

PRACTICE OF ANIMALS TRADING IN ISLAMIC LAW & POSITIVE LAW OF BIOLOGICAL RESOURCES & ITS ECOSYSTEMS

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ABSTRACT

Indonesia is a country that is very rich in the diversity of its natural resources. Both in terms of flora and fauna. However, Indonesia is an emergency country for the circulation of endangered animals that have been protected by law. The Animal Market is one of the places where several protected animals are circulated. In this study, the authors found a unique incident in the practice of buying and selling endangered animals that have been protected by this law, where the practice of buying and selling rare animals is carried out in markets managed by the government, namely under the auspices of the Department of Agriculture, Fisheries and Food. The focus of this research is to find out how the practice of buying and selling endangered animals in the Animal Market and how the review of Islamic law and Act No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems. Through qualitative research methods and through a juridical normative approach, the researcher tries to uncover the focus of the problem above by going directly to the field to find facts which then leads to an analysis of Islamic law and Act No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems. Data were taken through documentation, observation, and interviews. The data that has been obtained is presented in the form of a description in order to obtain conclusions. The results of the study explain that the sale and purchase of endangered animals protected under Islamic law is a sale that does not bring benefits, contains najis, does not belong to the seller wholly, causes damage to nature and contains fraud. Meanwhile, when viewed from Act No. 5 of 1990 concerning the Conservation of Natural Resources and Their Ecosystems, the practice of buying and selling endangered animals that are protected illegally is a criminal act of wildlife crime in which the legal consequences of this crime are a maximum criminal sanction of ten years in prison and a fine of between 100 million and IDR 200 million rupiah.

A. INTRODUCTION

Natural resources are gifts from Allah swt that must be managed wisely, because natural resources have limited users¹. Natural resources are everything that exists in the natural environment that can be utilized for various interests and needs of human life to be more prosperous. In Article

1 Supriadi, *Hukum Lingkungan Indonesia*, ed-2 Sinar Grafika, Jakarta, 2008, page. 95

1 paragraph 1 of Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, natural resources based on their type can be divided into two, namely living or biotic natural resources and non-biological or abiotic natural resources. Biological natural resources are biological elements in nature consisting of vegetable (plant) natural resources and animal (animal) natural resources which together with the surrounding non-biological elements as a whole form an ecosystem².

What is meant by buying and selling of endangered animals is the sale and purchase of protected animals without taking into account the existing rules. Some people still like to trade in protected animals in the wild, either by trading them alive to be cared for, or in the form of animals that have been preserved. The illegal wildlife trade is still commonly found in animal markets. Even the trade in protected animals is also carried out by certain individuals to use animal organs as ingredients for traditional medicines³.

The rampant wildlife trade is caused by weak law enforcement regarding the conservation of living natural resources and also the lack of public awareness of animal conservation. Lack of knowledge and high economic value of these protected animals is also the cause of the rampant illegal trade to this day. This act is very detrimental to the State and has violated the provisions set by the State. Trade in protected animals is a criminal offense that has violated the provisions of Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems.⁴

Illegal wildlife trade is a serious threat to wildlife conservation in Indonesia. Wild animals that are traded illegally based on various facts found in the field are mostly caught from nature, not from captivity. Natural Resources Conservation Center (BKSDA) as an institution that has a strategically important role in efforts to save and protect endangered species based on Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems⁵.

B. RESEARCH METHODS

This research uses qualitative research or field research, namely by making direct observations of field objects in the Animal Market. As well as using a normative juridical approach, namely research conducted by researchers on the practice of buying and selling endangered animals in the Animal Market to find out how Islamic law reviews⁶ and Act No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems. The source of data used in this study is the primary data

2 Fatchan, *Geografi Tumbuhan dan Hewan*. Penerbit Ombak, Yogyakarta, 2013, page. 65

3 Ibid.

4 Anonymous, *Islam Peduli Terhadap Satwa*, Pro Fauna, Malang, 2010, page. 2

5 Budiman, Arief. Pelaksanaan Perlindungan Satwa Langka Berdasarkan Undang- Undang No. 5 Tahun 1990 Tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya, *Jurnal Hukum*, Fakultas Hukum Universitas Sebelas Maret Surakarta, 2014

6 Ali Zainuddin, *Hukum Islam*. PT. Raja Grafindo Persada, Jakarta, 2011, page. 31 see to Azhar Basyir, *Azaz-Azas Hukum Muamalah*, UII, Yogyakarta, 1993, page.84

source, namely the results of data findings in the field through interviews from staff, traders and buyers of endangered animals at the Animal Market. Meanwhile, secondary data sources are data obtained from literature, books and scientific journals that are references and sources of research⁷. Data collection procedures using Interview, Observation and Documentation techniques. In analyzing data from both field studies and literature studies, basically the data are analyzed descriptively qualitatively, namely the collected data is poured logically and systematically and then analyzed and drawn conclusions. Researchers analyze various problems of buying and selling endangered animals in the Animal Market into buying and selling theories according to Islamic law⁸ with the Qur'an and Hadith as well as into Act No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems. Furthermore, the analysis produces conclusions, which conclusions can be known whether or not the practice of buying and selling endangered animals in the Animal Market according to Islamic law and Act No. 5 of 1990 concerning Conservation of Biological Natural Resources and their ecosystems⁹.

C. RESULTS AND DISCUSSION

1. Criteria for Endangered Animals According to the Law

According to Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, animals are all types of animal natural resources that live on land, and/or in water, and/or in the air. Biological natural resources are biological elements in natural plants (plants) and natural resources of animals (animals) which together with non-biological elements around them form an ecosystem as a whole. Meanwhile, the conservation of living natural resources is the management of living natural resources whose utilization is carried out in a wise manner to ensure the continuity of their supply while maintaining and improving the quality of their diversity and value. Wild animals are all animals that live on land, and or in water, and or in the air that still have wild characteristics, both living freely and being kept by humans.¹⁰

So rare animals are types or species of animals that are rarely found and sought in the wild because of their small number. Endangered animals generally include species that are threatened with extinction because they do not have the ability or are difficult to restore their natural population to their original population.¹¹

7 Margono, 2004, *Metodologi Penelitian*. Jakarta: PT. Pineka Cipta, see to Nasution, 2012, *Metode Research*, Jakarta: Bumi Aksara.

8 Rasjid Sulaiman, *Fiqh Islam*, Print. Ke-43 Sinar Baru Algensindo, Bandung, 2009, page. 49, see to Sabiq Sayyid, *Fiqh Sunnah*, Jilid 12 Ed. 11, translated by Kamaludin A Marzuki, Pustaka, Bandung, 1997, Al-Ma'arif and Shomad, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia*. Ed. 3 Kharisma Putra Utam, Jakarta, 2017;

9 Margono, *Metodologi Penelitian*, PT. Pineka Cipta, Jakarta, 2004, page.23

10 Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems

11 Tim Penyusun, *Kamus Besar Bahasa Indonesia*, Pusat Bahasa Departemen Pendidikan Nasional, Jakarta, 2008, page. 810

According to the international organization dedicated to the conservation of natural resources or the International Union for Conservation of Nature and Natural Resources (IUCN) based in Gland, Switzerland, categorizes animal species according to population level, habitat conditions and distribution. The species threat categories based on the IUCN red list are as follows:

- a. Extinction or extinction (EX) is a species is said to be extinct if there is no doubt that the last individual has died. A species is presumed extinct if a thorough survey of known habitats over a sufficient period of time (daily, seasonal or yearly) throughout its distribution area cannot record the presence of the individual.
- b. Extinct in the wild (EW) is a species is said to be extinct in the wild if it is known to only live in cages or developed in nature outside its original distribution.
- c. Critically endangered (CR) is a species is said to be critical if a species faces the risk of extinction in the near future. Meeting criteria A through E faces an extremely high risk of becoming extinct.
- d. In danger of extinction or Endangered (EN) a species is said to be in danger of extinction if it meets criteria A to E for species in danger of extinction so that it is considered to have a very high risk of extinction in nature.
- e. Vulnerable or Vulnerable (VU) ie a species is said to be vulnerable if it meets criteria A to E so that it can be considered to be facing a high risk of extinction in nature.
- f. Near Threatened (NT), a species is said to be near threatened if it has been evaluated but does not meet the CR, EN or VU criteria, but is close to these criteria or tends to meet the threatened criteria of the CR, EN, or VU criteria.
- g. Not yet threatened/not yet in need of attention or Least Concern (LC) is a species that has been evaluated but does not meet the criteria of CR, EN, VU or NT. Species that are widespread and abundant in this category.
- h. Insufficient (lack) or Data Dificient (DD) ie species that do not have sufficient information to conduct direct or indirect assessments. Species that fall into this category are not necessarily in a safe position from extinction.¹²

Criteria A to E in question are the Red List / IUCN red list to establish standard species list and conservation assessment efforts. While the criteria and criteria are:

- a. Criteria A, C and D: Population and Population Size
- b. Criteria B and C: Sub Population
- c. Criteria A, B, C and D: Number of Adult Individuals
- d. Criteria A, C and E: Descendants
- e. Criteria B and C: Continuous decline

12 Op.Cit.

- f. Criteria B and C: Extreme Fluctuations
- g. Criteria A and B: Rate of occurrence
- h. Criteria A, B and D: Occupancy Area
- i. Criteria B and D: Criteria Area
 - 1) A: Recorded rate of population decline
 - 2) B: Decrease or change in the size of the geographic distribution area
 - 3) C: Small and fragmented population size reductions or changes
 - 4) D: Very small population size and limited distribution
 - 5) E: Quantitative analysis of extinction risk

The IUCN Red List was first issued in 1964. To date, this list is the most influential guide on the conservation status of biodiversity. The IUCN red list establishes criteria for evaluating the rarity status of a species. This criterion is relevant for all species worldwide. Its purpose is to remind the public and policy makers of the importance of conservation issues to assist the international community in improving the status of species rarity.¹³

Meanwhile, in the convention on the protection of wildlife or wild life from international trade as regulated in international legal instruments or the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in Washington, D.C. and agreed by 80 IUCN member countries categorize species into 3 classes, namely species included in Appendix I, II and III. Each category clearly distinguishes its trading control rules as follows:

a. Appendix I Species

This category is species that are threatened with extinction according to the red list of the International Union for Conservation of Nature and Natural Resources (IUCN) included in the critically endangered (CR) category, partially vulnerable (VU), and in danger of extinction (endangered). /EN) and extinct in the wild (extinct in the wild).

b. Appendix II species

This category is species that are not currently in an endangered state, but if their use is not strictly controlled, they will soon become endangered.

c. Appendix III Species

This category is species whose population is abundant according to the IUCN with a high enough utilization rate so that it is sufficient to monitor their use.

There are thousands of protected species in Indonesia. In Indonesia, protected animal species are contained in the Minister of Environment and Forestry Regulation number P.20/MENLHK/SETJEN/KUM.1/6/2018 concerning Protected Plant and Animal Species replacing PP. 7 of 1999.

13 Ibid.

2. Buying and Selling of Rare Animals in Islamic Law

In research conducted by researchers at the Animal Market, researchers found buying and selling transactions which when viewed from the pillars of buying and selling according to Islam, it can be concluded that these buying and selling transactions have fulfilled the pillars of buying and selling according to Islam. Because in the transaction there is *aqid* namely seller and buyer, *ma'qud alaih* namely price and goods and *sighat* namely *Ijab* and *qabul*.

However, if we look at the terms of sale and purchase according to Islam, buying and selling transactions are not allowed according to Islam if:

- a. These animals contain *najis* and are not useful according to Islamic law, such as carrion or animal skins. For example, trading parts of snake bodies for medicine, parts of crocodiles for medicine and deer antlers used as knife handles. Because the Messenger of Allah has said, "*Verily Allah and His Messenger forbid selling wine, carrion and pork and idols (muttafaqun alaih)*".¹⁴
- b. These animals are traded illegally without official procedures from the government in their country. Because the goods are not their own but belong to the State which is regulated in the laws and regulations in the local area. As the Prophet SAW said, "*Don't sell things that you don't have!*" (HR. Ibn Majah)

And this is an act that is against the law which in Islam obeying government regulations is an act that must be carried out for every believer. As the word of Allah swt in the letter *An-Nisa* verse 59 which means: "*O you who believe, obey Allah and obey the Messenger and Ulil Amri (Government) among you*".¹⁵

- c. Causing natural damage, such as illegally trading protected animals, certainly does not meet the requirements set by the local government. This has the potential to cause environmental damage such as natural resources and ecosystems. Because Allah has said in Surah *Al-Baqarah* verse 11: "*And when it is said to them, do not do mischief on the earth, they say, indeed, we are the ones who make repairs.*"

From the above provisions, the sale and purchase of protected endangered species is prohibited under Islamic law, because they contain *najis* and carcasses that do not bring benefits according to the Shari'a, are a violation of laws that have been set by the government and can cause damage to nature. These things are certainly very

14 Nashirudin Muhammad Al-Bani, translated by Taufiq Abdurrahman, *Shahih Ibnu Majah*, , Pustaka Azzam, Jakarta, 2007, page. 305

15 Departemen Agama RI, *Tarjemah Al-quran Al-Kariim by Prof H Mahmud Junus. Al Maarif*, Bandung, 1997

contrary to Islamic law and contrary to the principles of *muamalah*¹⁶ such as illegal and excessive trade of endangered animals will bring harm, namely damage to ecosystems and harm the country's economy, and the occurrence of persecution of the animals themselves, because it is not uncommon for trade in protected animals to use improper cages and inadequate feed. According to Ahmad Azhar Basyir, the law of *muamalah* in Islam is as follows:

- a. Basically the form of *muamalah* is permissible, except what is specified in the Qur'an and the Sunnah of the Prophet.
- b. *Mu'amalah* is carried out on a voluntary basis, without containing elements of coercion.
- c. *Muamalah* is carried out on the basis of considerations of bringing benefits and avoiding harm in people's lives.
- d. *Muamalah* is carried out by maintaining the value of justice, avoiding elements of persecution and elements of taking opportunities in adversity.

3. Sale and Purchase of Endangered Animals in Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems

In Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems Article 21 paragraph (2) stipulates that: Everyone is prohibited from:

- a. Capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals alive.
- b. Storing, possessing, maintaining, transporting, and trading protected animals that are dead.
- c. Releasing protected animals from one place in Indonesia to another inside or outside Indonesia.
- d. Trading, storing or possessing skins, bodies, or other parts of protected animals or goods made from these parts or releasing them from one place in Indonesia to another inside or outside Indonesia.
- e. Taking, destroying, destroying, trading, storing or possessing eggs and or nests of protected animals.¹⁷

From several provisions in the existing legislation, it can be briefly concluded that the types of crimes against protected animals are as follows:

- a. Hunting for protected animals
- b. Trade/illegal use of protected animals
- c. Illegal ownership of protected animals
- d. Smuggling protected animals
- e. Misuse of documents (transportation, export quotas etc.)¹⁸

16 Haroen Nasrun, *Fiqh Muamalah*. Gaya Media Pratama, Jakarta, 2007, page. 62 see to Harun, MH, *Fiqh Muamalah*, Muhammadiyah University Press, Surakarta, 2017, page.28 and Huda Qomarul, *Fiqh Muamalah*. Sukses Offset, Yogyakarta, 2011, page. 10

17 Article 21 paragraph (2)

In addition to regulating prohibitions related to protected animals, Indonesia also has a statutory instrument regarding the use of protected animals under certain conditions. This is stated in Government Regulation No. 8 of 1999 concerning the Utilization of Wild Plants and Animals.

In this regulation what is meant by the use of species is the use of natural resources, both wild plants and animals and or their parts and the results thereof in the form of study, development, captive breeding, hunting, trade, demonstration, exchange, cultivation of medicinal plants and maintenance for enjoyment.¹⁹ Utilization of wild animals must be carried out while maintaining the balance of the population and their habitats and fulfilling the conditions that have been determined.

In Article 42 PP No. 8 of 1999 concerning the Utilization of Wild Plant and Animal Species, explains that for wildlife trade activities, the following requirements must be met:

- a. Shipping or transportation of wild flora and fauna species from one habitat area to another in Indonesia, and or from outside the territory of Indonesia, must be accompanied by shipping or transportation documents.
- b. Documents are declared valid, if they meet the following requirements:
 - 1) transport technical standard
 - 2) shipping permit
 - 3) captive permit for captive-bred animals
 - 4) animal health certificate from the authorized official
- c. The delivery permit as referred to in paragraph (2) letter b must contain information regarding:
 - 1) Types and numbers of plants and animals
 - 2) Port of departure and port of destination
 - 3) Identity of the Person or Entity who sends and receives plants and animals
 - 4) Allotment for the use of plants and animals.

However, in Article 34 PP No. 8 of 1999 concerning the Utilization of Wild Plants and Animals, there are exceptions where some of these animals can only be used with the approval of the president. Some of these animals are:

- a. Anoa (*Anoa Depressicornis*)
- b. Deer pig (*babyrousa babyrussa*)
- c. Javan rhino (*rhinoceros sondaicus*)
- d. Sumatran rhino (*Dicerorhinus sumatrensis*)
- e. Komodo dragon (*varanus komodoensis*)
- f. Cendrawasih (*paradiseidae*)

18 Hanif Fathi, Upaya Perlindungan Satwa Liar Indonesia Melalui Instrumen Hukum dan Perundang-undangan, *Jurnal Hukum Lingkungan*, Vol.2 ISSUE 2, December 2015. page. 39

19 Government Regulation of the Republic of Indonesia No. 8 of 1999 concerning the Utilization of Wild Plants and Animals Article 1 paragraph (1)

- g. Javanese eagle, Garuda eagle (*spizaetus bartelsi*)
- h. Sumatran tiger (*Phantera tigris sumatrae*)
- i. Mentawai langur (*Presbitis potenziane*)
- j. Orangutans (*Pongo pigmaeus*)
- k. Javan gibbon (*Hylobates mologh*)

As a crime, the trade and or circulation of protected wild animals in Indonesia will be subject to punishment as stated in Article 40 of Act No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems, namely:

- a. Whoever intentionally violates the provisions as referred to in Article 19 paragraph (1) and Article 33 paragraph (1) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)
- b. Whoever intentionally violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
- c. Whoever because of his negligence commits a violation of the provisions as referred to in Article 19 paragraph (1) and Article 33 paragraph (1) shall be sentenced to a maximum imprisonment of 1 (one) year and a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
- d. Whoever due to his negligence violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 50,000,000.00 (fifty million rupiah).
- e. The criminal acts as referred to in paragraphs (1) and (2) are crimes and criminal acts as referred to in paragraphs (3) and (4).

In practice, the provisions on criminal threats for protected wildlife crimes have not resulted in significant court decisions and have a deterrent effect on perpetrators of crimes. Because the maximum criminal penalty is only five years, it is certainly not proportional to the impact caused by the perpetrators of the crime. If this continues to happen, then in the not too distant future the wildlife in Indonesia will reach the extinction phase, and the loss will not only befall the Indonesian people, but the world.

This crime of protected wildlife has caused multi-dimensional damage, which includes damage to ecosystems, extinction of endemic species, threat of disease, and economic losses.

- a. Ecosystem Damage.

In the crime of protected wildlife, the perpetrators of the crime have threatened the ecosystem damage in the forest area. This can happen because the perpetrators, in committing their crimes, often go deep into the forest area to enter the core zone of the national park. Often the perpetrators cut down wild plants

carelessly. This ecosystem damage can also occur due to the disconnection of the food chain from animals and plants in the forest. Not infrequently the animals being hunted are in a position as the main predator (top predator). With the loss of the role of the main predator in the wild, the population of animals in the lower stages of the process of eating and eating is not controlled, so that overpopulation can occur which can lead to ecosystem damage, and even extinction.

b. Endemic Species Extinction

The crime of endangered species protected in the long term will result in the extinction of endemic/typical Indonesian species. For example, in the last decade experts have concluded that the Javan tiger and Bali tiger have become extinct in Indonesia. Currently the Sumatran tiger, orang utan, Javan rhino, Sumatran rhino and Sumatran elephant are in an endangered status.

c. Disease Threat.

Illegal or illegal trade in protected endangered species in animal markets in big cities has the potential to spread wildlife diseases to other animals. It even has the potential to transmit disease to humans.

d. Economic Losses.

In a 2010 report from the Ministry of Forestry, State revenues from export activities of wild mammals, amphibians, corals, crocodiles/crocodile skins and fish, resulted in an export value of around IDR 2,918,840,600,000. Of this amount, the largest export value was obtained from the export of Arwana fish of IDR 1.989 billion. The data represents only legal trade, while the economic potential lost and spinning in illegal trade is much greater. In the report of the Non-Governmental Organization PRO FAUNA, it is estimated that the turnover of trade in illegal rare plants and animals in the world is estimated to reach US\$ 10-20 billion per year. This figure is the second largest illegal turnover after the drug business. In Indonesia, the turnover of trade in endangered species reaches IDR 9 trillion per year.

D. CONCLUSION

That there is a practice of buying and selling rare animals in several animal markets where the market is a market owned by the government which is managed by the Department of Agriculture, Fisheries and Food. The sale and purchase is carried out by unscrupulous traders and buyers in which the sale and purchase is not accompanied by a permit from the authorized party. Most of the endangered protected animals that are traded in the market are bird species and there are several other protected animals that are only taken from their bodies. The sale and purchase of endangered animals is prohibited by law and even constitutes a crime, because it has been protected by law. Violations of these crimes will be subject to a maximum of ten years in prison and a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

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