

Juridical Review of Decision Number 809/PID.SUS/2024/PN DPS Related to the Protection of Protected Animals in Review Based on the Law on Conservation of Natural Resources and Ecosystems

I Kadek Krisna Paradipta¹, H. Nurianto RS², Komang Edy Dharma Saputra³

Universitas Mahendradatta, Indonesia

E-mail: krisnapradipta99@gmail.com¹, lawyer.nurianto@yahoo.com²,
edydharma saputra@gmail.com³

ABSTRACT

This research discusses the legal protection of protected animals under the Law on Conservation of Living Natural Resources and Ecosystems in Indonesia. The existence of protected animals is increasingly threatened, so an understanding of the applicable law is important to prevent violations. The objectives of this study are to (1) determine the legal protection of protected animals, and (2) evaluate the legal consequences of Decision Number 809/PID.SUS/2024/PN DPS on the protection of protected animals. The research method used is normative legal research with a statutory approach, case approach, and conceptual approach. Data collection was conducted through a literature study that involved reading, reviewing, and recording relevant legal sources. The results showed that the legislative framework in Indonesia for the protection of protected animals is regulated in Law No. 5 of 1990, which has been amended into Law No. 32 of 2024. Decision number 809/PID.SUS/2024/PN DPS shows that there are positive and negative impacts on animal protection, where although there are considerations of justice, there is potential for future law violations. This research concludes that the legal protection of protected animals in Indonesia requires strengthening in law enforcement and increasing public awareness. Recommendations are proposed to increase socialization on the types of protected animals and the sanctions that apply to violations.

Keywords: decision number 809/Pid.Sus/2024/Pn Dps; protection; protected animals.

INTRODUCTION

The State of Indonesia is a State of Law which basically all human behavior must be regulated by law as stated in the preamble of the 1945 Constitution Article 1 Paragraph (3) which states that the State of Indonesia is a State of Law (Harisman, 2021; Muhammad & Husen, 2019; Tibaka & Rosdian, 2017). Therefore, the law works by providing instructions on the behavior of every human being and therefore the law is a norm that lives and develops in society. In juridical provisions, Indonesian wildlife is divided into two groups: protected species and unprotected species. Protected wildlife is a type of animal whose existence is almost extinct or whose existence is very rare in Indonesia, thus these animals need to be protected to maintain their sustainability.

Keeping protected animals is prohibited in the provisions of Article 21 paragraph 2 of Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems with a maximum penalty of 5 (five) years imprisonment and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). To keep protected animals

according to the regulations, one must have a permit in order to keep the protected animals, which in this case means breeding, if a person or entity has obtained a permit from the Natural Resources Conservation Center then breeding can be done. The captive breeding license is regulated in the Minister of Forestry's Regulation No. 19/2005 on Captive Breeding of Wild Plants and Animals, Article 74 paragraph (1). The captive breeding license can be granted to individuals, cooperatives, legal entities, and conservation organizations (Lubis, 2017; Trouwborst, 2014).

The provisions related to the prohibition of keeping protected animals based on Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems have indeed been clearly and clearly stated in Article 21 paragraph (2) of Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems. However, in its implementation in the field there are still cases related to violations committed against protected animals, one of the cases is a case that occurred in Bali Province with a perpetrator named I Nyoman Sukena who was caught keeping 4 Javanese porcupines where this animal is a protected animal, while the chronology of the case of I Nyoman Sukena is as follows:

Bali Police initially received reports from the public about residents keeping wildlife. On Monday, March 4, 2024 at around 11:00 a.m. local time, Unit 1 of Subdit IV Ditreskrimsus Bali Police inspected a house suspected of storing, owning, and maintaining state-protected Javanese porcupine wildlife. The house belongs to Sukena in Bongkasa Pertiwi Village, Abiansemal, Badung, Bali.

During the investigation, the police found evidence of four Javanese porcupines. On Tuesday, March 5, 2024, a case title was held. As a result, the status of the case rose from investigation to investigation. The hedgehog evidence was then confiscated based on a confiscation order number SP. Sita/S-18/13/III/2024/DITKRIMSUS/POLDA BALI dated March 5, 2024, as well as court order Number 355/Pen.Pid/2024/PN Dps as of March 19, 2024. On March 5, a notice of commencement of investigation (SPDP) was also immediately made to the Bali High Prosecutor's Office with copies to the complainant and the reported party.

Furthermore, on Thursday, March 21, 2024, a case title process was carried out against the reported party. Sukena's status was elevated from witness to suspect with a suspect determination letter number S. Tap/S-4/18/III/2024/DITKRIMSUS/POLDA BALI dated March 21, 2024 and a notification letter of suspect determination to the Bali High Prosecutor's Office with copies to the complainant and suspect. The Bali Police then sent a summons to Sukena. Then the police made an official report of Sukena's examination on Tuesday, March 26, 2024. Then on Thursday, June 20, 2024 the police sent the case file (Phase I) to the Bali High Prosecutor's Office. On June 27, 2024, the prosecutor's office declared the file complete or P-21. On Monday, August 12, 2024, the suspect and evidence were handed over (Phase II) to the Bali High Prosecutor's Office and finally the case proceeded to the Denpasar District Court (PN). Sukena was

charged with violating Article 21 paragraph (2) letter a Jo article 40 paragraph (2) of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems.

In terms of legal certainty, the defendant I Nyoman Sukena has indeed been proven to have violated the provisions of Article 21 of Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems because he has been proven to keep protected animals and does not have a permit intended for keeping protected animals. However, Decision Number 809/Pid.Sus/2024/Pn Dps stated that the defendant I Nyoman Sukena was not proven legally and convincingly guilty of committing a criminal offense as in the single charge of the Public Prosecutor with the consideration that the defendant did not know that the Javan porcupine was a protected species and did not have the bad element to sell or harm the animal. With the decision Number 809/Pid.Sus/2024/Pn Dps, it certainly makes that sometimes justice is prioritized over legal certainty, but of course with the existence of decision Number 809/Pid.Sus/2024/Pn Dps, there is a conflict of norms in relation to the protection of protected animals.

Reflecting on the case of I Nyoman Sukena, of course knowing the laws governing protected animals is very important so that similar incidents do not happen again, the public needs to know what types of animals are protected and not intended to be kept. Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems has now been amended into Law No. 32 of 2024 amending Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems. In Law No. 32 of 2024, there are several changes and additions to the provisions regarding prohibitions related to what should not be done to protected animals (Alexander et al., 2015; Bayne et al., 2024).

Previous research has explored the legal framework surrounding wildlife conservation in Indonesia, mainly focusing on the implications of various laws, such as Law No. 5 of 1990 and its amendments. For example, research by Utami and Santosa examined the effectiveness of this law in curbing wildlife trade and the challenges faced in its enforcement. They highlighted enforcement challenges and gaps in public awareness regarding the protection of endangered species. In addition, case analyses, such as that conducted by Rahmawati, illustrate the complexity of legal processes involving wildlife violations, emphasizing the need for a more robust approach to wildlife protection and compliance with the law (Mangkunegara, 2024). Additionally, research conducted by Permata investigated the socio-economic factors that influence the illegal wildlife trade, and showed that community engagement and education are crucial to improving conservation efforts. Collectively, these studies underscore the importance of integrating legal and ecological perspectives to improve wildlife conservation in Indonesia.

This research presents a new perspective by analyzing verdict No. 809/Pid.Sus/2024/Pn Dps, which addresses the legal protection of endangered species under the revised Law No. 32 of 2024. Unlike previous studies, this research explores the specific legal ramifications of this case, by examining the judicial considerations and implications for future wildlife protection efforts. By integrating legal analysis and ecological considerations, this research contributes to a deeper understanding of how court decisions can influence conservation policy in Indonesia.

The main objective of this research is to examine the legal protections afforded to endangered species under Indonesian conservation law and to assess the implications of recent court decisions for wildlife protection efforts. Specifically, this research aims to identify the strengths and weaknesses of the current legal framework, explore public awareness of protected species, and evaluate the impact of court decisions on wildlife conservation practices.

The findings of this research have significant benefits for policy makers, conservationists, and legal practitioners by providing insights into the effectiveness of current wildlife protection laws and their enforcement. By highlighting gaps in legal protection and public awareness, this research can inform future law amendments and public education campaigns aimed at improving wildlife conservation efforts. Furthermore, the implications of the court rulings analyzed in this study may pave the way for more consistent and effective legal interpretations that prioritize the protection of endangered species in Indonesia.

RESEARCH METHOD

The type of research used in this research is using the Normative Law writing method. Normative legal writing method is normative research, namely library legal research or legal research based on data, namely secondary data and based on the occurrence of a vagueness, conflict, and vacancy of norms in a statutory regulation with other regulations or traditions that exist in society, law that examines document studies using Legislation, Court Decisions, legal theories, and opinions of scholars.

In connection with the type of research used, namely normative legal research, the approaches used are as follows: (1) Statute Approach, an approach that is carried out by identifying and discussing the applicable laws, regulations related to the problem being analyzed. (2) Case Approach, The case approach is carried out by examining cases related to the legal issues at hand. The case is a case that has become a court decision that has permanent force or *inkracht*. The case is not limited to the region, it can occur in Indonesia or in other countries. The main study in this case approach is the *ratio decidendi* or reasoning of the judge to arrive at a decision. The *ratio decidendi* or reasoning is needed both for practice and academic studies. (3) Conceptual Approach, approaching the problem through legal concepts that are carried out by discussing legal concepts and principles that are relevant to the issue at hand based on existing laws and

regulations. (4) Analytical Approach, an approach through comparison between applicable laws and regulations.

As for the source of legal material used in this research which focuses on the existence of norm conflicts in Decision number 809/Pid.Sus/2024/Pn Dps with Law on the Law on Conservation of Natural Resources and Ecosystems, the source of material used in this research is the source of material (1) primary law, namely Decision number 809/Pid.Sus/2024/Pn Dps and Laws related to the Law on Conservation of Natural Resources and Ecosystems. (2) Secondary legal materials regarding literature research, namely by collecting literature books, journals and readings related to the protection of wild plants and animals and related environmental law. Legal material collection techniques are done by means of literature studies. The literature study is conducted by reading, analyzing, taking notes to make reviews of library materials, as well as searching through internet media that have to do with the protection of protected animals. Legal Material Analysis Technique is analyzed by qualitative analysis, namely selected legal materials related to the problem so that it can be understood and can be studied descriptively analysis.

RESULT AND DISCUSSION

Legal Protection for Protected Animals in the Law on Conservation of Natural Resources and Ecosystems

In Law Number 32 of 2024 concerning Amendments to Law Number 5 of 1990 concerning Conservation of Living Natural Resources and Ecosystems, the definition of wildlife in accordance with the provisions of Article 1 paragraph 10 is "Animals that still have wild characteristics, both those that live freely and those that are kept by humans" (Number, 5 C.E.). In the juridical provisions of the types of animals that exist in Indonesia, we can see in Article 20 of Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems, among others, protected animals, namely animals whose populations are rarely found or animals that are in danger of extinction (Damayanty & Saragih, 2024; Ekawati & Mukti, 2024; Victoria & Zukri, 2021).

While unprotected animals are animals or animals whose populations are still large and easy to find. However, unfortunately, the existence of both protected and unprotected wildlife is increasingly threatened and experiencing population decline due to various factors such as poaching, habitat loss, and climate change. Therefore, the protection of wildlife in Indonesia is very important and must be done immediately.

The protection of protected wildlife in Indonesia needs to be studied further for several very important reasons. First, Indonesia's biodiversity makes the country one of the world's biodiversity centers. Protected animals in Indonesia include a variety of unique and rare species, including some endemic species that are only found in certain regions of Indonesia. The existence of these protected animals provides significant

ecological, economic and aesthetic value. Secondly, protected animals also play an important role in maintaining ecosystem balance. They contribute to plant pollination, seed transfer, and habitat regeneration.

The presence of protected animals can also help control pest populations and maintain the food chain in nature. Third, protected wildlife protection is directly linked to environmental conservation and sustainable natural resource management efforts. By maintaining the sustainability of protected animal populations, we also preserve ecosystems and natural resources that provide long-term benefits for humans. Fourth, protected animals also have high cultural and spiritual values. Many communities in Indonesia have a strong cultural connection and belief in protected animals as symbols of power, beauty, or sacred creatures. Protected wildlife protection is also a form of preserving cultural heritage and local wisdom. Finally, significant declines in wildlife populations and endangered species threaten the sustainability of ecosystems and biodiversity in Indonesia. If not addressed immediately, the loss of wildlife can have serious impacts on ecosystems and disrupt the harmony of nature.

The legislative framework in Indonesia to protect wildlife is governed by several important laws and regulations. The main law is Law No. 5 of 1990 on the Conservation of Living Natural Resources and their Ecosystems (Muawanah et al., 2018; Sahri et al., 2020; Simaremare & Noho, 2021). This law has been in effect for more than three decades and forms the basis of wildlife protection in the country and has now undergone amendment to Law No. 32 of 2024 on the Amendment to Law No. 5 of 1990 on the Conservation of Living Natural Resources and Their Ecosystems.

In addition, Law No. 18/2013 on the Prevention and Eradication of Forest Destruction (P3H Law) is also an important regulation that complements existing laws. This law imposes criminal sanctions on perpetrators of environmental crimes, including wildlife destruction and poaching. In addition to these laws, there are government regulations that provide specific guidelines for the conservation and protection of plant and animal species. Government Regulation No. 7/1999 on the Preservation of Plant and Animal Species regulates the procedures for preserving plant and animal species, including the protection of protected wildlife (Alica, 2014; Rees, 2017). Meanwhile, Government Regulation No. 8/1999 on the Preservation of Protected Plant and Animal Species lists protected plant and animal species, and the protective measures that must be taken. Furthermore, there are also ministerial regulations issued by the Ministry of Environment and Forestry that support wildlife protection efforts. Minister of Environment and Forestry Regulation No. P. 106/MENLHK/SETJEN/KUM.1/4/2018 regulates the list of protected plant and animal species in Indonesia. Meanwhile, Minister of Environment and Forestry Regulation No. P.20/MENLHK/SETJEN/KUM.1/12028 regulates licensing procedures in the utilization of protected plants and animals.

These laws and regulations form the legal framework for wildlife protection in Indonesia. However, despite the existence of these laws, their implementation still faces various challenges. Therefore, further study and evaluation is needed to overcome these obstacles and improve law enforcement and the effectiveness of the laws in protecting wildlife in the country. According to the Big Indonesian Dictionary (KBBI), legal protection means shelter, the act (thing and so on) of protecting. The meaning of the word protection linguistically has similar elements, namely the elements of protective actions, elements of ways to protect. Thus, the word protects from certain parties by using certain methods. According to C.S.T Kansil, Legal Protection is a variety of legal efforts that must be provided by law enforcement officials to provide a sense of security, both in mind and physically from disturbances and various threats from any party. Meanwhile, according to Muchsin, Legal Protection is something that protects legal subjects through applicable laws and regulations and enforces its implementation with a sanction.

Legal protection can be divided into two, namely:

1. Preventive Legal Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the intention of preventing a violation and providing signs or boundaries in carrying out an obligation.
2. Repressive Legal Protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.

In this case, of course, the law is one of the means to provide protection to all parties, including animals and the environment because the function of the law itself is actually to protect society and the welfare of society. Real legal protection of environmental sustainability, especially the environment including wildlife, is expected to be useful for preserving the environment and animals so that they do not become extinct and can still be useful for current and future generations. In order to conserve protected wildlife, there needs to be regulations in monitoring so that people cannot capture, kill, or sell protected wildlife at will. Currently, protected animals are difficult to find because of the many captures, killings, and sales of protected animals by some people. Given the very important role of animals, including as a supporting factor for human life in the balance of the ecosystem, it is necessary to have legal regulations to protect the existence of these animals. In line with efforts to protect animals whose populations are small and approaching extinction, the government has made several regulations related to animal protection. The laws and regulations are as follows: Law No. 32 of 2024 Concerning the Amendment to Law No. 5 of 1990 Concerning the Conservation of Living Natural Resources and Their Ecosystems.

The prohibition to commit a criminal offense against protected animals is contained in Article 21 paragraph (2) of Law Number 32 of 2024 Concerning the Amendment to Law Number 5 of 1990 Concerning the Conservation of Natural Resources and Ecosystems. Which reads:

Every Person is prohibited to:

- a. hunting, capturing, injuring, killing, storing, possessing, keeping, transporting, and/or trading protected animals alive;
- b. keeping, possessing, transporting, and/or trading protected wildlife in a dead state;
- c. keep, possess, transport, and/or trade specimens, parts, or items made from parts of protected wildlife;
- d. take, damage, destroy, trade, store, and/or possess eggs and/or nests of protected wildlife;
- e. removing protected animals alive or dead, their specimens, parts, or items made from their parts from one place to another within the territory of the Unitary State of the Republic of Indonesia and/or outside the territory of the Unitary State of the Republic of Indonesia;
- f. conduct demonstration activities in electronic media and/or other media for commercial purposes without authorization of protected animals and/or their parts; and/or
- g. trading through electronic media or other media without a license of protected animals and/or their parts.

With various regulations or rules in terms of legal protection for protected animals, it is certainly intended to provide understanding to the public what are the actions or forms of exploitation of protected animals. In this case, it is certainly related to how the government, officials and animal protection agencies optimize supervision and provide education or socialization about the importance of survival for protected animals, in order to narrow the way for the perpetrators of animal exploitation steps to carry out their actions.

Legal Sanctions for Perpetrators of Illegal Keeping of Protected Animals

Regulations on the Maintenance of Protected Animals in Indonesia are mentioned in the rule of law that living things whose lives depend on land, water and can also be in the air animals are animal natural resources, in the Indonesian dictionary animals are defined as animals. And the word "rare" means difficult to get or rarely found because it is very little, therefore this rarity can be interpreted as a situation that shows that it is difficult to get something because the number is very limited. And the word "protected" which refers to animals means that protection must be given to animals from the danger of extinction.

In the conservation of protected wildlife, there needs to be a strict legal regulation to regulate the supervision of protected endangered animals so that people do not behave at will by killing, trading or keeping illegally. For example, killing tigers for their body parts to be used as clothing, and keeping animals that are classified as protected endangered animals without a permit in the form of an official certificate. The threat of animal existence makes animals rare and needs to be protected due to the desire of some people to own these animals known to breed or keep rare animals without legal permission.

The existence of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) which was established in order to protect the world's attention on an international level where the rules make it a prohibition that it is strictly not allowed to trade plants and animals that are considered almost extinct or rare.

Regarding the keeping of rare and endangered animals kept by unlicensed individuals which may lead to the extinction of protected rare animals because the keeping of protected rare animals must obtain a license to show that there is readiness in terms of technical aspects, feed, cages and other things so that protected rare animals can remain healthy.

The meaning of the word "permit" is a form of statement granting or approval, the licensing referred to in the maintenance of protected endangered animals is in the form of marking and certification as well as the provision of signs so that it can be recognized that there is protection on the body of the protected animal in the form of a stamp, tattoo, or label containing numbers and letters. The purpose of marking and certifying protected endangered animals is to facilitate the tracking of the origin of the species.

Application for a license to keep endangered and protected animals can be submitted, this is a registration that meets the qualification standards regarding these provisions that have been regulated in the existence of Ministerial Regulations in the scope of forestry and handle the protection of wild and rare animals and plants with this then one will get a permit in the form of an official certificate of eligibility permit from the Minister.

Legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events that the law itself has determined or considered as legal consequences. Or the result of an action taken to obtain an effect desired by the perpetrator and regulated by law.

The provisions in Law Number 32 of 2024 Concerning the Amendment to Law Number 5 of 1990 Concerning the Conservation of Living Natural Resources and Ecosystems have regulated the criminal sanctions related to keeping protected animals illegally or without a license, namely in Article 40 A paragraph 1 letter d which states: *"Individuals who hunt, capture, injure, kill, store, possess, maintain, transport, and/or trade protected wildlife in a live condition as referred to in Article 21 paragraph (2)*

letter a shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least category IV and a maximum of category VII". The continuation of the act committed by the corporation is contained in Article 40 A paragraph 4 letter d which states: *"hunting, capturing, injuring, killing, storing, possessing, maintaining, transporting, and/or trading protected wildlife in a live condition as referred to in Article 2L paragraph (2) letter a shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least category IV and a maximum of category VII".*

When viewed based on the sanctions that will be given to perpetrators for those who commit the crime of keeping protected animals illegally or without official permission from the ministry, we can see that in Law Number 32 of 2024 concerning Amendments to Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems, there are changes related to the criminal threats given where the previous law, namely Law Number 5 of 1990, the criminal threat does not mention a special minimum penalty, and only the maximum penalty is threatened.

In this case, it allows the perpetrator of the crime to get a light criminal penalty. However, in its amendment, Law No. 32 of 2024 applies a light criminal sanction up to the highest, as seen from the imprisonment sanction applied, especially to the first individual, which is the shortest of 3 years and the longest and maximum of 10 (ten) years and a fine of at least category IV and at most category VI. This shows that the legislators have seen various cases of criminal offenses related to violations committed by individuals, especially against keeping protected animals illegally or official permits, there are many irregularities that occur, including very many people or communities who do not know that the animals they take or keep are protected animals considering the development related to the types of animals that are protected so fast and massive. In this case, it sometimes becomes a debate in trials related to cases of violations against protected animals to choose to use legal certainty or justice in making decisions.

Legal Effects of Decision Number 809/Pid.Sus/2024/Pn Dps on the Protection of Protected Animals

A court decision is a judge's statement pronounced in a court session open to the public, which aims to resolve or end a case, both criminal and civil. Decision Number 809/Pid.Sus/2024/Pn Dps is a decision from the Denpasar District Court related to a case of violation of protected animals in the form of a Javanese porcupine or in Latin called *Hystrix javanica* with the defendant named I Nyoman Sukena, a 38-year-old man from Bongkasa Pertiwi Village, Abiansemal District, Badung Regency, Bali Province. The father of two children was deemed to have violated Article 21 paragraph 2 a juncto Article 40 paragraph 2 of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems (KSDA-HE).

As a result, I Nyoman Sukena faces up to five years in prison. The Javanese hedgehog case began when the Bali Police arrested I Nyoman Sukena on March 4, 2024. The Bali Police claimed to know that Nyoman Sukena was keeping Javanese porcupines from a public report. According to Nyoman Sukena's confession, he found the two Javanese hedgehog cubs after being secured by his family for damaging crops in their fields. The two Javanese hedgehog cubs were allegedly left behind by their mother. Nyoman Sukena then decided to raise and care for the animals. For about five years, Nyoman Sukena took care of the two Javanese porcupine cubs, until they multiplied to four. During that time he did not know that Javanese hedgehogs were included in the list of protected animals. Eventually, however, Bali Police arrested Sukena based on a report from an unidentified citizen. The four Javanese hedgehogs kept by Nyoman Sukena were then entrusted to related parties to be examined for health and behavior. This was done to assess whether the animals were suitable for release.

I Nyoman Sukena was charged with violating the provisions of Article 21 paragraph 2 a in conjunction with Article 40 paragraph 2 of Indonesian Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems (KSDA-HE). Where each of the provisions of the article reads: Article 21 paragraph 2 a

"Every person is prohibited to : capture, injure, kill, store, possess, maintain, transport, and trade protected wildlife".

The provisions of the article clearly and clearly explain that keeping protected animals is prohibited in Indonesia and I Nyoman Sukena has been proven to keep protected animals, namely the Javanese porcupine (*Hystrix javanica*).

Article 40 paragraph 2 which reads:

"Any person who intentionally violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah)".

The provisions of article 40 paragraph 2 are sanctions or threats related to violations committed against protected animals in accordance with the provisions of article 21 paragraph 2 a, one of which is a prohibition related to keeping protected animals such as those charged to I Nyoman Sukena who keeps protected species of animals in the form of Javanese hedgehogs (*Hystrix javanica*).

Currently the law related to the conservation of natural resources and ecosystems has undergone changes, which originally was law number 5 of 1990 to Law number 32 of 2024, but the case of I Nyoman Sukena occurred before Law number 32 of 2024 was passed, thus using the old law, namely Law number 5 of 1990, the difference in criminal sanctions that ensnare I Nyoman Sukena between the two laws is quite significant, the provisions of criminal sanctions for keeping protected animals carried out intentionally in law number 5 of 1990 provide maximum criminal sanctions by directly giving the highest threat of 5 years imprisonment or a fine of Rp. 100,000,000

(one hundred million rupiah). 100,000,000 (one hundred million rupiah) while if done negligently, it is punishable by 1 year imprisonment or a fine of Rp 50,000,000.00 (fifty million rupiah).

The provisions of criminal sanctions related to keeping protected animals in the provisions of Law No. 32 of 2024 have differences with Law No. 5 of 1990 where the threats related to keeping protected animals have the highest and lowest threats, namely being punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least category IV and a maximum of category VII. Criminal penalties under Law No. 32 of 2024 appear to be more severe with a threat of 15 years imprisonment, which means that the interest and preservation of protected animals is very important considering the existence of protected animals is very rare and needs to be preserved.

The case against I Nyoman Sukena regarding the keeping of protected animals without a permit certainly makes it clear that keeping protected animals is prohibited and can certainly be subject to criminal charges in accordance with the provisions of the applicable laws and regulations because protected animals are rare or almost extinct and their existence must be preserved in nature.

In the process of the court session, the decision handed down to the defendant I Nyoman Sukena, the panel of judges prioritized justice in handing down the decision, even though in terms of legal certainty I Nyoman Sukena had actually been proven to have violated the provisions of article 21 paragraph 2 a of Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems.

In the end, the decision of the panel of judges of the Denpasar District Court in deciding the case against the defendant I Nyoman Sukena was as follows:

1. Stating that the defendant I Nyoman Sukena was not proven legally and convincingly guilty of committing the crime as stated in the single charge of the public prosecutor;
2. To acquit the defendant I Nyoman Sukena from the single charge (VRIJSPRAAK);
3. Order the Public Prosecutor to immediately release the defendant from detention;
4. Restore the defendant's rights in his ability, position and dignity;
5. Stating that the evidence in the form of : 4 (four) Javanese Porcupines (*Hystrix Javanica*) in a state of life, confiscated for the State to be handed over to the Bali Natural Resources Conservation Center (BKSDA) to be released in their natural habitat or other actions deemed effective to oversee the protection and breeding of Javanese Porcupines. Supreme Court of the Republic of Indonesia;
6. Charge the costs of the case to the state;

The various considerations of the panel in handing down an acquittal decision to I Nyoman Sukena are:

1. The Panel considers that the Defendant did not intend to keep and trade protected wildlife alive, and furthermore did not intend to exploit the hedgehogs for his own benefit.
2. That the Defendant did not know or consider that keeping hedgehogs was against the law. The Defendant's actions were no more than culpa in keeping a hedgehog because he did not know that the animal was a protected animal and therefore the keeping was not accompanied by a maintenance permit from the competent authority to keep hedgehogs.
3. That based on the above considerations, because according to the panel of judges the subjective requirements of the unlawful nature are not fulfilled, the Defendant does not meet the qualifications of the element of deliberately capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a live state so that the Panel is of the opinion that the element of deliberately capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a live state is not fulfilled.

With the above considerations, the panel of judges of the Denpasar District Court in decision number 809/PID.SUS/2024/PN DPS acquitted the defendant I Nyoman Sukena.

The case of I Nyoman Sukena is interesting to study in terms of juridical studies because there are many considerations that must be applied in making the decision. As has been explained, referring to the provisions of Article 1 paragraph 3 of the 1945 Constitution which states that Indonesia is a state of law, of course in terms of legal certainty I Nyoman Sukena can be subject to criminal charges as referred to in Article 21 paragraph (2) letter a Jo Article 40 paragraph (2) of Law No. 5 of 1990 concerning KSDA-HE which states that:

"Every person is prohibited from capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected wildlife in a live condition"

The content of the provisions of the aforementioned article clearly and clearly states that both capturing and keeping protected animals is prohibited and can be subject to criminal sanctions in accordance with the applicable threats. In this case, it is also clear and clear that the defendant I Nyoman Sukena has been proven to keep protected animals in the form of Javanese porcupines and moreover does not have a permit to keep these protected animals so that in terms of legal certainty the defendant I Nyoman Sukena can be punished.

The consideration of the panel of judges related to the defendant not knowing that the Javanese porcupine is a protected animal is actually juridically contradictory because there is a legal adage that reads *ignorantiam juris non excusat* or *ignorantiam legis excusat neminem* which means ignorance of the law cannot be excused. If seen,

the defendant I Nyoman Sukena is someone who can be said to have legal capacity because in accordance with the age of the defendant who is 39 years old, in this case it is certainly very important to know the applicable laws or regulations, namely wild animals in the form of Javanese porcupines (*Hystrix javanica*) are protected animals in accordance with the Minister of Environment and Forestry Number: P.20 / MENLHK / SETJEN / KUM.1 / 6 / 2018 concerning Plant and Plant Species./6/2018 concerning Protected Plant and Animal Species where it is clear and clear at number 71, which if you do not have a permit to keep these animals will be subject to criminal sanctions in accordance with the provisions of Article 21 paragraph (2) letter a Jo article 40 paragraph (2) of Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems, in this case it is certainly important for the public to know about the regulations or provisions of the applicable legislation related to the protection of protected animals.

In terms of the consideration of the panel of judges, in the opinion of the author, the appropriate reason for the acquittal of the defendant I Nyoman Sukena is because the defendant kept the Javanese porcupine well and there was no intention to benefit himself by owning the Javanese porcupine, this was proven by the success of the Javanese porcupine in giving birth to a total of 4 animals which made the animal population increase.

In this case, it is certainly a proof that I Nyoman Sukena really intends to keep the animal well and sincerely, although still in terms of legal certainty I Nyoman Sukena can still be sanctioned because in keeping protected animals must be equipped with a permit or legality in keeping the animal.

In this case, in the author's opinion related to some legal consequences that may occur against the protection of protected animals against decision Number 809/Pid.Sus/2024/Pn Dps is that it can have a positive impact and also cannot deny that there can be a negative impact, if you see from the negative side, it is feared that in the future there will be many unscrupulous animal lovers who deliberately keep, If we look at the negative side, it is feared that in the future there will be many unscrupulous animal lovers who deliberately keep, capture and take protected animals and argue that they do not know that these animals are protected animals which are certainly prohibited from being kept by using this alibi, of course there will be many irresponsible people who keep protected animals without having a permit in accordance with the provisions of the applicable laws and regulations, but finally get an acquittal from the Court which will ultimately experience losses in the existence of protected animals.

On the other hand, if seen from a positive impact, it will certainly have a good impact on the perpetrators of justice seekers, in this case there are still many ordinary people who do not know the types of protected animals that are not intended to be kept and they purely only want to care for these protected animals, in this case if criminal

sanctions are imposed in accordance with applicable provisions, there will certainly be injustice and public trust in law enforcement institutions will be lost.

The principles of justice and legal certainty have indeed become an important issue in law enforcement, sometimes law enforcers still have delimitations in giving decisions that are in accordance with the perpetrators or defendants, of course this is where the role of the Panel of Judges who will give decisions has a very important role and must be observant in providing legal considerations so as to issue appropriate and fair decisions. In this case, in accordance with the legal adage "Summum ius summa injuria, summa lex, summa crux" is a legal adage which means that harsh law can hurt, except justice can help it.

Factors Causing Violations of Protected Animals.

Protected animals are all types of wildlife, both living and dead, as well as rare and rare populations, parts of which according to legislation are designated as protected animals. Indonesia has many cases of protected wildlife violations such as protected wildlife trade, keeping protected wildlife without a license and poaching caused by various factors. Some of the factors that cause violations against protected animals are as follows:

A. Economic factors

One of the factors underlying the perpetrators of protected wildlife trafficking is economic. The rarity of the protected animals has a high selling value, which makes many irresponsible people trade the protected animals for their own profit. The perpetrators claim that they trade protected animals because of the high demand in the market for mintos in the form of supernatural things such as mustika stones contained in the bodies of these animals, where the mustika stones are believed to cure various diseases such as cancer, tumors, hypertension, dengue fever, liver, diabetes and various other deadly diseases. In addition, the perpetrators also committed the crime of trading protected animals because the selling price of wildlife on the black market or sold abroad at a high price so that the perpetrators could get a large profit.

B. Opportunity

Another factor why perpetrators trade protected wildlife is opportunity. This is because perpetrators who trade wildlife are often in forest areas where protected wildlife roam and also live in the forest area, making it easier for perpetrators to carry out their actions. The factor of opportunity is because the perpetrators also get the animals from the local community, so the perpetrators can easily get the protected animals.

C. Weak law enforcement

The lack of protection process efforts due to the lack of members to carry out protection efforts in each region, weak law enforcement against the perpetrators is the cause of cases of trading protected wildlife. It is like the perpetrators who are punished not in accordance with the penalties applied by the applicable laws and regulations, but the perpetrators are only subject to a criminal sanction of 4 months imprisonment and a fine of Rp.500,000 so that it causes no deterrent effect for the perpetrators which can make the perpetrators re-commit the act and will worry that it can cause other people to also commit the same act.

D. Lack of information on protected species

Lack of information and ignorance regarding protected species causes many parties to commit protected species violations such as keeping these animals without permission or legality. Many ordinary people do not understand what types of animals are protected and what threats will be imposed by the perpetrators if they commit violations against these protected animals so that it will be detrimental to the protected animal population.

E. Rapid turnover of protected species

The existence of protected species is indeed very rare and rarely found, the rapid change of species and updates related to protected species is also one of the factors that result in violations of protected animals, such as if today the species is not protected but there is a massive poaching or even because of natural disasters that cause the animal's population to decrease drastically so that the government quickly decides that the animal becomes a protected animal, thus of course it becomes a very risky thing if the community arrests the animal right when the animal is declared a protected animal.

The various factors above certainly make the existence of protected animals become increasingly reduced and need to be preserved considering that Indonesia is a country that is very rich in the existence of rare species of animals, of course in this case the government must be more massive socialization about the types, and prohibitions that cannot be done against protected animals so that people will know more about the protected animals and the threats that will be imposed if they violate the protected animals.

As it is known that protected animals are animals whose populations are rarely found or animals that are in danger of extinction, in this case of course their existence needs to be preserved and protected, various violations that occur against protected animals such as trading, hunting and keeping protected animals without permission will certainly have an impact on the protected animal population. In this case, the public needs to better understand the regulation of protected animal protection and what types of animals are included in protected species.

Anything related to resolving violations against protected species or preventing violations against protected animals is as follows:

1. Providing Education and Socialization

Efforts to conserve endangered animals in Indonesia can be done by providing education and socialization to the public.

2. Supporting Environmental Conservation Efforts

The next step that can be taken is that the community must support the efforts made by the government and other institutions that are preserving the environment.

3. Creating a Breeding Ground

The next way to conserve endangered animals in Indonesia is to create a place for captivity.

4. Making a Ban Board

The next way to protect endangered animals is to make a prohibition board for hunting, where if there is a place where there is a prohibition sign, of course people will not dare to violate protected animals in the area.

5. Reporting People Hunting Rare Animals

To protect endangered wildlife in Indonesia, people who hunt them should be reported to the authorities.

6. Avoid Rare Animal Transactions

There are several cases in Indonesia where people trade protected endangered animals such as Birds of Paradise, Clouded Tigers, Gibbons, Sun Bears and many others. These rare animals are even exported abroad at varying prices, of course this will be very detrimental to the population of protected animals because it will certainly reduce the number or existence of these animals and not sustainable in the wild.

With the method described above, it is hoped that it will be able to prevent the population reduction of protected animals because after all protected animals are rare species that should be preserved, but no matter how strict a regulation is if it is not balanced by awareness or desire by the community or individuals themselves, of course the existence of protected animals will remain threatened. Therefore, the role of the community is very important in terms of maintaining the existence of protected animals and the awareness of the community itself so that one day our children and grandchildren will be able to enjoy the beauty or uniqueness of these protected animals.

CONCLUSION

The legislative framework in Indonesia aimed at protecting protected wildlife is governed by a number of significant laws and regulations. The cornerstone law in this regard is Law No. 5 of 1990 on the Conservation of Living Natural Resources and their Ecosystems. This law has been in force for more than three decades and forms the basis for the protection of protected wildlife in Indonesia. Currently, the law has been amended into Law No. 32 of 2024 which amends Law No. 5 of 1990. The legal consequences that may arise from the protection of protected wildlife in relation to decision No. 809/Pid.Sus/2024/Pn Dps show the potential for positive and negative impacts. The positive impact is that it provides benefits for justice seekers, especially for ordinary people who do not understand the types of protected animals and have the intention to keep and care for these animals. However, on the other hand, there is a concern that unscrupulous animal lovers may capture and keep protected animals without a license, and instead get an acquittal from the court, which is clearly contrary to the principle of legal certainty.

Future research should explore the long-term impact of recent legal decisions on wildlife conservation practices, especially in terms of law enforcement and community engagement. In addition, comparative studies between Indonesia and other countries with similar legal frameworks could provide valuable insights into best practices for wildlife protection. In addition, investigating the role of local communities in conservation efforts and their awareness of legal protection could improve the effectiveness of wildlife laws. Finally, research focusing on the socio-economic factors that influence the illegal wildlife trade could reveal new strategies to mitigate these challenges and promote sustainable practices.

BIBLIOGRAPHY

- Alexander, K. A., Potts, T. P., Freeman, S., Israel, D., Johansen, J., Kletou, D., Meland, M., Pecorino, D., Rebours, C., & Shorten, M. (2015). The implications of aquaculture policy and regulation for the development of integrated multi-trophic aquaculture in Europe. *Aquaculture*, 443, 16–23.
- Alica, S. S. (2014). Protection of nature and biological diversity in Turkey. *International Journal of Environment and Sustainable Development*, 13(3), 316–337.
- Bayne, K., Guillen, J., France, M. P., & Morris, T. H. (2024). Legislation and oversight of the conduct of research using animals: a global overview. *The UFAW Handbook on the Care and Management of Laboratory and Other Research Animals*, 101–121.
- Damayanty, R., & Saragih, Y. M. (2024). Legal Analysis of the Criminal Act of Trading in Protected Animals Based on Law Number 5 of 1990 Concerning Conservation of Natural Resources and Ecosystems. *Proceedings of the International Conference on Multidisciplinary Science (INTISARI)*, 1(1), 543–560.
- Ekawati, K. N., & Mukti, Y. A. (2024). Analysis of the phenomenon of keeping endangered animals as a trend. *Journal of Character and Environment*, 1(2).
- Harisman, H. (2021). Protection of Human Rights in the Amendment of the 1945 Constitution of The Republic of Indonesia. *1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 384–389.

- Lubis, M. I. (2017). Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Law No, 5 of 1990 on the Conservation of Biological Natural Resources and Its Ecosystems in Law Enforcement Efforts and Guarantees of Environmental Rights in Gunning Leuser National Park, Indonesia. *JILS*, 2, 55.
- Mangkunegara, R. M. A. (2024). Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 24(1), 235–252.
- Muawanah, U., Yusuf, G., Adrianto, L., Kalther, J., Pomeroy, R., Abdullah, H., & Ruchimat, T. (2018). Review of national laws and regulation in Indonesia in relation to an ecosystem approach to fisheries management. *Marine Policy*, 91, 150–160.
- Muhammad, M., & Husen, L. O. (2019). State Civil Apparatus in Indonesia in the Conception of Welfare State: A Study of Legal Material Law Number 5 Year 2014 on State Civil Apparatus. *Asian Social Science*, 15(3), 64.
- Number, L. (5 C.E.). *of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems*.
- Rees, P. A. (2017). *The laws protecting animals and ecosystems*. John Wiley & Sons.
- Sahri, A., Mustika, P. L. K., Dewanto, H. Y., & Murk, A. J. (2020). A critical review of marine mammal governance and protection in Indonesia. *Marine Policy*, 117, 103893.
- Simaremare, S. P., & Noho, M. D. H. (2021). Disharmonized the regulation of biological resources and its ecosystem in Indonesia. *International Journal of Criminology and Sociology*, 10, 332–340.
- Tibaka, L., & Rosdian, R. (2017). The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 11(3), 266–288.
- Trouwborst, A. (2014). Exploring the legal status of wolf-dog hybrids and other dubious animals: International and EU law and the wildlife conservation problem of hybridization with domestic and alien species. *Review of European, Comparative & International Environmental Law*, 23(1), 111–124.
- Victoria, O. A., & Zukri, N. F. B. M. (2021). Practice Of Animals Trading In Islamic Law & Positive Law Of Biological Resources & ITS Ecosystems. *International Journal of Law Society Services*, 1(2), 91–102.



licensed under a
Creative Commons Attribution-ShareAlike 4.0 International License