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## Rethinking Indonesian Legislation on Wildlife Protection: A Comparison between Indonesia and the United States

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Article	Abstract
<p><b>Keywords:</b> Civil Sanctions; Criminal Sanctions; En- vironment; Law Enforcement; Wildlife.</p> <p><b>Article History</b> Received: Sep 9, 2020; Reviewed: Jan 8, 2021; Accepted: Jan 29, 2021; Published: Jan 31, 2021.</p> <p><b>DOI:</b> 10.28946/slrev.Vol5.Iss1. 881.pp143-162</p>	<p>In Indonesia, a crime against wildlife is still not well controlled. Several reasons are the fact that certain wildlife is still considered a threat by the community and the lack of implemented criminal sanctions. This paper compares the application of sanctions to perpetrators of wildlife crimes between Indonesia and America. Based on the Indonesian Law, Article 40(2) of the Law on Conservation of Living Natural Resources and their Ecosystems, a person who commits a crime against individual wild animals can be imprisoned for a maximum of five years and a maximum fine of one hundred million rupiahs. Meanwhile, the United States Law, the Endangered Species Act (ESA), charges wildlife criminals with criminal and civil penalties. In §1540(a)(1) it provides that anyone who takes, imports, exports, transports or sells endangered species can be fined not more than \$ 25,000. If the species is threatened in the group, the offender can be subject to a sentence of not more than \$ 12,000. Also, additional criminal sanctions were imposed to revoke federal licenses, lease permits and hunting permits. This study aims to analyse criminal sanctions' enforcement in criminal cases against protected animals in courts in Indonesia and the United States to find best practices using normative legal research methods. The results show that the criminal sanctions against wildlife crimes in Indonesia have never reached the maximum sentence so that it is not sufficient to provide a deterrent effect for the perpetrators. Unlike in America, the imprisonment sanction for criminal sanctions for protected animals is still relatively weak, but fines and civil sanctions can be maximally applied.</p>

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### INTRODUCTION

This article aims to discuss the wildlife law enforcement in Indonesia by comparing wildlife law enforcement in the United States. The comparative method in this article is essential to seek best practices in applying sanctions against perpetrators. There are several reasons why Indonesia needs to rethinking wildlife protection legislation.

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

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

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

Having such a legal framework on wildlife protection, Indonesia's number of wildlife species should increase. In fact, wildlife crimes continue to occur. Several crimes were human-wildlife conflict. One of the cases was taking place at the beginning of 2018 when a headless Orangutan was found floating in Kalahien Village, South Hamlet Subdistrict, South Barito District, Central Kalimantan. The autopsy results found seventeen air rifle bullets in the body (heart, lungs and stomach) and several injuries wounds. At the end of January, the Central Kalimantan police succeeded in arresting two perpetrators who claimed to have shot and severed orangutans because the Orangutan entered their plantations. The other case that Indonesia has shocked the international community was the discovering dead Orangutans with 130 gunshot wounds in its body in East Kutai (TNK) National Park (Kutim), East Kalimantan February 6, 2018. Police arrested five perpetrators of orangutan killers who argued that the orangutans damaged their plantations located in Kutai National Park.

Based on data from Center for Orangutan Protection (COP) in collaboration with the Orangutan Foundation International (OFI) Pangkalan Bun, and the Borneo Orangutan Survival Foundation (BOSF) Palangkaraya, there are ten cases of crimes against Orangutans in Central Kalimantan which have not been revealed. A study by several scientists published in the journal

*Current Biology* showed that Bornean Orangutans suffered a population loss of 100,000 from 1999 to 2015, estimated to have a population decline.<sup>1</sup>

In addition to human-wildlife conflicts, the threat of extinction to several endemic species in Indonesia is the illegal trade in protected animals. Indonesia is "one of the top ten countries" mega-diversities "and the largest supplier of wildlife products in Asia, both legally and illegally."<sup>2</sup> UNODC (The United Nations Convention on Transnational Organized Crime) categorises wildlife trade as "transnational organised wildlife crime."<sup>3</sup>

In contrast to Indonesia, the United States has some measures to prevent severely from threatening the future of wildlife species and the habitat. The primary US legislation on wildlife protection, namely the Lacey Act (1990), Migratory Bird Treaty Act (MBTA), Endangered Species Act (ESA), Marine Mammal Protection Act.

As a comparison to Indonesia wildlife law, in this article, the authors discussed mostly ESA. The ESA stated that anyone who knowingly or knowingly violates the prohibition on "taking, importing, exporting, removing or selling endangered species is subject to a maximum civil penalty of \$ 25,000. Meanwhile, anyone who violates other ESA provisions, including the prohibition of action against threatened species, is subject to a civil sanction of more than \$ 12,000. However, for people who do not know that exporting or importing is against the provisions, the civil sanction is more than \$ 500.

Criminal provisions for offenders who have known the prohibition of "taking, importing, exporting, transporting or selling endangered species are subject to a maximum penalty of \$ 50,000 and one year in prison. Meanwhile, perpetrators who violate existing provisions against threatened species are subject to a maximum criminal sanction of \$ 25,000 and 6 months in prison. Additional penalties in the form of license revocation and confiscation can also be applied.

Besides being charged under the ESA provisions, the perpetrator of a criminal act can also be charged under other provisions. In the event of torture or enrichment of wild animals, it can be related to animal welfare provisions.

The wildlife crime cases in the United States have received much public attention. The number of conservation crime cases handled by the courts in America is relatively high every year. Many criminal cases against wildlife in America are processed up to the Supreme Court. The role of the Supreme Court itself is to interpret words in the law, such as the word "take" and the word "harm" referred to in the Endangered Species Act (ESA).

In this article, the authors analysed criminal sanctions against perpetrators of criminal acts against wildlife judges in Indonesia and America. From this research, it is expected that Indonesia could reformulate criminal sanctions which could deter both the perpetrators or any potential felonies.

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

<sup>2</sup> USAID, "Perdagangan Satwa Liar, Kejahatan Terhadap Satwa Liar Dan Perlindungan, Spesies Di Indonesia: Konteks Kebijakan Dan Hukum Changes for Justice Project," 2015.

<sup>3</sup> UNODC, "Defining Transnational Organized Wildlife Crime," [https://www.unodc.org/documents/data-and-analysis/wildlife/WLC16\\_Chapter\\_1.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/WLC16_Chapter_1.pdf), 2016.

## RESEARCH METHODS

This research is normative legal research by examining legal norms' abstraction aspects through literature studies and reviewing legislation, court decisions, or other legal documents. In this research, the authors focused on analysing court decisions in Indonesia and America regarding criminals' sentencing against wildlife. The Indonesia court decisions that are analysed in this article are 1) Case Number: 27/Pid.B/LH/2018/PN BNT; 2) Case Number: 376/Pid.B/LH/2018/PN Plg; and 3) Case Number: 130/Pid.B/LH/2018/PN Sgt. The United States cases are 1) the United States v. Clavette (135 F.d 1308 (1998)); 2) the United States v. McKittrick (142 F.3d 1170 (1998)); and 3) the United States v. Bengis 611 F. App'x. 5 (2d Cir. 2015).

This research used the case approach and comparative approach method. Cases approach is a problem approach method by analysing cases related to crimes against wildlife in Indonesia and America by studying court decisions on these cases. Simultaneously, the comparative approach or comparison method is used to compare court decisions in Indonesia and America related to criminal acts against wildlife to see the advantages and disadvantages of each criminal sanction in both countries. This research can be used as material for formulating appropriate criminal provisions to be applied in Indonesia.

## ANALYSIS AND DISCUSSION

### Indonesia Legal Protection on Wildlife

Natural Resources in Indonesia are acknowledged to be very large and diverse. However, this potential has long been not protected by the state. It is caused by the absence of specific legislation on this matter. Moreover, Indonesia constitution is not too clear in accommodating the constitutional ideas of legal norms to protect natural resource ecosystems. If only the constitutional rights are stronger recognised by the state, this could raise awareness to protect Natural Resources and the Ecosystem.

To protect the natural resources and ecosystems, Indonesia has enacted Law Number 5 of 1990 on Conservation of Natural Resources and Its Ecosystems. Natural Resources and its Ecosystems must be protected by the state absolutely due to the following reasons:<sup>4</sup>

1. Protection of life support system

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

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

Preservation is an effort and conservation action to ensure species diversity includes safeguards so that these elements are not extinct. Each of these elements can function in

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<sup>4</sup> Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, Cet. 17 (Yogyakarta: Gadjah Mada University Press, 2002).

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

### 3. Sustainable use of living natural resources and their ecosystems

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

Protection of natural resources and their ecosystems is an action to protect from extinction, sustainability and scarcity. Sustainability is a condition where living natural resources in an area will be after that. The utilisation of natural resources that can be renewed is carried out at a maximum growth rate. If utilisation exceeds the growth rate, the resource becomes increasingly scarce and becomes extinct. The utilisation of non-renewable natural resources, such as mining, coal, oil, should be managed with the principle of saving use or finding alternative new resources that can replace their functions.<sup>5</sup>

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

Extinction is a condition in which the last individual of a species is no longer found in nature, for instance: *Trulek Jawa*, Java tiger. The causes of scarcity and extinction can be grouped into natural extinction and extinction due to human activities directly and indirectly. Natural extinction can be due to natural disasters such as earthquakes, tsunamis, volcanic eruptions. While scarcity and extinction due to human activities such as pollution, agricultural land clearing, mining, deforestation, habitat fragmentation.<sup>6</sup>

As stated in the discussion above, conservation is regulated in Law No. 5 of 1990 on Conserving Living Natural Resources and Their Ecosystems. This law is *lex specialis* from

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<sup>5</sup> Takdir Rahmadi, *Hukum Lingkungan Di Indonesia*, Cetakan 1 (Jakarta: PT. Raja Grafindo Persada, 2011).

<sup>6</sup> Rahmadi.

forestry law because the conservation law regulates part of the forest and forest areas that are generally regulated in forestry laws.

Law No. 5 of 1990 groups wildlife into protected species and unprotected animals. Article 20 Paragraph (1) Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and their ecosystems determines the protected species grouping into two types, namely species in danger of extinction and species in rare populations. The protected species are regulated in Government Regulation Number 7 of 1999 on Preservation of Plants and Animals which has 221 species listed as protected animals. Provisions for wildlife that shall be protected if they meet these criteria, namely they have a small population, there is a sharp decline in the number of individuals in nature, and they are limited (endemic) distribution area.

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

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

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

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

### **Indonesia Wildlife Law Enforcement**

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

To view wildlife law enforcement in Indonesia, the authors analysed the implementation of criminal sanctions against wildlife. After analysing some cases, the courts' decisions did not favour too much for wildlife interest. It appears that the judges did not impose the maximum sentence on the perpetrator.

*First* case studies were conducted toward the court's decision in the headless Orangutan (*Pongo Pygmaeus*) case. As earlier mentioned, a headless death body Orangutan was found in

Kalahien Village, South Hamlet Subdistrict, South Barito District, Central Kalimantan, Indonesia. Besides his head was cut off, in the body of the Orangutan was found seventeen gunshot wounds. After several investigations, police has arrested two perpetrators. Then, in April 2018 the case was brought before the Buntok Court. From the court examinations, the court determines the shreds of evidence, as follow: seventeen of air rifle bullets; an air gun; a 50 cm long machete; an air rifle bullet box; the skull of an orangutan; a piece of orangutan jaw bone; two segments of the thumb of the toes to the right and left of an orangutan; and a handful of orangutan hair.

Based on the examinations and evidence, the defendants (Mulyadi bin Landes and Tamorang bin Ribin) were found guilty of committing a criminal act of killing protected wildlife in a living condition. The defendants have sentenced imprisonment for six months and a fine of 500,000,000 rupiahs.<sup>7</sup>

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

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

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

Defendant I then left the place because he was summoned by the witness Mariska Binti Ma'ruf (wife of Defendant I) to escort Defendant-in-law I. Then, at around 10:00 a.m., the defendant II left the shooting place. At the same time, witness Hendri Herdiansya a.k.a Hendri bin Jekrianto witness Andi bin Hambali and witness Rustan bin H. Nasir still at the place and

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<sup>7</sup> Case Number: 27/Pid.B/LH/2018/PN BNT (n.d.).

still shooting the Orangutan until around 11:00 WITA, the three of them left the place with the condition of the Orangutan still on the wood in the middle of the forest.

Later on Sunday, February 4, 2018, at around 6:30 p.m. WITA witness Dede Nurhidayat Als Deden (an officer) was informed by the TNK WhatsApp group that there were orangutans who were limp and had wounds on their bodies but still living on logs in the middle of the lake in the district Teluk Pandan. Then the witness Dede Nurhidayat Als Deden was ordered by the Head of the TNK Office to see the Orangutan condition at that time along with three of his colleagues. Arriving at the crime scene with consideration of safety and evacuation procedures, evacuation cannot be carried out until Monday, February 5, 2018, around 8:00 a.m. The orangutans were evacuated while still alive but weak, and there were many injuries all over their bodies. When he arrived at TNK's office, a medical action was taken by Veterinarian Felicitas Flora Sambe Mambela but could not save the Orangutan and was declared dead at 1:55 a.m.

For their crimes, the Sangatta court imposed a criminal sentence against the defendants each with a prison sentence of seven months and a fine of 50,000,000 rupiahs. If the fine is not paid, it will be substituted with a sentence of two months.<sup>8</sup>

*The third* case that the authors discussed in this research is the illegal trade of wildlife in Banyuasin District, South Sumatera, Indonesia.<sup>9</sup> On Wednesday, December 13, 2017, at around 13.00 WIB, the defendant Muhammad Arif bin Sarnubi bought 100 kilograms eggs of Horseshoe Crab (*Belangkas*) from Unggun (still suspect) for 50,000 rupiahs per kilogram with the total amount for 5,000,000 rupiahs in the warehouse that the defendant leased from WI in Yunan Village, Sungsang IV Village, Banyuasin II District, Banyuasin District.

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

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

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

<sup>8</sup> Case Number: 130/Pid.B/LH/2018/PN Sgt. (n.d.).

<sup>9</sup> Case Number: 376/Pid.B/LH/2018/PN Plg (n.d.).



What can we conclude from the three cases above? The sentences for wildlife crimes determined by the judges tend to be weak. The judges did not impose sentences that can cause a deterrent effect on the perpetrators. Since Indonesia is a civil law system in which the judges cannot make law; thus, the judge only follows the laws and regulations, no matter how cruel the defendants' crimes. Article 40 Paragraph (2) of Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem stated an individual who conducted crimes against protected wildlife which mentioned in Article 21 Paragraph (2) is sentenced to a maximum of 5 (five) years imprisonment and a maximum fine of 100,000,000 rupiahs. However, at least the judges could sentence the defendants with maximum sanction stated in the statute.

### **The US Wildlife Law Enforcement**

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

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

“(A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species are taken in violation of subparagraphs (B) and (C); (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species; (F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation about such species or to any threatened species of fish or wildlife listed ...”

Violations of the above provisions can be subject to criminal or civil sanctions. Three factors determine the application of sanctions:<sup>10</sup> (1) the type of species affected, whether violations are committed against endangered or threatened species; (2) the perpetrator's knowledge of the provisions of the ESA; (3) for certain circumstances, the perpetrator's occupation. The application of criminal and civil sanctions will be more severe if the offender harms the species in the endangered category compared to the threatened category. Also, civil penalties will also be more severe if the perpetrator knows that the ESA prohibits his action. Criminal sanctions can be imposed on the perpetrator if the perpetrator knows that his action is against the law. If the perpetrator is an importer or exporter, the absolute civil liability is applied to the perpetrator.

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

The application of criminal sanctions against perpetrators who violate ESA criminal provisions must fulfil the element of "knowing." Actors who know that "taking", importing, exporting, transporting or trading endangered species prohibited by the ESA are subject to

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<sup>10</sup> Dale D. Goble & Eric T. Freyfogle, *Wildlife Law: Cases and Materials* (New York: Foundation Press, 2010).

sanctions maximum fine of \$ 50,000 and imprisonment for one year. If the action is carried out on species in the threatened group, the offender may be subject to criminal sanctions of a maximum of \$ 25,000 and imprisonment for a maximum of 6 months. Besides, additional crimes were also applied modification, suspension, or revocation each lease of any license, permit, certificate or other agreement, as well as confiscation of all equipment and transportation equipment related to these violations.

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

Besides ESA, America also has a series of acts regarding wildlife protection interrelated anyone, or any activity shall comply with. Some of the derivative rules are African Elephant Conservation Act; Airborne Hunting Act; Alaska National Interest Lands Conservation Act; Alaska Native Claims Settlement Act; Alien Species Prevention Enforcement Act of 1992; Anadromous Fish Conservation Act; Animal Damage Control Act; Animal Welfare Act; Antarctic Conservation Act; Archaeological Resources Protection Act; Asian Elephant Conservation Act of 1997; Atlantic Striped Bass Conservation Act; Bald Eagle Protection Act of 1940; Bankhead-Jones Farm Tenant Act; Base Closure and Realignment Act; Clean Air Act; Cibola National Wildlife Refuge; Coastal Barrier Resources Act; Coastal Wetlands Planning, Protection and Restoration Act; Coastal Zone Management Act of 1972; Colorado River Basin Water Project Acts.

Comprehensive Environmental Response Compensation and Liability Act; Dolphin Protection Consumer Information Act; Estuary Protection Act; Fish and Wildlife Conservation Act; Fish and Wildlife Act; Fish and Wildlife Coordination Act; Fish and Wildlife Improvement Act; Fishery Conservation and Management Act; Fur Seal Act of 1966; Great Lakes Fish and Wildlife Restoration Act; Great Lakes Fishery Act; Great Apes Conservation Act of 2000; Interjurisdictional Fisheries Act of 1986; International Environment Protection Act; Klamath River Basin Fishery Resources Restoration Act; Lacey Act Amendments of 1981; Marine Mammal Protection Act; Marine Protection, Research and Sanctuaries Act; Migratory Bird Conservation Act; Migratory Bird Hunting and Conservation Stamp Act; Migratory Bird Treaty Act; National Environmental Policy Act; National Fish and Wildlife Foundation Establishment Act; National Wildlife Refuge Acts; Neotropical Migratory Bird Conservation Act of 2000; Northwest Atlantic Fisheries Act. There are still more statutes and regulations in the US regulatory scheme. Since this article focuses more on law enforcement, the following paragraphs will talk about the court decisions on wildlife crimes cases.

Since 1978, there have been several cases of criminal acts against wildlife in the United States that have been processed up to the Supreme Court of the United States. Here are some cases that play an essential role in establishing animal protection laws in the United States: a) Tennessee Valley Authority v. Hill (TVA v. Hill, 437 U.S. 153 (1978)); b) The Snail Darter Case Babbitt v. Sweet Home Chapter of Communities for a Better Oregon (Babbitt v. Chap Home Sweet., Coms. For Ore., 515 U. 687 (1995)); c) Bennet v. Spear (Bennett et al. v. Spear et al.,

520 U.S. 154 (1997)); d) *National Association of Home Builders v. Defenders of Wildlife* (National Association of Et Al. V. Defenders Of Wildlife Et Al., 551 U.S. 644 (2007)); e) *Winter v. NRDC: Navy Sonar and Whales* (Winter V. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008)).

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

***The United States v. Clavette (135 F.d 1308 (1998))***<sup>11</sup>

On September 20, 1995, Tim Eicher, the US Fish and Wildlife Service officer, investigated a grizzly bear killed at a campsite southwest of Big Sky, Montana. Eicher found two pine trees between the two trees tied to a piece of wood that was thought to have just been used to hang a skinned deer. Eicher also found a dead grizzly bear about 170 yards from the location of the pine tree. The bear is estimated to have been shot dead four times. Eicher then looks for bullet marks and sleeves. About 25 yards from where the bear was found, Eicher found 17 mm bullet shell and two bullets, one two-inch ground covered under a tree close to the bear's corpse, and one fruit above the ground next to a bear pool of blood.

Eicher found two hunters who stopped at the camp on September 17, 1995, with an Oregon man skinning a newly killed deer. The man seemed in a hurry and said nothing about being attacked by a grizzly bear or killing him. Nevertheless, the man asked the two hunters what happened if someone shot a grizzly bear. The hunter said that he should be able to prove if his actions were in order to defend himself. Through these two hunters and records from the Montana hunting permit section, Eicher managed to identify the perpetrator as Paul Clavette as a man at the camp on September 17, 1995.

Officers from the US Fish and Wildlife Service in Portland, Oregon, received an arrest warrant against the perpetrators arrested at his home on November 2, 1995. After searching and reading the suspect's rights (Miranda warnings), Clavette admitted killing a grizzly bear for protecting her. After the trial, the court ruled that Clavette was guilty and unlawfully killed a grizzly bear. Clavette was proven to know that killing a grizzly bear was illegal and without asking the U.S Fish & Wildlife Service permission. Also, during the trial, Clavette and his wife changed the story repeatedly. The story presented by Clavette and his wife did not conform to the evidence found. Keith Aune, laboratory officer at U.S Fish & Wildlife Service Montana, testified that the grizzly bear shot's autopsy results did not match what was told by Clavette. Clavette was sentenced to three years of probation and paid a \$ 2,000 fine and \$ 6,250 compensation/recovery fees to the U.S Fish & Wildlife Service department.

***The United States v. McKittrick (142 F.3d 1170 (1998))***<sup>12</sup>

Gray Wolf or *Canis Lupus* is a species included in endangered, protected species throughout the United States, except in Minnesota, which is listed as a threatened species. While in Canada, there are still many grey wolves. Under Section 10 of the ESA, the Fish & Wildlife Service department captures Canadian grey wolves and releases them in Yellowstone National Park as an "experimental population" to increase the number of wolves in Wyoming and parts of Montana and Idaho. One of the wolves was moved from Yellowstone to Red Lodge, Montana, where the wolf was shot dead by Chad McKittrick. After shooting dead the grey wolf, McKittrick skinned

<sup>11</sup> *United States v. Clavette*, "United States Court of Appeals, Ninth Circuit," Findlaw, 1998.

<sup>12</sup> "*United States v. McKittrick (142 F.3d 1170)*," 1998.

and decapitated the wolf's head. The government charged McKittrick with three counts: (1) "taking" grey wolves in contravention of the provisions in 16 USC §§ 1538 (a) (1) (G), 1540 (b) (1) and 50 CFR §17.84 (i) (3); (2) having a grey wolf which is contrary to the provisions of 16 U.S.C §§ 1538 (a) (1) (G), 1540 (b) (1), and 50 C.F.R. §17.84 (i) (5), and; (3) transporting grey wolves as opposed to the Lacey Act, 16 U.S.C §§ 3372 (a) (1), 3373 (d) (2). Chad McKittrick was sentenced to jail for six months after being proven for all charges against him.

***United States v. Bengis 611 F. App'x. 5 (2d Cir. 2015)***<sup>13</sup>

From 1987 to 2001, the defendants jointly harvested South Coast and West Coast rock lobsters from South African waters to be exported to America. Such actions are contrary to the laws of America and South Africa. Simultaneously, the Department of Marine and Coastal Management regulates the quota for fishing and harvesting seasons and permits export rock lobster. Through his company, Hout Bay Fishing Industries Ltd. ("Hout Bay"), the suspects have harvested rock lobster in large quantities beyond the stipulated conditions and exported it to America.

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

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

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

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

Using the market price method, the panel of judges recommended compensation of \$ 54,883,550, according to the price of rock lobster. The suspect has paid \$ 7,049,080 to South Africa. Arnold Bengis and Jeffrey Noll pleaded guilty to smuggling conspiracies and have

<sup>13</sup> The United States v. Bengis, "United States Court of Appeals, Second Circuit," Findlaw, 2011.

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

### Rethinking Indonesia Legislation on Wildlife Protection

Generally, the purpose of comparing laws from various countries is to understand foreign laws. In this research, the authors have compared wildlife law between Indonesia and the USA to determine which law enforcement could arise deterrent effect?

After comparing wildlife law enforcement of two countries, the authors have concluded that there is a big difference between Indonesia and the USA. Following tables are the summary comparisons of legislations and law enforcement on wildlife law:

Table 1, Comparison of wildlife law

Indonesia	USA
<b>Act</b> - Law Number 5 of 1990 on Conservation of Natural Resources and its Ecosystem, applied only to protected wildlife.	<b>Act</b> - the Endangered Species Act (ESA), grouped wildlife into two groups: endangered and threatened species.
<b>Prohibitions against wildlife:</b>	<b>Prohibitions against wildlife:</b>
<ul style="list-style-type: none"> <li>a) catch, hurt, killed, keep, possess, pet, transport, and sell protected alive species;</li> <li>b) keep, possess, pet, transport, sell protected death species;</li> <li>c) exclude protected species from the Indonesian region to other regions, inside or outside Indonesia;</li> <li>d) sell, keep or possess skin, body or others part of protected species bodies, or goods made from these animals parts or exclude them from a region in Indonesia to other regions;</li> <li>e) take, destroy, exterminate, sell, keep or possess any eggs and/or nest of protected species.</li> </ul>	<ul style="list-style-type: none"> <li>a) import into or export from the United States;</li> <li>b) take any such species within the United States or the territorial sea of the United States;</li> <li>c) take any such species upon the high seas;</li> <li>d) possess, sell, deliver, carry, transport, or ship;</li> <li>e) deliver, receive, carry, transport, or ship in interstate or foreign commerce;</li> <li>f) sell or offer for sale in interstate or foreign commerce; or</li> <li>g) violate any regulation on such species or to any threatened species of fish or wildlife listed under ESA.</li> </ul>
Criminal Penalties – Maximum 5 (five) years of jail	Criminal Penalties – ESA Violations: imprisonment not more than one year and fined not more than \$50,000 Other regulations violations: imprisonment not more than six months and fined not more than \$25,000
Fine - maximum fine of 100,000,000 rupiahs	Civil penalties – Violations ESA: Not more than \$25,000 Violations of other regulations: Not more than \$12,000 Regulation, Permit, certificate violations which issued under ESA: Not more than \$500

Table 2, Comparison of Criminal Sanctions

Indonesia		USA	
Case	Sentences	Case	Sentences
1. Case Number: 27/Pid.B/LH/2018/PN BNT: The killing of an orangutan with its head cut off from the body and seventeen gunshot wounds	six months imprisonment and a fine of 500.000.000 rupiahs	1. The United States v. Clavette (135 F.d 1308 (1998): The killing of a grizzly bear	three years of probation and paid a \$ 2,000 fine and \$ 6,250 compensation/recovery fees to the US Fish & Wildlife Service department
2. Case Number: 130/Pid.B/LH/2018/P N Sgt.: The killing of Orangutan with 130 gunshot wounds case	Jail for seven months and a fine of 50,000,000 rupiahs with substitution sanction of two months imprisonment.	2. The United States v. McKittrick (142 F.3d 1170 (1998)): The Killing of Gray Wolf or Canis Lupus	Jail for six months
3. Case Number: 376/Pid.B/LH/2018/P N Plg: Illegal trade of wildlife, 100 kilograms eggs of Horseshoe Crab ( <i>Belangkas</i> ).	Jail for eight months and a fine of 2,000,000 rupiahs with substitution sanction of four months imprisonment.	3. United States v. Bengis 611 F. App'x. 5 (2d Cir. 2015): Smuggling rock lobster from South Coast and West Coast, South African waters to America	Restitution or compensation to for \$ 22,446,720 to South Africa and was sentenced to 46 months in prison (Arnold Bengis), 30 months (Jeffrey Noll), and 12 months (David Bengis) a fine of \$ 13,300,000 paid to the Americans.

Looking at table 1 and table 2, it can compare that there are several reasons why Indonesia can not enforce like the USA. *First*, Indonesia is a civil law country in which judges can not make a law. In other words, judges only apply the sanction based on the law as it is stated. It can be seen from the court decision, which imposed criminal penalties and fines to the defendants, not more than as it is stated in the law (Law Number 5 of 1990). In contrast, majority courts in the US sentenced the defendants with several penalties (criminal penalties, civil penalties, restitution, and compensation). The penalties are higher than it is stated in the statute. Since USA is a common law, a judge can make law in which the court could rule differently. In brief, if civil law prioritises written law as its source of law, common law makes *stare decisis* or a previous judge's decision the source of law for later decisions.

*Second*, the US wildlife protection laws are interrelated. The laws and regulations that are interrelated, and intergovernmental or involve government officials (federal and state) coming from various departments and services. On the contrary, Indonesia wildlife law enforcement solely relies on Law no. 5 of 1990.

Hence, Indonesia wildlife law needs to be revised in order to provide more protection for wildlife. Besides, the revision of the law must also be directed to create a deterrent effect on the perpetrators. According to Lisa Nelson, it is time to adopt a global approach to animal

protection, which means<sup>14</sup> universal (involves all countries in the world); comprehensive (dealing with all animal protection problems); and holistic (considering the interconnection with other fields (environment and people)).

Law is a crucial tool to prevent wildlife species loss. Indonesia needs to take an urgent review of the current wildlife legislation to improve law enforcement. The question is how to draft effective wildlife legislation in a way to deter potential criminals against wildlife?

From the philosophical point of view, whether or not we have the right to punish the offender. To answer this question, Herbert Morris stands on four assumptions.<sup>15</sup> *First*, we have the right to punish. *Second*, this right is attained from a fundamental human right. *Third*, this fundamental right is a basic, natural, and supreme right. *Fourth*, the refusal of these rights indicates the disavowal of every moral right and obligations. Morris assumed that offenders become liable to be punished because their actions cause “an unfair distribution of benefits and burdens” in society.<sup>16</sup> He argued that punishment restores equality of liberties and burdens.<sup>17</sup>

Classically, there are two schools of thoughts regarding punishment: the retributive theory and the utilitarian (the deterrence theory).<sup>18</sup>

### ***Retributive Theory***

One of the philosophers behind this theory is Immanuel Kant. Kant assumed that punishment is an end.<sup>19</sup> Punishment is a way to deter others from conducting similar crime. According to this theory, the basis of punishment lies within the crime, that punishment is an absolute demand to hold retaliation (*vergelding*) against the perpetrator of the crime.<sup>20</sup> This theory considered that punishment is “morally justified” or justified morally. In other words, evil deeds that cause suffering must be rewarded with suffering. Kant’s principle of punishment is a categorical imperative. The principle of punishment means (a) an unconditional moral demand is made, not one that can be modified for the convenience or desire of another, and (b) it can be extracted from some version of the categorical imperative. This principle identified as *lex talionis* which is derived from Mosaic law meaning “An eye for an eye, a tooth for a tooth, a life for a life.”<sup>21</sup>

### ***Deterrence Theory (Utilitarian)***

This Deterrence theory is the purpose of punishment apart from the retributive theory above. Zimring and Hawkins provide definite limits of deterrence only on the application of punishment in a case. In other words, the criminal threat will scare the offender and prevent him from committing a crime.

The deterrence effect as the purpose of punishment is divided into two: punishment for general prevention and punishment for unique prevention. General prevention aims to prevent

<sup>14</sup> Lisa Nelson, “Managing Human-Wildlife Interaction,” *International Journal of Public Administration* 31, no. 3 (2008): 287–97, <https://doi.org/10.1080/01900690701590488>.

<sup>15</sup> Herbert Morris, “Persons and Punishment,” *The Monist* 52, no. 4 (1968): 475–501, <https://doi.org/10.5840/monist196852436>.

<sup>16</sup> Joseph Q. Adams, “Retribution Requires Rehabilitation” (Georgia State University, 2008), [https://scholarworks.gsu.edu/philosophy\\_theses/35/](https://scholarworks.gsu.edu/philosophy_theses/35/).

<sup>17</sup> Morris, “Persons and Punishment.”

<sup>18</sup> Kevin M Carlsmith, “The Roles of Retribution and Utility in Determining Punishment,” *Journal of Experimental Social Psychology* 42, no. 4 (2006): 437–51, <https://doi.org/10.1016/j.jesp.2005.06.007>.

<sup>19</sup> Carlsmith.

<sup>20</sup> Marlina, *Hukum Penintensier* (Bandung: PT. Refika Aditama, 2011).

<sup>21</sup> Nelson Thomas Potter Jr, *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy*, J. Kneller (SUNY Press, 1998).

people from committing a crime. Meanwhile, unique prevention is to create a deterrent effect on the perpetrator to commit a crime.

Jeremy Bentham argues that the legitimacy of imposing punishment is deterrence, incapacitation, and rehabilitation. He also states that the purpose of punishment is prevention and feeling satisfaction and/or compensation. Bentham's view on community's pleasures and security is the end and sole that legislators ought to consider.<sup>22</sup>

Indonesia must reconstruct a legal protection system for wildlife which is interrelated and intergovernmental. It involves cooperation and contributions from legal drafters, Ministry of Environment, Natural Resources Conservation Agency (BKSA), Ministry of Forestry, wildlife managers, researchers. It is essential since the efforts to protect wildlife must be carried out comprehensively and become the responsibility of all government officials. Legal protection for wildlife must be provided by-laws relating to the environment and activities that impact animals and habitats. It is in line with what Andrew Long statement "there is a relationship between wildlife protection law and other laws relating to the environment."<sup>23</sup> Dublin and Hora also stated that wildlife management must be supported by a clear policy and legal framework at the national level, and involve land-use policies.<sup>24</sup>

A general study by FAO (Food and Agriculture Organization of United Nations) found that wildlife legislation has evolved from limited command and control to a more inclusive approach focused on broader principles such as biodiversity conservation and sustainable use.<sup>25</sup> A variety of factors inform this pattern. The identification of interdependence between different species and the direct and indirect threats to wildlife are among them.<sup>26</sup> A people-centred approach to wildlife management is also generally appealing, implying the engagement of interested citizens in decision-making related to wildlife and local communities' involvement in wildlife.<sup>27</sup>

In reforming the wildlife legislation, Indonesia also could refer to Addis Ababa Principles and Guidelines. Principles and Guidelines on Biodiversity Management were adopted at the seventh meeting of the Parties' Conference to the Convention on Biological Diversity (CBD COP7). Particularly, Principle 24: Provide for the regulation of both national and international wildlife trade. It suggests several restrictions and requirements on both national trade and international trade improve law enforcement regarding wildlife protection.

The restrictions and requirements encompass:<sup>28</sup> 1) permits for possessing, transporting, and trading wildlife or part other than a licensed hunter; 2) establishing criteria for registration and procedures for current wildlife specimens; 3) establishing additional penalties for violations of national trade restrictions; establishing trade quotas, if appropriate.

<sup>22</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1907).

<sup>23</sup> Andrew Long, "Developing Linkages to Preserve Biodiversity," *Yearbook of International Environmental Law* 21, no. 1 (2010): 41–80, <https://doi.org/doi:10.1093/yiel/yvr002>.

<sup>24</sup> Francine M. Madden, "The Growing Conflict Between Humans and Wildlife: Law and Policy as Contributing and Mitigating Factors," *Journal of International Wildlife Law & Policy* 11, no. 2–3 (2008): 189–206, <https://doi.org/10.1080/13880290802470281>.

<sup>25</sup> Elisa Morgera, James Wingard, and Alessandro Fodella, *Developing Sustainable Wildlife Management Laws in Western and Central Asia*, ed. Kai-Uwe Wollscheid (FAO and CIC, 2009).

<sup>26</sup> Morgera, Wingard, and Fodella.

<sup>27</sup> Morgera, Wingard, and Fodella.

<sup>28</sup> FAO Legal Papers Online, "Principles For Developing Sustainable Wildlife Management Laws," 2008.



Finally, there are still many things to discuss regarding Indonesia wildlife legislation. This article only a general view for policymakers and legal drafters to consider. A further and specific discussion is still needed. At least, this article could be an opening to rethinking and reforming effective wildlife legislation for Indonesia.

## CONCLUSION

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

Court decisions in Indonesia are much lower in sanctioning than the US court decisions because Indonesia is a civil law country in which judges are obliged to decide under written law. Consequently, the court decisions less likely to have a deterrent effect. For that reason, Indonesia needs to revise its current wildlife law in which it shall have high penalties both criminal and civil penalties. Therefore, Indonesia wildlife legislation is urgent to be revised. Reforming the wildlife law involves cooperation and coordination from various parties. Addis Ababa Principles could be used as guidance to revised the wildlife law.

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