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Money Laundering Crimes Arising from The Illegal Trade of Protected Wildlife

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ABSTRACT

Illegal trade in protected wildlife is a criminal offense regulated under Law No. 5 of 1990 on the Conservation of Natural Resources and Ecosystems. The high consumer demand for protected wildlife drives criminals to continue engaging in illegal trade for profit. However, the penalties under this law are considered inadequate and have not been updated since 1990. This study proposes that the crime of trading protected wildlife be classified as a predicate offense for money laundering to impose heavier penalties on perpetrators. By utilizing Law No. 8 of 2010 on Money Laundering, it is hoped that offenders can be subjected to more severe penalties and stronger evidence through tracking the financial flows from illegal trade. This research is normative and descriptive-analytical, and it recommends updating Law No. 5 of 1990 to align with current developments and enhance the deterrent effect against wildlife crime.

Keywords: Illegal Trade, Money Laundering, Protected Wildlife.

ABSTRAK

Perdagangan ilegal satwa liar yang dilindungi merupakan tindak pidana yang diatur dalam Undang-Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya. Tingginya permintaan konsumen terhadap satwa liar yang dilindungi mendorong para pelaku kejahatan untuk terus terlibat dalam perdagangan ilegal demi keuntungan. Namun, sanksi dalam undang-undang ini dianggap tidak memadai dan belum diperbarui sejak tahun 1990. Studi ini mengusulkan agar kejahatan perdagangan satwa liar yang dilindungi diklasifikasikan sebagai tindak pidana pendukung pencucian uang untuk menjatuhkan sanksi yang lebih berat kepada pelaku. Dengan memanfaatkan Undang-Undang No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, diharapkan para pelaku dapat dikenai sanksi yang lebih berat serta diperkuat pembuktiannya melalui pelacakan aliran keuangan dari perdagangan ilegal. Penelitian ini bersifat normatif dan deskriptif-analitis, dan merekomendasikan agar Undang-Undang No. 5 Tahun 1990 diperbarui agar sejalan dengan perkembangan saat ini serta meningkatkan efek jera terhadap kejahatan satwa liar.

Kata kunci: Perdagangan Ilegal, Pencucian Uang, Satwa Liar yang Dilindungi.

Article History
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1. Introduction

Indonesia is home to a diverse range of wildlife distributed across its numerous islands. These animals are classified into two categories: domesticated animals and wildlife. According to Article 1, Number 7 of Law No. 5 of 1990, wildlife is defined as

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"all animals that live on land, in water, or in the air, which still possess wild characteristics, whether they live freely or are kept by humans." (Syahfriliani & Sunarsi, 2020)

There are four elements contained in the definition of a forest as outlined in Article 1, Paragraph (2) of Law No. 41 of 1999 on Forestry. These elements include: the spatial element, which refers to the forested land; the elements of trees, flora, and fauna; the environmental element; and the government designation element. The first three elements represent an interdependent ecological community that cannot be separated from one another. (Salim, 2013)

The Centre for Biological Biodiversity reports that Indonesia is home to 12 percent of the world's mammals and 16 percent of its reptiles. The country hosts 1,592 bird species and at least 270 amphibian species. Among these, 194 species are currently threatened with extinction due to the increasing prevalence of capture and trade activities in Indonesia (Herliyanto, 2018).

According to Article 2 of the Indonesian Commercial Code (KUHD), a trader is defined as a person who engages in commercial activities as a daily occupation. The definition of trade itself is regulated in Article 3 of KUHD, which refers to the act of buying goods for the purpose of reselling them, whether in large or small quantities, whether in the form of raw materials or finished products, or even merely for rental purposes (Muhammad, 1999).

The increasing volume of wildlife trade has led to a decline in the populations of various species across multiple countries. According to data from the United Nations (UN) and the International Criminal Police Organization (INTERPOL), the value of illegal wildlife trade globally has reached between USD 15,000,000,000 and USD 20,000,000,000 (fifteen to twenty billion U.S. dollars). (Suyastri, 2015)

Various factors contribute to the increasing illegal trade of protected wildlife, including economic incentives, weak law enforcement, and high market demand. Despite the application of the Conservation of Natural Resources and Ecosystems Act to prosecute perpetrators, these measures often fail to deter offenders effectively. Law enforcement must pay close attention to the crime of illegal trade in protected wildlife to prevent it from becoming a snowball effect with increasing scope over time. One of the objectives of criminal law is to create a deterrent effect, ensuring that both the convicted individuals and potential offenders are fearful of engaging in such crimes (Hamzah, 2017).

The connection between money laundering and wildlife trafficking lies in the fact that illegal wildlife trade generates millions, even billions, of dollars annually. To transfer, conceal, and launder their illicit gains, wildlife traffickers exploit vulnerabilities in both the financial and non-financial sectors, thereby perpetuating wildlife crimes and undermining financial integrity.

Money laundering is a crime with international dimensions. The practice of money laundering creates instability in the national economy, as it can lead to sharp fluctuations in

exchange rates and interest rates. Money laundering has a significant negative impact on a country's economy, prompting countries around the world and international organizations to pay serious attention to its prevention and eradication, including Indonesia (Nasution, 2008).

One of the money laundering cases in Indonesia that has become a global issue in the Financial Action Task Force (FATF) report involves the laundering of money derived from the crime of protected wildlife trafficking, referred to as illegal wildlife trafficking (IWT). This case was adjudicated with legally binding decisions under Case Number 71/Pid.B/LH/2018/PN.PLW and Case Number 38/Pid.Sus-TPK/2018/PN.PBR.

There are challenges associated with money laundering originating from IWT crimes. Money laundering linked to IWT is a type of large-scale transnational organized crime that can involve authorities. According to global research, the illegal profits from IWT reach billions of dollars annually, which can incentivize officials to become involved in money laundering related to IWT offenses.

Based on Case Number 71/Pid.B/LH/2018/PN.PLW and Case Number 38/Pid.Sus-TPK/2018/PN.PBR, it is evident that the experienced perpetrators were fully aware that their actions constituted a crime. The defendants even engaged in negotiations with the police who apprehended them. The perpetrators also recognized that their amassed wealth could pose a problem, which led them to launder their assets derived from illegal wildlife trafficking. This insight underscores the importance of examining this issue further.

2. Method

This research is a normative juridical study with a descriptive-analytical approach. The research methodology employs both the statute approach and the case approach. The data utilized in this study includes primary, secondary, and tertiary legal materials, such as official documents, books, reports, research findings, and other relevant sources, collected through library research and documentary study methods. Once the data is gathered, it is analyzed qualitatively, and conclusions are drawn using deductive reasoning.

3. Result & Discussion

A. The Relationship Between Wildlife Trafficking and Money Laundering Offenses

The rapid development of wildlife crime is driven by several factors, including the increasing organization of such crimes, their links to other offenses like corruption and money laundering, and evolving methods such as online sales. This section will analyze the criminal law policy of Law No. 5 of 1990 from the following perspectives: (1) the protected objects under this legislation; (2) the concepts, types, and systems of penal sanctions; (3) adjustments to the monetary penalties; and (4) the secondary regulations mandated by Law No. 5 of 1990 in relation to the evolving dynamics of wildlife crime (Sembiring & Adzkia, 2015).

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The trade of protected wildlife is an organized crime, necessitating a shift in law enforcement's approach. Rather than merely pursuing individuals (against the person) or physical evidence related to wildlife trade crimes, it is crucial to also target the financial flows and assets involved (against the asset). Given that the primary motive for wildlife traders is financial gain, uncovering the flow of funds will facilitate the identification of perpetrators and reveal the modus operandi of the crime. To effectively accomplish this, law enforcement officers, specifically from the Customs and Excise Investigators (PPNS), must be empowered and take the initiative to target assets used in or derived from wildlife trade. Once the targeted assets have been identified, several steps should be taken: blocking the assets obtained from illegal wildlife trade by establishing and strengthening cooperation with financial service providers; requesting financial data, asset information, and tax records of the perpetrators from relevant financial institutions; and submitting a request for financial transaction analysis reports and asset tracking of wildlife traders to the Financial Transaction Reports and Analysis Center (PPATK) (Zakariya, 2020).

Uncovering organized crime requires extraordinary effort due to the difficulty in tracing the organizational network and apprehending the leaders or those acting as leaders within the network. Therefore, organized crime, including transnational organized crime related to wildlife offenses, should be considered an aggravating factor in sentencing (Sembiring & Adzkia, 2015).

Preventing or minimizing wildlife crimes in Indonesia, which constitute one of the forms of organized crime, must begin at the national level. Generally, the root of the problem lies in normative aspects or regulations. The absence of legal provisions regarding corporate criminal liability in combating wildlife crimes has resulted in significant impacts on the sustainability of Indonesia's biodiversity, particularly the existence of these wild animals. The most severe consequence is the potential extinction of these species, which are crucial for maintaining ecosystem balance. Illegal wildlife trade ranks as the fifth most significant crime globally, following narcotics, counterfeiting, human trafficking, and oil smuggling. The money laundering law allows perpetrators to be prosecuted with a maximum prison sentence of 20 years and fines of up to 20 billion rupiah (Winarni, 2015).

The instrument of money laundering offenses can be effectively used to target networks involved in the illegal wildlife trade. Law No. 8 of 2010 accommodates crimes in the fields of forestry, environmental protection, marine resources, or any other offenses punishable by four years or more of imprisonment as predicate offenses for money laundering. This instrument is also strategic because it can prosecute perpetrators not only for predicate offenses committed within Indonesia but also for those committed outside its jurisdiction, provided that the actions are considered crimes under Indonesian law. This capability is crucial for addressing the evolving methods of illegal wildlife trade, particularly online transactions that may occur outside Indonesia's borders.

B. Proof in Money Laundering Offenses Arising from the Illegal Trafficking of Protected Wildlife (A Study of Decision No. 71/PID.B/LH/2018/PN.PLW and Decision No. 38/PID.SUS-TPK/2018/PN.PBR)

One of the unique features of the anti-money laundering (AML) regime is its use of a predicate crime or predicate offense approach to combat criminal activities. This regime is characterized by two main approaches: the "all-crime" approach and the "predicate offense" approach. The first model, the all-crime approach, clearly stipulates that any crime can serve as the basis for applying the requirements, penalties, and sanctions of anti-money laundering laws. This is a broad approach, where any crime, whether directly or indirectly, can function as a predicate offense within the anti-money laundering legal framework. The second approach, the predicate offense approach, more narrowly defines the types of crimes that qualify as predicate offenses under the anti-money laundering regime, based on the specific conditions of each national jurisdiction. This approach presents greater challenges in dealing with money laundering offenses because certain types of crimes may not be explicitly included in the legislative scheme of the regime. Additionally, other threshold conditions may hinder the effective application of anti-money laundering laws (Pascual et al., 2021).

There are three models for identifying predicate offenses in money laundering cases: the all crimes approach, the list approach, and the threshold approach. The first model, the all crimes approach, considers that any crime can be regarded as a predicate offense for money laundering. The second model, the list approach, involves categorizing or listing specific types of crimes that are then recognized as predicate offenses linked to money laundering. The third model, the threshold approach, treats all crimes as potential predicate offenses, but with certain limitations based on the severity of the punishment associated with those crimes (Borlini, 2008).

The process of proving whether the defendant committed the alleged act is a crucial aspect of criminal proceedings. In this context, human rights are at stake. The consequences can be severe if someone is found guilty of the alleged offense based on available evidence and the judge's conviction, even though they may be innocent. This is why criminal procedure law aims to seek material truth, which differs from civil procedure law, where formal truth is considered sufficient. The emphasis on material truth in criminal law underscores the importance of ensuring that justice is not only served but that it is done so in accordance with the actual facts and circumstances of the case, thereby protecting individuals from wrongful convictions (Ante, 2013).

The judge applied the evidentiary system as regulated in the Indonesian Criminal Procedure Code (KUHAP). Accordingly, the public prosecutor charged the defendant, M. Ali Honopiah, with money laundering offenses in Case Number: 38/Pid.Sus-TPK/2018/PN.Pbr., through a subsidiary indictment. The primary charge against the defendant, M. Ali Honopiah, was based on his actions violating Article 3 of Law No. 8 of 2010, which carries corresponding penalties. The subsidiary charge was based on the

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defendant's actions violating Article 5, paragraph (1) of Law No. 8 of 2010, which also prescribes penalties for such offenses.

C. Application of Money Laundering Law to Wildlife Crime Based on Decision No. 71/Pid.B/LH/2018/PN.PLW

The public prosecutor formulated that the criminal actions of the defendant violated the provisions of Article 21, paragraph (2), letters a and c, in conjunction with Article 40, paragraph (2) of Law No. 5 of 1990. Upon examination, Article 21, paragraph (2), letter a pertains to prohibited acts involving protected wildlife in their living state, while Article 40, paragraph (2) outlines the penalties for violations of Article 21, paragraph (2), letter a. The criminal actions committed by the defendant are deemed to have violated Article 40, paragraph (2). This provision explicitly includes the term "intentionally," which encompasses intentional acts where the defendant's actions were based on intent, purpose, and knowledge of the consequences resulting from such actions. Therefore, in terms of sentencing, criminal acts committed with intent are subject to more severe penalties compared to those committed out of negligence.

Referring to the sanctions outlined in Article 40, paragraphs (2) and (4) of Law No. 5 of 1990, it is evident that the penalties imposed on the defendant were not commensurate and were lighter than anticipated. The imposition of criminal sanctions for offenses under the statute, particularly Law No. 5 of 1990, fundamentally aims to uphold legal certainty regarding the protection of wildlife and their ecosystems to prevent their extinction due to illegal trade. Offenses related to the trade of protected wildlife are addressed in Article 21, paragraph (2) of the Conservation of Biological Resources Law. The types of criminal sanctions stipulated in this law include imprisonment and fines, as well as confinement and fines, in addition to the confiscation of all items obtained and any tools or items used in the commission of the offense, with a declaration of forfeiture to the state.

The articles specifying criminal provisions demonstrate a distinction where Article 40, paragraph (2) of Law No. 5 of 1990 is based on the element of "intentionality," while Article 40, paragraph (4) is based on "negligence" as the basis for imposing penalties. The elements of intentionality and negligence (culpa), as well as accountability, encompass three broad categories of culpability. All three are subjective elements required for criminal liability. Additionally, the absence of mitigating circumstances also constitutes a component of culpability. Engaging in the trade of protected wildlife falls under the category of "formal unlawfulness," as this activity contradicts legal provisions or statutes. Furthermore, trading in protected wildlife is conducted without authority, rights, or permits from the competent authorities.

Based on the court decision rendered by the Panel of Judges at the Pelalawan District Court, specifically in case No. 71/PID.B/LH/2018/PN.PLW, the legal enforcement criteria are clearly outlined. This includes the judicial considerations applied in imposing

the penalty under this decision. An analysis will be conducted to determine whether the ruling aligns with the procedural and legal requirements established in Indonesia.

The researcher also notes that the criminal actions committed by the defendant are considered to have violated Article 40, paragraph (2) of Law No. 5 of 1990. Article 40, paragraph (2) explicitly includes the term “intentionally,” which encompasses actions performed with intent or purpose. This means that the defendant's actions were based on their intention or desire and that the defendant was aware of the consequences of their actions. Accordingly, in terms of sentencing, criminal acts committed with intent are subject to more severe penalties compared to those committed due to negligence.

The decision No. 71/PID.B/LH/2018/PN.PLW reveals that the defendant was sentenced to 3 (three) years of imprisonment and a fine of Rp.100,000,000 (one hundred million rupiah), with the provision that if the fine is not paid, it would be replaced by an additional 4 months of imprisonment. This sentence does not align with the provisions of Article 40, paragraphs (2) and (4) of Law No. 5 of 1990. This is because the penalty imposed on the defendant is lighter than the sanctions stipulated by the legislation.

4. Conclusion

The application of the Money Laundering Act (UU No. 8/2010) to illegal wildlife trade faces both opportunities and challenges. This legislation enables the prosecution of individuals involved in illegal wildlife trafficking under money laundering provisions, given that the proceeds meet the criteria of wealth derived from other criminal activities, with penalties of imprisonment for four years or more. The substantial profits from wildlife trafficking necessitate a thorough examination of financial flows to identify key offenders. However, practical applications of this law in wildlife trafficking cases are limited. It is crucial to test these regulations with conservation and money laundering investigators working together to utilize asset-related investigative powers.

Evidentiary standards in cases of money laundering linked to illegal wildlife trade remain weak, as shown by decisions No. 71/PID.B/LH/2018/PN.PLW and No. 38/PID.SUS-TPK/2018/PN.PBR, resulting in relatively lenient sentences and insufficient deterrence. The online nature of wildlife trading complicates investigations, although financial tracing methods can help. To address this, Law No. 5 of 1990 should be revised to explicitly include wildlife trafficking as a predicate offense for money laundering, with enhanced penalties and anti-money laundering measures. Additionally, the current penalties, such as three years' imprisonment and fines of IDR 100,000,000.00, do not align with the provisions of Article 40(2) and (4) of Law No. 5 of 1990. Judges should ensure that evidence of money laundering is clearly connected to the underlying wildlife crime, as stipulated in Article 2(1) of UU No. 8/2010.

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