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IMPLEMENTATION OF THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) IN INDONESIA RELATED TO PROTECTED WILDLIFE TRADE CASES

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Abstract
Indonesia is one of the countries that ratified the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is the main international instrument to regulate trade in endangered animals and plants. Therefore, as a consequence of the ratification, Indonesia is obliged to adjust its legal system which is currently contained in Law Number 32 of 2024 concerning Amendments to Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems to be in line with the principles of animal protection regulated by CITES. This article analyzes the application of CITES in Indonesia in the context of protected wildlife trafficking cases, identifies enforcement constraints, and offers policy recommendations to strengthen biodiversity protection. The methods used are literature studies, regulatory analysis, and representative case studies. The results of the study show that despite the existence of an adequate legal framework, operational obstacles, inter-agency coordination, lack of forensic capacity, and socio-economic aspects still reduce the effectiveness of CITES implementation. Recommendations include strengthening law enforcement capacity, harmonizing regulations, increasing international cooperation, and public education campaigns.
Keywords: Wildlife Trade; Law Enforcement; CITES

INTRODUCTION

Indonesia is one of the mega-biodiversity countries with a wealth of endemic fauna and flora. Pressures from international and domestic trade put a number of species at risk of extinction. CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) plays an important role in international efforts to curb unsustainable trade. A large number of wildlife species have been routinely captured from nature and shipped to all corners of the world. Conservation experts suggest that some species of wildlife that are traded have begun to experience scarcity (Soehartono, 2003). In general, the causes of species extinction can occur in two ways. These include habitat damage caused by natural habitat conversion and the use of natural resources in a destructive way; and the unsustainable use of species, namely hunting, illegal trade, and ineffective regulations (Samedi, 2021).

The State of Indonesia is one of the countries that ratified the CITES Convention through Presidential Decree Number 43 of 1978 in an effort to protect, protect, and preserve animals whose existence is on the verge of extinction. Indonesia as a country rich in animal diversity, including endangered and endangered animals, is the driving force for Indonesia to ratify CITES, because the main concern of the convention focuses on the conservation of species from the threat of extinction.

With the ratification of CITES into Indonesian laws and regulations, the government has determined the Directorate General of Natural Resources and Ecosystem Conservation of the Ministry of Environment and Forestry (Dirjen KSDHE KLHK) as the management that regulates the export-import scheme of animals and plants in the Appendix 2 category of CITES (Hafidzah, 2022) and the Indonesian Institute of Sciences (LIPI) which has the authority to determine the quota of animals and plants traded by conducting a study and scientific

considerations (Zakariya, 2021). On the regional side, the establishment of the ASEAN-WEN (ASEAN Wildlife Enforcement Network) on October 11, 2004 in Bangkok as a form of efforts to counter illegal wildlife and plant trafficking also involved the Police, Customs, Prosecutor's Office and CITES Management Authority, which in this case is the Directorate General of Forest Protection and Nature Conservation (PHKA) (Aditya, 2016). In terms of marine itself, the government has regulated institutions that have their own authority in the context of law enforcement at sea as regulated in the applicable laws and regulations in the form of Ministries/Institutions (K/L) (Kartika, 2014).

In fact, if you look at Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that "The earth, water and natural resources contained in it are controlled by the state and used to the maximum extent of the prosperity of the people." This shows that the constitution guarantees the protection and management of the environment, for the maximum benefit of the people from time to time. The formulation of the article is then interpreted by various policies for environmental protection and management, one of which is the protection of animals through Law Number 32 of 2024 concerning Amendments to Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Ecosystems (KSDAHE) (Naomi, 2023).

In the case of the criminal act of "capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a living state", the protected animals are criminally threatened as stipulated in Article 21 paragraph (2) letter a jo. Article 40 paragraph (2) of the Criminal Code. Based on these regulations, trading or trading and storing/owning turtle eggs is a prohibited act. Therefore, legal protection is needed both preventively and repressively by the government by involving the community to maintain the turtle population (Tarigan, 2020). This study discusses how CITES provisions are implemented in the context of Indonesian national law, as well as examining several cases of wildlife trade as empirical studies to show challenges and opportunities for improvement.

METHOD

The type of research used is normative-empirical research, which the author will carry out, namely digging up information in the field (Field Research). Normative-empirical research is used to analyze or find out the extent to which regulations or laws and laws are running effectively (Hanitijo, 1990). To support the approach, primary data and secondary data are needed, the results of this approach are expected to produce an understanding of the reality in implementing normative legal provisions that are reviewed whether the process has been carried out properly or not (Muhammad, 2004). This study uses 4 (four) approach methods, namely the Statue Approach (Marzuki, 2008), the Case Approach, the Conceptual Approach, and the sociological approach.

RESULT AND DISCUSSION

The Application of CITES in Indonesia related to the Case of Trade in Protected Animals

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a framework that must be upheld by the parties that make laws for the implementation of CITES at the national level (wwf.or.id, 2025). Wita Wardani, explained that one of the forms of CITES implementation in Indonesia is the formation of the UUKKHE. However, the law on plant and wildlife protection at the national level is still not optimal in applying punishments, which is not balanced with the crime rate, and the lack of law enforcement against wildlife trade (Wardani, 2017).

Due to CITES, it has become a driver for the Government of Indonesia in shaping wildlife trade regulations. The regulations that have been formed are contained, among others, in the Law of the Constitution, Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 31 of 2004 concerning Fisheries, Government Regulation No. 7 of 1999 concerning the Preservation of Plant and Animal Species, Government Regulation No. 8 of 1999 concerning the Utilization of Plant and Wildlife Species, Article 23 of Government Regulation No. 60 of 2007 concerning Fish Resources Conservation, Presidential Decree No. 43 of 1978 concerning CITES, Decree of the Minister of Forestry and Plantation No.: 104/Kpts-II/2007 concerning How to Take Wild Plants and Catch Wildlife, and Decree of the Minister of Forestry No.: 447/Kpts-II/2003 concerning the Administration of Taking or Catching and Circulating Plants and Wildlife.

However, in reality, CITES is not optimal to be applied in Indonesia. Factors that make the implementation of CITES less than optimal include:

1. The country's economic condition is not yet in a good position to regulate the sustainable use of resources to meet the needs and welfare of the Indonesian population.
2. The level of education of the Indonesian people.
3. Law enforcement is not optimal.

Law enforcement to stop the illegal trade in plants and wildlife is still not optimal, so there are still violations of the plant and wildlife trade in a mode that continues to develop. One of the reasons is the lack of national regulations that can be used to address illegal trade in unprotected plant and wildlife species. Various types of animals included in Appendix I, including those entering Indonesia, are still easy to find traded freely and openly.

4. The relevant officers have limitations in identifying the types of plants and animals that are traded, including their protection status.
5. People who do not know the regulations for the protection of plants and animals, especially those included in Appendix I of CITES, namely types of plants and animals that are strictly prohibited for trade because it is feared that it will cause the extinction of these species.

The use of plant and animal species included in Appendix I is only for special interests, for example research with strict rules for captivity.

6. Weak commitment.

The commitment of plant and wildlife entrepreneurs to support conservation programs for traded plant and wildlife species is still low. There is a tendency that plant and animal entrepreneurs only prioritize the economic interests of the plants and animals that are traded, but have not paid much attention to their sustainability aspects to ensure sustainable use. In fact, in reality various types of plants and animals continue to be threatened, not only by exploitation for trade, but by habitat shrinkage by various causes such as illegal logging, conversion of natural forests for plantations, encroachment and so on. If one type of plant and animal is increasingly difficult to trade, then the tendency chosen by plant and animal entrepreneurs is to switch to other types of plants and animals. This is contrary to the government's desire to increase captive efforts as an alternative to reduce pressure on populations in the wild.

The mechanism in the plant and animal entrepreneurs association has also not been optimal to bind its members not to carry out illegal trade acts, which is actually also a concern for plant and animal entrepreneurs because it can threaten legal trade.

Weak commitment is also shown by NGOs, especially in terms of taking a role in seeking scientific data on various types of plants and animals that are traded, as well as in terms of improving the ability of officers, especially in identifying types of plants and wildlife that are traded by publishing guidebooks. Improving the ability of officers can also be done by supporting CITES training which is carried out periodically by the managing authorities.

To overcome the problems mentioned above, plant and wildlife entrepreneurs and NGOs together with scientific authorities and managing authorities can increase cooperation according to their respective capacities based on a common understanding to support the implementation of CITES in Indonesia in order to obtain sustainable use of plants and wildlife.

In adjudicating cases regarding the trade in protected animals, in addition to considering whether the defendant's actions constitute a criminal act, must also consider the elements of the criminal act charged. As is known, an act is said to be a criminal offense if it meets formal and material requirements. The fulfillment of formal requirements if the act in question is declared by law as a criminal act, this is based on the reading of article 1 paragraph (1) of the Criminal Code which states that "No act can be punished except based on the criminal rules in the law that existed before the act was committed." In criminal law, it is called the principle of legality.

The material condition is that the act must be really felt by the community as an act that is not appropriate to be done, commonly referred to as the unlawful nature of the act (wederrechtelijk).

The two conditions (formal and material) must always be proven by a judge in adjudicating a criminal case. In its Decision, the Panel of Judges who examine and adjudicate cases of trade/use of protected animals cannot be used as a justification and/or excuse for the defendant's mistakes.

The Panel of Judges in addition to seeing the fact that the act committed by the defendant is required as a formal unlawful act, namely an unlawful act declared by law, but also has further examined whether the defendant's act is also materially unlawful. The Panel of Judges needs to pay attention to and consider the defendant's actions in trading (utilizing) the protected animals even though they are felt to be harmless to the community, especially for those who buy animals, but must also examine that the defendant's actions will threaten the preservation of endangered animals.

In terms of the provisions enshrined in doctrine and jurisprudence in Indonesia, the doctrine of material unlawfulness is adhered to as stated in the Supreme Court's decision:

1. Supreme Court Decision No. 30 K/Kr/1969 dated June 6, 1970 which in its verdict stated: In every criminal act there is always an element of "unlawful nature" of the act accused, although in the formulation of the offense it is not always included.

Although the formulation of the offence of confiscation does not include the element of unlawful nature, it does not mean that the act accused does not constitute an offence of imprisonment even though there is no unlawful nature at all.

2. Supreme Court Decision No. 72 K/Kr/1970 dated May 27, 1972
   Against the Law
   a. At present, jurisprudence adheres to "materiele wederrechtelijkheid" (Supreme Court No. 42 K/Kr/1965 dated January 8, 1966)
   b. Although the accused is a formal offence, materially it is necessary to take into account the possible circumstances of the defendants on the basis of which they cannot be punished (materiele wederrechtelijk).

Thus, whether there is an element of unlawfulness in the formulation of the offense must always be proven. In the case of the defendant Ita Susanti in Decision No. 20/Pid.Sus/2016/PN.Pdg and the defendant David John George Camplin in Decision No. 75/Pid.Sus/2016/PN. Nga, even though the indicted offense does not clearly include elements of unlawful nature, it must still be proven at trial. Because in addition to meeting the formal requirements, namely that the act in question is unlawful and prohibited and declared to have violated the law, but also the act committed by the defendant must also be proven materially, namely really felt by the community as an act that is not allowed or should not be done because

it is contrary to the values that apply in society, especially because the defendant's actions have been destructive and disrupting natural ecosystems that can lead to the extinction of animal diversity.

Even though the examination carried out by the Panel of Judges not only stopped at the provisions of the prohibition of the law as an unlawful act, but also considered further the material unlawful nature. However, it is also necessary to pay attention to whether the defendant's actions will threaten the survival of animals.

The Panel of Judges still considers the general principles, both written and unwritten, as contained in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, that: "Judges and Constitutional Judges are obliged to explore, follow, and understand the legal values and sense of justice that lives in society."

Therefore, the problem of the doctrine of unlawful nature materially will really play an important role in implementing a criminal provision in the Criminal Code (Pradja, 1983). In accordance with the opinion of Mr. J.M. Van Bemmelen as follows (Groningen, 1975):

"There are still two things where it must be decided to be released from lawsuits. These things occur when the parts of an act as indicted, are also stated and can be proven and have also fulfilled all parts of the formulation of the crime, but neither the act nor the perpetrator for some reason cannot be punished. For the prohibition of an act and the threat of criminal punishment from the perpetrator, not only the parts of an act as formulated in the delicacy painting are also taken into account, but also the conditions arising from the generally accepted principles of law apply. We call these conditions elements of a criminal act. The term elements here is used in a narrow sense."

According to the teachings of against the law materially, in the sense of law, it also includes unwritten laws because "law" has a broad meaning and cannot only be interpreted as a law (Pradja, 1983). Hamel states that:

"The unlawful nature of a crime is one part of the general definition of a criminal act so that, in his opinion, in the case in question it is not contained in the formulation of the crime, the part is considered to always exist" (Pradja, 1983).

The issue of "unlawful" really plays an important role, especially in determining the existence of a "criminal act" so that in the case of "unlawful" it is not mentioned in the formulation of the deli, the element in question is considered to have existed.

Likewise, in the case of the defendant Ita Susanti and the defendant David John George Camplin, although the element of material unlawfulness is not clearly included in the indicted offense, it cannot abolish the criminal offense for both. Because materially, disturbing and utilizing endangered animals protected by law can result in the extinction of animal species, damage the balance of natural ecosystems, and ultimately harm future generations and descendants of humans.

The handling of cases of animal trafficking as stated in Decision No. 20/Pid.Sus/2016/PN.Pdg and Decision No. 75/Pid.Sus/2016/PN. The Panel of Judges in examining and adjudicating cases related to the environment, must first understand the principles of environmental policy which include (Riyono, 2016):

1. Principles of Substantive Legal Principles.
2. Principles of Process
3. Prinsip Keadilan (Equitable Principles)

One of the principles of the substance of environmental law (Substantive Legal Principles) applied in handling cases of the crime of trafficking in protected animals is the principle of cautionary (Precautionary Principles). This principle is contained in Article 2 of the UUPPLH and is adopted from the 15th Principle of the Rio Declaration of 1992. The 1992 Rio Declaration states:

"In order to protect the environment, the precautionary approach shall be widely applied by states according to capabilities. Where there are threats of serious or irreversible damage, lack of full scientific uncertainty shall not be used as a reason for postponing cost-effective measure to prevent environmental degradation". That is, to protect the environment, a precautionary approach must be applied by countries. If there is a serious or serious threat or irreparable loss, the absence of scientific certainty cannot be used as an excuse not to make a decision that prevents the deterioration of environmental quality.

The implementation of the provisions of the UUKKHE is a legal provision that is the basis for the implementation of the conservation of biological natural resources and their ecosystems related to the case of trade in protected animals. However, the Panel of Judges must see that there are currently many changes in the national strategic environment such as changes in the political and governance system from centralization to decentralization and democratization, as well as changes at the global level in the form of shifts in several international policies in conservation activities as stated in the results of conventions related to biodiversity, or the results of bilateral, regional and multilateral agreements. So the content of the UUKKHE needs to be developed to save biodiversity in Indonesia. In fact, it has been felt that the provision of sanctions contained in the UUKKHE does not provide a deterrent effect for the perpetrators of the crime of trade in protected animals.

The Panel of Judges should have seen the fact that the rampant wildlife trade in Indonesia has made biodiversity even worse, especially due to illegal animal trafficking. Moreover, these animals are included in the type of animals in the Appendix I category of CITES, which things should not be taken advantage of at all, including trade.

CONCLUSION

The implementation of CITES in Indonesia has put the country in a position of international compliance to regulate the trade in protected animals. However, the effectiveness of implementation in the field is still limited by technical barriers, coordination, and socio-economic aspects. Integrated improvements include strengthening forensic capacity, policy harmonization, inter-agency coordination, and the development of alternative economies needed to make CITES a truly effective instrument in protecting vulnerable species in Indonesia.

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