. The relative theory is fulfilled because there are no recidivists in the


\textsuperscript{26} Hasil wawancara dengan Erna Dewi selaku akademisi hukum pidana Fakultas Hukum Universitas Lampung, pada 9 Maret 2023.
crime of transportation of protected animals in the jurisdiction of the Tanjungkarang District Court. Likewise, the combined theory is fulfilled because the biggest reason for the perpetrators is economic needs, so money can be used as a benchmark in providing learning for the perpetrators. With the imposition of heavy fines on the perpetrators, the perpetrators will suffer a lot of losses and will think again about committing this crime.

Among the three objectives of punishment that have been described, the author argues that coaching and improving the quality of criminal offenders is a very important factor in the imposition of punishment against criminal offenders. It would be wiser and more beneficial if convicted wildlife poachers were sentenced to imprisonment and community service as a form of redemption for the crimes committed, as required by Law Number 1 of 2023 on the Criminal Code. This community service is unpaid due to its nature as a punishment. In terms of its application, this community service must first be approved by the convicted person so that it does not conflict with international conventions.27

C. Conclusion

The imposition of punishment on the perpetrators of the crime of without the right to transport protected animals alive, as stated in the Tanjung Karang District Court Decision No: 77/Pid.B/LH/ 2020/PN.Tjk is based on juridical considerations in the form of juridical facts revealed in the trial. Sociological considerations include aggravating matters, namely that the defendant’s actions have an impact on animal extinction and result in damage to the ecosystem. As for the mitigating circumstances, the defendant admitted his actions frankly, the defendant behaved politely in court, then the defendant regretted his actions and promised not to repeat them. Then the philosophical consideration is that the imprisonment and fines imposed are a form of punishment that is expected to have a deterrent effect on the defendant. Criminalization of perpetrators of criminal acts without the right to transport protected animals in a live state as stated in the Tanjung Karang District Court Decision No: 77/Pid.B/LH/ 2020/PN.Tjk, the imposition of punishment according to the fundamental theory is not fulfilled due to the low criminal sanctions so that it can reduce the deterrent effect for the perpetrators. The relative theory is fulfilled because there are no recidivists in the crime of transportation of protected animals in the jurisdiction of the Tanjungkarang District Court. Likewise, the combined theory is fulfilled because the biggest reason for the perpetrators is economic needs, so the fine can be used as a benchmark in providing learning for the perpetrators.

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A. Book


B. Journal


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Undang-Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya (UU KSDAHE)

Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor P.20/MENLHK/SETJEN/KUM.1/6/2018 tentang Jenis Tumbuhan dan Satwa yang Dilindungi