



# 3<sup>rd</sup> IMCoSS 2015

**THE THIRD INTERNATIONAL MULTIDISCIPLINARY  
CONFERENCE ON SOCIAL SCIENCES**

5, 6 June 2015  
Bandar Lampung University (UBL)  
Lampung, Indonesia

## PROCEEDINGS

Organized by:



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## ***PREFACE***

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the **The Third International Multidisciplinary Conference on Social Sciences (The 3<sup>rd</sup> IMCoSS) 2015** organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 112 technical papers were received for this conference.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 6 June 2015

**Mustofa Usman, Ph.D**  
Chairman of 3<sup>rd</sup> IMCoSS 2015

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# CRIMINAL LAW POLICY AS AN EFFORT OF OVERCOMING CRIME TOWARDS PROTECTED ANIMALS

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**ABSTRACT** - This research discusses about criminal law policy in determining direction of the criminal offense prevention policy protected animals now in Indonesia and in the foreseeable future. The study was based on the results of research in normative jurisdiction to find a norms and principle in formulating the protection of animals. The research concludes the protection of animals are still in effective, such as the lack of accountability for corporate regulation and the absence of a regulation on sanctions difference between animals from the nature and captive breeding. therefore, there needs to reformulation of the Law of Conservation of Natural Resources and Ecosystem, and the inclusion of regulation of protected animals in the Draft Criminal Code as a new juridical basis to provide the protection both in concretely and abstractly.

**keywords:** Criminal Law Policy, The Protection of Reserved Animals

## 1. INTRODUCTION

### 1. 1. Background

Natural resources and ecosystems that have accrued and vital part of life is the gift of God Almighty, therefore, it need to be managed and used sustainably, in harmony, and balance for the welfare of the people of Indonesia in particular and humanity in general, both present as well as the future.

Environmental management is actually not new since human existence on earth has made environmental management to meet the necessities of life, such as humans hunt animals, which in the early developmental stages of life, patterns of production and consumption is only determined by the activities of hunting of human population. The increase of production and consumption patterns change, too.

Addressing the needs of human life, in its application does not hesitate to commit acts that violate the law by way of theft of protected animals, such as the killing of elephants for ivory in the capture because it has a high economic value, which can be made ivory cigarette holder and other crafts that have a sale value / high consumptive. Article 33 paragraph (3) of the Constitution of 1945 states that:

"Earth, water and natural resources contained therein shall be controlled by the state and used profusely for common people sake".

This means, the constitution confirms the obligation of the state and the government to protect, conduct environmental management in the interests of the people who live in the present and as well as those living in the future. The use of earth, water, and natural resources contained therein for the greatest prosperity of the people organized through the efforts of development.

Protected animals by law such as Sumatran elephants, pangolins, turtles, and other animals are scattered throughout the islands of Indonesia, including both inside and outside the forest area in the whole territory of the Republic of Indonesia are species that must be protected. Law of the Republic of Indonesia Number 5 of 1990 on Conservation of Natural Resources and Ecosystems which is a product of national law in

order to be able to manage thoroughly with regard to the utilization, the legal relationship between humans and the natural resources and ecosystems.

Based on the above description, it is associated with a variety of phenomena that occur in the world of conservation of natural resources and ecosystems today is a deep concern. Rampant violations of the criminal offense of protected animals raised concerns on the balance of the ecosystem. Violations against protected animals are very heterogeneous in nature and are made directly or indirectly, by vulgar or hidden action.

### 1.2. Issues

Problematic criminal law policy for the reduction of the crime of protected wildlife in Indonesia is interesting authors to study it in this article. Therefore in the legal writing, the writer formulates formulation of the problem:

- (1) How is the regulation concerning the criminal offense of protected animals currently in Indonesia?
- (2) How should the criminal law policy in tackling the crime of protected animals in the future?

## 2. DISCUSSION

### 2.1. System Policy settings of Protected Animal in Crime Criminal Law Positive

#### a). Position and Management of Crime Protected Animals in the Criminal Code

Discussion about the position and arrangement of protected animals criminal offense will be described in accordance with the three main issues / main substance of criminal law that is (issue criminal offenses), the (problem of error or criminal responsibility), and crime / punishment. The setting of the Crime of animals protected under the Criminal Code does not exist, but the closest is regulated in Article 302 of Chapter XIV of crimes against decency, as follows:

Article 302

- (1) Threatened with imprisonment of three months or a maximum fine of four thousand five hundred dollars for a less serious assault against animals

1. Whoever without a goal worth or is beyond the limit, with intentionally hurt or injure an animal or detrimental to health;

2. Whoever without a goal worth or by exceeding the limits necessary to achieve that goal, deliberately does not provide the necessary food for the animal life, which wholly or partially into hers and there was under his supervision, or the compulsory maintenance of animals.

(2) If the act that resulted in more than a week sick, or handicapped or suffer other serious injuries, or death, is guilty of punishable with imprisonment for a maximum of nine months, or a maximum fine of three hundred dollars, because of mistreatment of animals.

(3) it belongs to the innocent animal, then the animal can be seized.

(4) Experiment commit a crime is not punished. "

### 1. Crime

Elements of criminal acts intended in the criminal provisions set forth in Article 302 paragraph (1) it is an element of 'deliberately'. In accordance with its location in the formulation of the criminal provisions set forth, elements 'deliberately' includes the following elements: a. cause pain; b. cause injury; c. adverse health; d. an animal.

### 2. Criminal Liability

The formulation of Article 302 above, about animal mistreatment, criminal liability is imposed on people, it can be proved that whoever element referred to in Article 302 of the Criminal Code that can be criminally is a person, it can be emphasized in the formulation of Article 59 of the Criminal Code that in cases in Where as specified criminal offense against the board, members of the Board or commissioners, the management, board members or commissioners who did not intervene offense is not punished.

### 3. Crime and Punishment

The division of criminal and sentencing, which consists of several parts that will be explained in this division, at the start of the first criminal to be described. Crime which consists of criminal types (strafsoort), how the implementation of the criminal (strafmodus), the length of the criminal (strafmaat), and the formulation of a system of criminal threats.

Based on the formulation of Article 302 of the above, there are three sub that can be analyzed, namely;

a). Straafmacht (length of criminal sanctions)

Under Article 302 of the Criminal Code length of criminal sanctions is a maximum of 3 months in prison or a maximum fine of four thousand five hundred dollars. Imprisonment of 3 months is the maximum system specifically for setting in the second book of the Penal Code while the maximum system common and common minimum set in the book to the Criminal Code.

b). Straafsoort (type of crime)

Under Article 302 of the Criminal Code, criminal types contained in this article is imprisonment and criminal fines.

c). Formulation system of criminal threats

Under Article 302 of the Criminal Code, the criminal threat system formulation contained in this article

adopts an alternative formulation for using the word "or"

### b). Position and arrangement Crime Protected Animals in In Act No. 5 of 1990

Law No. 5 of 1990 on Conservation of Natural Resources and Ecosystems (KSDAHE) namely article 40, paragraph 1, 2, 3, 4, and 5, in the penal provisions contained in Law No. 5 of 1990, paragraph 5 divides criminal offenses into 2 groups, namely criminal act is said to be a crime to paragraphs 1 and 2 and criminal offenses be regarded as a violation of paragraph 3 and 4.

The formulation of criminal sanctions in Law No. 5 of 1990 on Conservation of Natural Resources and Ecosystems scattered in article 40 of them:

(1) Whoever intentionally violating the provisions referred to in Article 19 paragraph (1) and Article 33 paragraph (1) shall be punished with imprisonment of ten (10) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

(2) Whoever willfully violating the provisions referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment of five (5) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

(3) Anyone who due to negligence breaches of the provisions referred to in Article 19 paragraph (1) and Article 33 paragraph (1) shall be punished with imprisonment of 1 (one) year and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

(4) Anyone who due to negligence breaches of the provisions referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment of 1 (one) year and a maximum fine of Rp. 50,000,000.00 (fifty million dollars).

(5) The offenses referred to in paragraph (1) and (2) is a crime and a crime referred to in paragraph (3) and (4) is violation

### 1. Crime

The setting of the Crime of Illegal Wildlife in Law No. 5 of 1990 contained in Article 40 paragraph 2

#### 1) Elements of Deeds

In Article 40 paragraph 2 above, whoever violates Article 21 paragraph 2 which reads, everyone is forbidden to:

a. Capturing, injuring, killing, keeping, owning preserve, transport, and trading protected animals alive;

b. storing, having, raising, transporting, and trading protected animals in the dead;

c. issued protected animals from an in Indonesia to other places inside or outside Indonesia;

d. trading, store or pick the skin, body, or other parts of protected animals or goods made from these parts or removing it from a place in Indonesia to other places inside or outside Indonesia

e. taking, damaging, abolish, trade, store or possess the eggs or nests of protected animals.

#### 2) Judicial Qualifications

Juridical qualification, as has been described above is an important thing because if a special law does not

specify whether an offense as a crime or offense it will cause problems in the judicial application of the law in the field, in the event of trial, assistance, participation, follow criminal and others, as has been shown above.

In this Act, juridical qualification contained in Article 40 paragraph 2, which reads: The offenses referred to in paragraph (1) and (2) is a crime and criminal offenses as referred to in paragraph (3) and (4) is **violation**,

## **2. Criminal Liability**

Criminal liability on a specific law is contained in Article 40 paragraph 2, which reads:

"Whoever willfully violating the provisions referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be punished with imprisonment of five (5) years and a maximum fine of Rp 100,000,000, 00 (one hundred million rupiah) ".

The formulation of Article 40 paragraph (2) above, on offenses to animals, criminal liability imposed on the person, it can be proved from the elements Whoever is Article 40 paragraph (2) which can be accounted for by the criminal is a person, it is emphasized in the formulation Article 59 of the Criminal Code that in cases where due to the specified criminal offense against the board, members of the Board or commissioners, the management, board members or commissioners who did not intervene offense is not punished.

## **3. Criminal Matters and Punishment**

In Act No. 5 of 1990 adopts a specific maximum criminal and his kind consisting of imprisonment and fined (criminal penalty adopts a cumulative formulation using the word "and", in which the judge declared second decision must impose criminal sanctions set in formulation articles, namely imprisonment and fines.

### **B.2. Crime policy settings Protect Animals in the National Law System In Upcoming**

#### **a). Position and arrangement Crime Protect Animals in the National Law System in Coming**

Crime against protected animals in the future basically the concept of the bill has not been applied in the Criminal Code in 2012, which until now not being legalized, there is the provision of Article approaching that in the ninth part of Article 501 in torture animals, namely:

#### **Article 501**

(1) Punishable as a less serious assault on animals with imprisonment of 6 (six) months or a maximum fine of Category II, every person who:

a. hurting or injuring an animal or adverting its health without a goal worth or to exceed the extent necessary to achieve these objectives;

b. Without a goal worth or to exceed the extent necessary to achieve these objectives, do not feed or the necessities of life to the animals in whole or in part is hers and under its supervision, or the compulsory maintenance of animals; or

c. sexual intercourse with animals.

(2) If the criminal offense referred to in paragraph (1) resulting in sick more than 1 (one) week, disability, serious injury, or death, the maker of a criminal

offense shall be punished for mistreatment of animals, with a maximum imprisonment of one (1) year or a maximum fine of Category II.

(3) If the animals referred to in paragraph (1) belongs maker criminal offense, then the animal can be seized.

(4) Experiment with a criminal offense referred to in paragraph (2) shall be punished by a maximum fine of Category II.

Crime of "light maltreatment of animals" referred to in the criminal provisions set out in Article 501 of the Criminal Code bill it is:

1. With the intent to hurt or injure an animal or adverse its health without a goal worth or to exceed the extent necessary to achieve that goal.

2. Deliberately without a goal worth or to exceed the extent necessary to achieve these objectives, do not feed or the necessities of life to the animals in whole or in part is hers and under its supervision, or the compulsory maintenance of animals.

3. With the intent to have sex with the animal.

Criminal liability or fault as has been described above, according Sudarto consists of deliberate and oblivion. Intention here is subdivided by level of its kindie, deliberate with the intent, deliberate with certainty conscious and deliberate offense to knowingly possibility. Responsibility of light maltreatment of animals in the bill Criminal Code contained in Article 501 is for people because there is no information about the corporation.

Based on the formulation of Article 501 above, there are three subs that can be analyzed by crime and punishment, namely;

#### **a. Straafmaat (length of criminal sanctions)**

Under Article 501 of the Criminal Code bill duration of criminal sanctions is no longer than 6 months in prison or a maximum fine of 2. Sanksi category could grow to 1 year if an illness of more than 1 (one) week, disability, serious injury, or death.

#### **b. Straafsoort (type of crime)**

Under Article 501 of the Criminal Code Bill, criminal types contained in this article is that the principal criminal imprisonment and criminal fines.

#### **c. Formulation system of criminal threats**

Under Article 501 of the Criminal Code Bill, the formulation of the system of criminal threats contained in this article adopts an alternative formulation for using the word "or".

Legislation governing the crime of protected animals in Law No. 5 of 1990 theremention or juridical classification between crimes and violations. In chapter Criminal Provisions should be no provision / confirmation of the juridical qualification of the criminal act as crime or violation, as a general rule the Criminal Code consists of general rules for Crime and common rules for Violation. Placement qualifying offense as "evil" or "breach" in essence a judicial determination of the qualifications that have a good result anyway juridical juridical material related to the general rules of the Criminal Code and the formal juridical consequences in the Criminal Code (Code Criminal Procedure), to the extent not specified Another by law. Determination of judicial



qualifications required to bridge the entry into force of the general rules of the Criminal Code to things that are not regulated by law outside the Criminal Code to identify a judicial determination of the qualifying criminal offense against an act of protected animals.

Special minimum criminal matters is a deviation from the parent system of criminal law, namely the Penal Code, as already explained above threat special minimum punishment is not embraced by the Criminal Code, it is possible for special legislation outside the Criminal Code to create rules that deviate based on the provisions of Article 103 of the Criminal Code ,however special threat minimum cannot simply be applied to only be included in the formulation of reason alone. It should also be loaded minimally criminal rules or guidelines specific to the application of a special minimum criminal sanctions for the crime of protected animals.

Special minimum criminal sanctions should also be set pattern, as a special formulation of minimal patterns, can presumably put forward specific minimum pattern according RKUHP concept as follows:

a. In principle, the special minimum punishment is an exception, namely for certain offenses that are considered very harmful, harmful or disturbing the public and offenses that are aggravated by the consequences (Erfolgsqualifizierte Delikte). As a quantitative measure are offenses that are punishable imprisonment of over seven years (until the death penalty) alone may be subject to specific minimal, because the offenses that are classified very seriously, but in certain cases it can be lowered benchmark on offences that are relatively heavy offense that is punishable 4-7 years in prison).

b. The special minimum pattern according Concepts ranged from 1-5 years with the following categories :

Offense category	Maximum Punishment	Minimum Punishment
1. Heavy	4 up to 7 years	1 year
2. Very Serious	7 up to 10 years	2 years
	12 up to 15 years	3 years
	Death sentence/a life sentence	5 years

Determination specifically targeted minimum or maximum differentiated according to specific threats to the offense bersangkutan. Ini merely an objective standard or formal benchmark. Not any offense that is included in the category as above, should be given special minimal. In setting specific minimum to be considered as a result of the offense in question against the public at large (among others: general unrest pose a hazard, danger to the life / health / environmental consequences or death) or the repetition factor of crime (recidivist). In general, the offenses were very serious threat alone is given a

specific minimum. According to the concept of special even this minimal threat in certain things can still be reduced or commuted if a criminal type / action for mostly corporate fines (financial sanction is), rarely in the form of "Structural sanction" or "restriction on entrepreneurial activities" (restrictions on business activities, the dissolution of the corporation) and "Stigmatizing sanction" (announcement of the verdict, warning the corporation). In the future, the legislators should include the type of criminal or corporation other than a criminal action for fines.

Laws relating to the crime of protected animals in the future should contain matters that are not regulated sentencing guidelines for corporations to criminal acts of protected animals in the future as set out in the Concept of the Criminal Code of 2012, among others :

- Affirmation of the corporation as the subject of a criminal act.
- Determination of criminal sanctions / measures for the corporation.
- Determining when corporations can be.
- Determining when officials accountable.
- Determination of justifying and forgiving for the corporation.

In addition it should also add things related to the additional penalty which may be imposed separately without coupled with the principal and the criminal penalties for corporate replacement guidelines as set out in the Concept of the Criminal Code of 2012, as follows:

1. Guidelines for the imposition of additional penalty which may be imposed on their own without preceded the main criminal as contained in Article 67 paragraph (2) concepts, namely:

Additional penalty can be imposed together with a principal criminal, as criminal stand-alone or can be dropped together with other additional penalty.

2. Guidelines for substitute criminal fines for corporations if the fine is not paid as in Article 85 Concept that:

If the decision of wealth or income referred to in Article 82 paragraph (2) cannot be done then to corporations subject to criminal replacement in the form of license revocation or dissolution of the corporation.

b). Position and arrangement Crime Protect Animals in the Comparative Study with Other Countries

Comparative studies in criminal law by comparing some of the settings in other countries said to be very important because, according Sudarto, there are two benefits of studying a foreign legal system that:

- a. General
  - 1) Giving satisfaction for people who want to know a scientific nature;
  - 2) Deepening the sense of community and cultural institutions themselves;
  - 3) Bringing critical attitude towards its own legal system.

**b. Which are special**

In connection with the national principle espoused active in our Criminal Code. Different from the above description, the comparison of criminal law on

protected animals will be discussed, among others, from the UK and Thailand, which includes the setting of the crime of protected animals. Van Apeldorn itself distinguishes comparison purposes legal in theoretical goals and objectives that are practical. Theoretical purpose described the law as a symptom of the world (universal) and therefore the science of law must be able to understand the phenomenon of the world; and for it to be understood law in the past and in the future legal sekarang. Practical purpose nature of comparative law is a tool to help public order and national legal reform as well as provide knowledge about the various regulatory and legal minds to the legislators and judges.

#### **a. Thailand**

Law on animal mistreatment in Thailand is Wild Animal Reservation and Protection act BE 2535 (1992), a special law is set up with a clear procedure on how the animals and their parts if people want to hunt, breed, Had, trading Results of Wildlife, wildlife and Sections are. In Act No. 5 of 1990 there was no regulation regarding the above is clearly due to the discussion about the preservation and use of animals and plants regulated further by Government Regulation

#### **1. The offenses**

Before discussing the criminal act in this particular legislation, we can look at the Criminal Code provisions on trial in Thailand as the parent of the sub-systems of special rules, which are set in Article 80-82 first book about "general provisions". The terms or elements may be punished by experiment formulated in Article 80 as follows:

Sub 1:

"Whoever commences to commit an offense, but does not carry it through, or carries it through but does not Achieve its end, is said to attempt to commit an offense".

(Said to be experimenting crime, whoever committed a crime, but did not finish it, or carry it out but did not achieve the outcome / goal)

Sub 2:

"Whoever attempts to commit an offense shall be liable to two thirds of the punishment provided for such offense".

(Whoever tried with a criminal offense shall be convicted of two thirds of criminal threats in charge for the criminal offense in question)

From the formula above shows that the elements of a crime under the Criminal Code trial Thailand, are:

a. Has started doing a crime (so has no beginning implementation)

b. But implementation was not completed, or the outcome / result is not achieved its goal

So in the Thai Criminal Code does not distinguish between types of criminal offense and the offense, but only using specific terms offenses in the second book in book III petty offenses.

#### **2. Criminal Liability**

The formulation of the Articles contained in Chapter 8 of its criminal sanctions almost all of his responsibilities imposed on people, it can be proven

from the elements "whoever" and "no one". There are regulations on criminal acts committed by a corporation or legal entity in the specific laws of Thailand precisely in Article 59. The criminal liability of a legal person, there is controversy in Thailand is a legal entity can be the subject of a criminal offense and liable responsibility.

#### **3. Crime and Punishment**

Based on the formulation of the Articles in Chapter 8 of the Act sanctions in particular Thailand, there are 3 sub that can be analyzed, namely;

1. Straafmaht (length of criminal sanctions)

Under Article 54 of Law Reservation and Protection of Thailand's wildlife duration of criminal sanctions is not exceeding 7 years or a fine not exceeding 100,000 baht.

2. Straafsoort (Criminal Type)

Under Article 47,48,49,50,51,52,53,54,55,56 Reserve Act and the Protection of Wildlife Thailand, the type of sanction in the form of prison and fines. It also applies sanctions deprivation of goods contained in Article 57 and 58.

3. Straafmodus (Criminal Threats Formulation System)

Under Article contained in Chapter 8 of the sanctions, the formulation of the system of criminal threats contained in the Articles of this is the formulation of a system of alternative threat / cumulative or combined for use "or / and", where judges can impose two types of simultaneously existing criminal threats , or can only choose one course

### **3. CONCLUSION AND RECOMMENDATION**

#### **3.1. Conclusion**

Based on the discussion that has been described above can be concluded as follows:

1. The current criminal law policy, especially policy formulation criminal acts protected animals there are still some lack synchronized between host systems Penal Code with a special law governing the crime of protected animals both on the issue of crime, issues of criminal responsibility and criminal matters and punishment that can cause problems juridical.

2. mistreatment of animals in the future have been listed in the draft RKUHP 2012, his efforts only limited protection to animals in general, not devoted to the animals should be protected because of danger of extinction. Based on the study of various countries (England and Thailand) there are still some weaknesses in the Act specifically we are no arrangements regarding the criminal acts committed by the corporation and the absence of sanctions against the difference between wildlife from nature and wildlife bred in captivity

#### **3.2. Suggestion**

Based on the above conclusion, the authors recommend the following:

1. The system also threats specific minimum sentencing guidelines for setting the minimum system specific threats must be contained in the Act which are criminal acts protected wildlife in Indonesia.

2. Should criminal liability for corporations and the sentencing guidelines for corporations as well as set out in the Criminal Code Concept 2012 must be contained in the law governing the crime of protected animals.

3. Should the issue of sanctions (strafmaat) needs to be increased due to a maximum of 5 years in prison and a maximum fine of Rp 100,000,000 , - ( One hundred million ) is too small and moreover there is no setting specific minimum guidelines giving rise to disparity of criminal

4. The setting of repetition crime (recidivist) needs to be set considering the repetition of criminal offenses in the Criminal Code set in books II and III of the book so it only applies to criminal offenses in the Criminal Code alone .

5. The need to enter a study on the crime of protected animals in RKUHP that will come due in the current

Criminal Code and the draft 2012 only includes the usual crimes against animals

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#### **INTERNET**

Wildlife\_Reservation\_Protection\_Act\_2535\_en.pdf



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