

CHAPTER II

LITERATURE REVIEW

A. Animals Protection

The animals that are almost extinct and in critical levels in their habitats is a warning in the reduced existing ecosystems. To keep the ecosystems of the animals it must be properly preserved and protected based on the needs and imperatives that will be received from any endangered animal.

To ensure the protection of the animal, the government must fulfill the animals right as well as their welfare of the population and the habitat. If the welfare and animal rights have been met then the ecosystem, population and habitat will be maintained and the rate of their decline will reduce.

The animal protection not only aims to save endangered animals, but also as endeavor to ensure the diversity of ecosystems and the balance of ecosystems that have decreased as well as disruption due to the expansion of human activity.

B. Endangered Animals

Endangered animals are all kinds of animal living on land, water and in the air that have been in small number and difficult to be found in their original habitats and declared in the extinct condition.¹ It means the endangered animals are animals or species that have been very difficult to be found in the wildlife because they are small in number. Usually the animal can be called endangered if their number is less than 10,000 worldwide. They do not have the ability to return the population naturally to the original population.

¹ Muhammad Iqbal, Mahendra Putra Kurnia, Erna Susanti, *Op.Cit*, p. 9.

The Government Regulation No. 13 of 1994 on Animals Listed in Article 1 Point 15 states that animals as well as endangered species are all types of animal-based natural resources that live on land, or in water and or in the air but are not present in all locations or regions and their presence is limited, so they need to be protected.²

The causes of endangered animals can be the lossing of habitat as residence, and lack of roaming space to breed. Nevertheless, the main cause of the decline of the population of species is human activity. Whether human being realizes it or not, the occupied land, the food, the clothing, the fuel, and the goods, and the waste of human being, contribute to the cause of the extinction or loss of species populations. Among other causes are deforestation, hunting, and trading.³

a. Deforestation

The deforestation still remains a threat in Indonesia. Based on data 2003-2006 issued by the Ministry of Forestry, the rate of deforestation in Indonesia reaches 1.17 million hectares every year.⁴

Based on the data released by the State of the World's Forests 2007 and the United Nation on Food & Agriculture Organization (FAO), Indonesia's deforestation figures from 2000-2005 are 1.8 million hectares/year. Based on the data above the Guinness Book of The Record gave a 'title of honor' to Indonesia as the world's fastest forest destruction.

From the total forest area in Indonesia that reach 180 million hectares, 21

² Wisuda Unud: "Tinjauan Umum Tentang Perlindungan Species Langka dan Sindikat Perdagangan", available at <https://wisuda.unud.ac.id/pdf/0803005174-3-BAB%202.pdf>, accessed on Thursday, April 13, 2017 at 2.56 p.m.

³ WWF: "Program Spesies", available at <http://www.wwf.or.id/program/spesies/>, accessed on Thursday, April 13, 2017 at 4.26 p.m.

⁴ Evana: "Profauna Indonesia, Helps Uncovering Illegal Parrot Trade Syndicate in Bali", available at <http://www.evana.org>, accessed on Wednesday, April 12, 2017 at 3.40 p.m.

percent or equivalent to 26 million hectares of forest have been totally destroyed. No more trees can be planted. On the other hand, 25 percent or equivalent to 48 million hectares are also deforested and damaged. Of the total forest area in Indonesia only about 23 percent or equivalent to 43 million hectares are still free from deforestation (forest destruction).

Deforestation has given a significant impact to society and the natural environment in Indonesia. Logging activities that override forest conversion lead to degradation of environmental quality that ultimately increases the incidence of natural disasters, such as landslides and floods. Another effect of forest destruction is the threatened sustainability of fauna and flora in Indonesia primarily endemic flora and fauna. Endemic animals are increasingly threatened with the extinction due to deforestation of forests such as Javan langur (*Trachypithecus auratus*), and peacock (*Pavo muticus*), Javan gibbons (*Hylobates moloch*), leopards (*Panthera pardus*), javan eagles (*Spizaetus bartelsi*), silver forest pigeons (*Columba argentina*), and the Sumatran elephant (*Elephant maximus sumatranus*).⁵

b. Hunting

Hunting in Indonesia is still much done and often occurs in areas that have a weak economy. Hunting activities especially in rural areas of Borneo⁶ which have tropical forests, are still high as it became an activity for the fulfillment of needs. Endangered animals and wildlife are popular among Indonesian people especially in rural areas of Borneo including

⁵ Kompas.com: “Kerusakan Lingkungan Hidup di Indonesia dan Penyebabnya”, available at <https://kompas.com/2010/03/09/kerusakan-hutan-deforestasi-di-indonesia>, accessed on Wednesday, April 12, 2017.

⁶ Retno Dwi Hastiti, “Kearifan Lokal dalam Perburuan Satwa Liar Suku Dayak Kenyah di Taman Nasional Kayan Mentarang Kalimantan Timur”, Under Graduate Thesis of Forestry Faculty of Institut Pertanian Bogor, Downloaded on Wednesday, April 22, 2017 at 10.33 p.m.

Bearded Pig (*Sus Barbatus*), Sambar Deer (*Cervus unicolor*) and Kijang (*Muntiacus muntjac*).

People do the hunting just for consuming in case there is a party and to fulfill their economic problem. However, people do not think the impact that occurs by hunting the animals. Furthermore, they hunt the animals by targeting the rare animals and wildlife because both of them have high economic value.

c. Trade in Endangered Animals

According to *Traffic*⁷ trade against rare animals, the trade is defined as “the sale and exchange of animal and plant resources. This includes ornamental animal products such as corals for aquaria, reptile skins for the leather industry, tortoiseshell, as well as ornamental plants such orchids and cacti. It also, *includestimber* products, medicinal and aromatic products such as *taxol*, *agarwood*, and musk, fisheries products, and live animals for the pet trade including parrots, raptors, primates, and a wide variety of reptiles and ornamental fish”.

The illegal trade of protected animals and the endangered animals still continues until today.⁸ This is a very serious threat of extinction to endangered species in Indonesia. Since high profits are gained by the illegal traffickers with the small risks, illegal trade became major attraction for perpetrators to commit crimes. Although there have been a large number of perpetrators convicted, the punishment is still too low to stop the trafficking

⁷ TRAFFIC is an institution established in 1976 and engaged in conservation in collaboration with the CITES Secretariat (Convention on International Trade in Endangered Species of Flora and Fauna), Members of TRAFFIC selected by WWF and CITES, available at <http://www.traffic.org/overview/>, accessed on Monday, April 17, 2017.

⁸ Cifebrima Suyastri, “Political Environment: Wildlife Trade Management by CITES Articles Identification, Riau University, *Jurnal Kajian Politik dan Masalah Pembangunan*, downloaded on Tuesday, November 8, 2016.

of endangered animals. The hunting of wildlife basically aims to meet daily needs, but along the time and the development of the era, hunting is now also done as an exclusive hobby or pleasure (maintaining protected wildlife as a status symbol) in collecting wildlife products.⁹

The illegal trade of wildlife is also believed to have contributed significantly to the extinction process of wildlife, as well as the loss of habitat and the danger of spreading disease from animals (*zoonoses*). According to the International Enforcement Agency (IEA), the value of global trade in wildlife is second ranks after narcotics. The third order is the illicit trade in weapons and gold. The Government of Indonesia through the Directorate General of Forest Protection and Nature Conservation stated that the value of state losses due to illegal wildlife trade reaches more than IDR 9 trillion annually.¹⁰

Trafficking of these species is generally not recorded in government data that usually done informally, or in other words, illegal. *Traffic* recorded that international trade of this flora and fauna reached 300 billion US dollars in 2005. This amount is increasing from year to year where traded products are varied which includes animals and plants for traditional medicines.¹¹ Thousands of species are captured and traded to fulfill domestic and international demand. Unlimited international trade in these species threatens the survival and population of these species.

⁹ WWF: “Memerangi Ilegal Satwa yang Dilindungi”, available at <http://www.wwf.or.id/?48442/Memerangi-Peredaran-Ilegal-Satwa-Liar-Dilindungi>, accessed on Monday, April 17, 2017

¹⁰ *Ibid.*

¹¹ TRAFFIC, *op.cit.*

The illegal trade of wild flora and fauna occurs in the world and threatens the survival of biological resources on earth. The trade that generates billions of dollars is a huge problem in Southeast Asia.¹²

This trade includes both live animals and parts of the animal itself (ivory, leather, or meat). Trafficked species often include species classified as threatened.¹³ Indonesia, like any other countries in Southeast Asia, became one of the biggest and promising markets for illegal traders. As an illustration, in Lampung there are 12 elephant ivory hunters that since 2003 have traded over 1,200 kilograms taken from 47 elephants. In *Way Kambas*, there are 19 groups of hunters, supporters and craftsmen who have traded over 1,800 kilograms of ivory from 52 elephants.¹⁴ From 2007 of the observation in Bali, more than 500 birds are smuggled and traded every year. The number is not small and most of them are protected species such as yellow crested cockatoo (*disabled galua galerita*), and black cockatoo (*lorius lory*).¹⁵

Based on the *profauna* report, the smuggling of cockatoos in the Halmahera archipelago reach 10,000 heads to meet local and international demands for these animals; more than 40% of the amount is smuggled into the Philippines, and more than 60% are smuggled for trading in Surabaya,

¹² Michael Sullivan, "Southeast Asia Illegal Wildlife Trade", available at <http://www.npr.org>, accessed on Wednesday, April 12, 2017 at 9.49 p.m.

¹³ "IUCN and RED List Criteria Review Working Group Divides Threatened Animals into Three Categories: a. Vulnerable b. Endangered, and c. Critically endangered", available at <http://erepo.unud.ac.id/9813/3/7346c269b5aab55a9f43b50d9fa7aa55.pdf>, accessed on Wednesday, April 19, 2017 at 1.27 p.m.

¹⁴ Jakarta Pos: "Illegal Trade of Wild Animals Alarming Level", available at <http://thejakartapost.com>, accessed on Wednesday, April 12, 2017 at 9.55 p.m.

¹⁵ Evana: "Profauna Indonesia, Helps Uncovering Illegal Parrot Trade Syndicate in Bali", available at <http://www.evana.org>, accessed on Wednesday, April 12, 2017 at 9.57 p.m.

Bali and Jakarta.¹⁶ Based on the data, Pramuka Market in Jakarta is the largest illegal animal market in the world.¹⁷

C. Indonesian Legal Framework on Endangered Animal Protection

a. Law No. 5/1990 on the Conservation of Biological Natural Resources and it's Ecosystem

The conservation of biological natural resources and it's ecosystems is the most important part of flora and fauna or natural phenomena have function and benefit as the environment elements, whose presence can not be changed. From their characteristic, they can not be changed and they play important role for human life, so the conservation of biological natural resources and it's ecosystem is a duty of all generations.

An irresponsible act can be a damaging factor of natural reserve area and natural conservation area or the violation acts can harm the protected animals and plants. Thus, the irresponsible acts can be given criminal punishment such as imprisonment and a fine.¹⁸ The criminal punishment should be given because the destruction and the rare animals are part of element of the biological natural resources and it's ecosystems. Therefore, people will get a very big loss because the natural resources can not be replaced or fixed anymore.¹⁹

Considering of the Republic of Indonesia is a state of law, to manage of the conservation of biological natural resources and it's ecosystems,the

¹⁶ *Ibid*, Profauna Indonesia.

¹⁷ Kanis Dursin, "Animal Trade Thrives Amid Crackdown", available at <http://thejakartapost.com>, accessed on Wednesday, April 12, 2017 at 10.02 p.m.

¹⁸ See general provision of Law No. 5 Year 1990 on Conservation of Natural Resources and Ecosystems.

¹⁹ *Ibid*.

government should provide a clear, assertive, and comprehensive legal basis to ensure the legal certainty.²⁰

The sustainable utilize effort is one of the conservations of biological natural resources and it's ecosystem aspects but it has not been fully developed as needed. Managment of the natural conservation area such as national park, forest park, natural park which combine with the functions to protect the system should support the life of flora and fauna and their ecosystems.²¹

National and detailed laws on the conservation of biological natural resources and it's ecosystems are very necessary to protect the systems of the species, preservation of the diversity of plant and animals ecosystem and to ensure of the welfare to human life.²² This Law regulates the protection of species in the conservation of biological natural resources and it's ecosystems.²³

The Law No. 5 of 1990 in Article 1 Paragraph 2, states "the conservation of biological natural resources is to manage of the biological natural resources which their utilization is done wisely to ensure the continuity of their inventory and to maintain the quality of their diversity and value."²⁴

From Chapter 1 Paragraph 7 it is found that "Wildlife is all the animals that live on land, and/or in the water, and/or in the air which still

²⁰ *ibid.*

²¹ *ibid.*

²² *Ibid.*

²³ Yogyanto Daru Sasongko, "Penegakan Hukum Perdagangan Ilegal Satwa Liar Dilindungi Non-Endemik di Indonesia", Faculty of Law Universitas Negeri Surakarta, *Pasca Sarjana Journal*, Vol III No. 2 July-December 2015, downloaded on Tuesday, 8 November, 2016 at 10.40 p.m, p. 117.

²⁴ Law Number 5 of 1990 about Conservation of Natural Resources and Ecosytems

has a wild nature, free-living and human-maintained".²⁵ Therefore, the Article 1 Paragraph 7 mentions that the wildlife, whether maintained or not maintained by human, must get the freedom to live and also has the maximum protection. Article 4 of Law No. 5 of 1990 on Conservation of Biological Natural Resources and It's Ecosystems states that the conservation is the responsibility and also the obligation of government and its people.²⁶ Chapter V on the Preservation of Plant and Animal Types, the Article 21 Paragraph 2 states that, everyone is prohibited to:²⁷

- a. Catch, harm, kill, save, possess, maintain, transport, and trade protected animals alive;
- b. Save, possess, maintain, transport, and trade death protected animals;
- c. Remove the protected animals from any place in Indonesia to an other place inside or outside Indonesia territory;
- d. Trade, save or possess the skin, body or other parts of protected animals or the goods made from those parts of the animal or remove from one place in Indonesia to another inside or outside Indonesia territory;
- e. Bring, damage, destroy, trade, save or have an egg and/or nest of the protected animals.

The legal basis to manage of protected areas is stated in the Law No. 5 of 1990 on the Conservation of Biological Natural Resources and it's Ecosystems. This law has established and further conserve biodiversity and it's users to protect the diversity of endangered animals, and also their

²⁵ *ibid*, Article 1, Paragraph 7

²⁶ Alfa Andiantono, "Tinjauan Yuridis Sengketa Kewenangan Pemberian Izin Pengelolaan Kebun Binatang Surabaya", Under Graduate Thesis Faculty of Law Universitas Negeri Surabaya, *Journal Penggalan Judul Artikel*, downloaded on Tuesday, December 6, 2016 at 8.48 p.m, p. 7.

²⁷ *ibid*.

ecosystem.²⁸ The animals that should be protected that is rarely to be found and therefore need to be protected according to the regulations. Nowadays, the action that often happens is the lack of knowledge of the society about the Law No. 5 of 1990 on the Conservation of Biological Resources and it's Ecosystems.

The foundation of the establishment of the Law No. 5 of 1990 on the Conservation of Biological Resources and it's Ecosystems is to realize 3 conservation objectives; to protect life support, preserve germplasm sources and to sustain their growth. From all conservation objectives, it can be implemented in the form of the legal arrangements of the conservation of biological natural resources, and the establishment of the implementation Law No. 5 of 1990 on the Conservation of Biological Resources and it's Ecosystems.²⁹

b. Government Regulation No. 13 of 1994 on Hunting of Wildlife

The Government Regulation No. 13 of 1994 on Hunting of Wildlife is issued to preserve the natural heritage in the form of wildlife. It regulates the subject of hunting in biological natural resources and also about wildlife. It regulates, among others, that the utilization of wild animals may be carried out in the form of hunting, and their implementation shall be regulated by the Law and the regulations with the aims set forth in the Law. Nowadays hunting wildlife runs less regularly but there are still many unauthorized hunting, which resulted in the threat of wildlife preservation.

²⁸ Tri Rahayu, *Perlindungan Hukum Terhadap Satwa Liar dari Perdagangan Liar (Studi pada Wildlife Rescue Centre, Pengasih Kulon Progo Yogyakarta)*, Under Graduate Thesis Faculty of Sharia'a and Law Universitas Islam Negeri Sunan Kalijaga Yogyakarta, downloaded on Tuesday, November 8, 2016, p.17.

²⁹ *Ibid*, p.18.

The Article 4 Paragraph 1 of Government Regulation No. 13 of 1994 on Hunting of Wildlife stated that "The numbers of hunting of the animals is set according to the state of the population and its growth rate". Such hunting is clearly contrary to the principles of conservation of biological natural resources and their ecosystems. On the other hand, along with the progress of development and the increasing of people's welfare, the people's interest to hunt is increasing, so it is necessary to accommodate and anticipate in the form of providing professionally cultivated land for hunting spots in the form of hunting parks and hunting gardens.³⁰

c. Government Regulation No. 8 of 1999 on Wild Flora and Fauna Exploitation

The Government Regulation No. 8 of 1999 on Wild Flora and Fauna Exploitation is regulated to preserve natural heritage from the abuse of ecosystem utilization. It regulates the use of wild flora and fauna in the preservation and ecosystem of biological natural resources.

The Article 2 Paragraph 1 of Government Regulation No. 8 of 1999 on Wild Flora and Fauna Exploitation explains "Utilization of species of plants and wildlife aims to utilize them sustainably for the greatest prosperity of the people". And Article 2 Paragraph 2 explains "The use of wild plant and animal species shall be carried out by controlling the

³⁰ See general provision on Article 4 Paragraph 1 of Government Regulation No. 13 of 1994 on Hunting of Wildlife.

utilization of plant and wildlife species or parts and the results while maintaining the diversity of species and the equilibrium of the ecosystem."

d. Government Regulation No. 7 of 1999 on Preservation Flora and Fauna Species

This regulation is regulated in order to keep flora and fauna within their ecosystem. In an effort to keep the ecosystem of flora and fauna becoming extinct, therefore this regulation governs systematically to be kept in the habitat or outside the habitat of flora and fauna.

The Article 2 for the preservation flora and fauna is aimed at avoiding flora and fauna from the extinction, maintaining genetic purity and flora and fauna diversity, as well as maintaining the balance of existing ecosystems in order to be used for sustainable prosperity.