



# Judicial Considerations and Policy Gaps in Combating Wildlife Trade Crime

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## Abstract

**Introduction:** Wildlife trade is a form of environmental crime that has serious impacts on biodiversity. Ambon City, as part of the Eastern Indonesia region which is rich in endemic species, is also a location for criminal acts of protected wildlife trade. This can threaten the survival of species and their ecosystems.

**Purposes of the Research:** The purpose of this study is to examine and analyze the policy of combating wildlife trade in Ambon City, both in terms of penal (criminal law) and non-penal (non-criminal law) efforts, and to assess the basis for judges' considerations in imposing criminal sentences on perpetrators. This study uses a normative legal research method with a statutory approach and a conceptual approach.

**Methods of the Research:** This research uses normative juridical using primary, secondary, and tertiary legal materials. The collection technique is done through literature studies in the form of books, scientific works, and other literature.

**Findings of the Research:** This research shows that efforts to tackle wildlife trade crime in Ambon City are still very weak. Based on a study of two Ambon District Court decisions (No. 327/Pid.Sus-LH/2023/PN Amb and No. 242/Pid.Sus-LH/2024/PN Amb), it was found that law enforcement has not provided an optimal deterrent effect. The penalties imposed on perpetrators tend to be light and disproportionate to the environmental damage caused. This study also found that non-penal efforts such as legal education, environmental monitoring, and community empowerment have not been effective. In addition, public understanding of the law on wildlife protection is still low. Thus, a more integrative policy between penal and non-penal (preventive and educative) approaches is needed to effectively and sustainably tackle wildlife trade in Ambon City.

**Keywords:** Prevention Policy; Crime; Wildlife Trade.

Submitted: 2025-06-30

Revised: 2026-06-28

Accepted: 2026-06-29

Published: 2026-06-30

How To Cite: Yemima Nurhayati Simanjuntak, Yanti Amelia Lewerissa, and Carolina Tuhumury. "Judicial Considerations and Policy Gaps in Combating Wildlife Trade Crime." *TATOHI: Jurnal Ilmu Hukum* 6 no. 4 (2026): 147-159. <https://doi.org/10.47268/tatohi.v6i4.3257>

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## INTRODUCTION

Indonesia is a country with a very large territory and extraordinary natural wealth, known as one of the countries with the highest biodiversity and non-biological in the world. As a tropical country with abundant natural resources, Indonesia is included in the category of mega-biodiversity countries. This provides great opportunities for the community to utilize natural resources, both biological and non-biological. In 2024, Indonesia is reported to have around 27,500 species of flowering plants, including a diversity of palms covering more than 477 species, with 255 of them recognized as national flora. In addition, Indonesia is the second most biodiverse country in the world, with around 300,000 species of wild animals, covering around 17% of the total wild animal species worldwide, Indonesia is also home to 10-15% of all flowering plant species and 10% of the total species of living things in the world.<sup>1</sup>

<sup>1</sup> Johan Iskandsar, *Keanekaanan Hayati Jenis Binatang: Manfaat Ekologi Bagi Manusia*, (Yogyakarta: Graha Ilmu, 2015), p. 1.

This natural wealth requires proper management and protection to preserve the existing natural resources. Therefore, it is very important to protect natural resources and endangered species. Indonesia has established an important policy, namely, Protection of biological natural resources in Indonesia which is regulated in Article 21 Paragraph 2 Letter a of Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems which states that everyone is prohibited from catching, injuring, killing, storing, owning, maintaining, transporting and trading protected animals either alive or dead.<sup>2</sup> And there are several regulations governing protected wildlife as stated in the Regulation of the Minister of Environment and Marine Affairs of the Republic of Indonesia Number: P.106/MENLHK/SETJEN KUM.1/12/2018 concerning the second amendment to the Regulation of the Minister of Environment and Marine Affairs of the Republic of Indonesia Number: P.20/MENLHK/SETJEN KUM.1/6/2018 concerning Protected Plant and Animal Species, which has been stipulated. In addition, Indonesia is one of the countries that has ratified the convention on international trade in endangered plants and animals (Convention on International Trade in Endangered Species of Wild Fauna and Flora), known as CITES. As one of the ratifying countries, Indonesia has the right to Parties or COP).<sup>3</sup>

Wildlife is all animals that live naturally on land, water, or air that still have natural characteristics, both those that live independently or those that are kept by humans. Wildlife conservation aims to protect species of wild plants and animals so that they can be utilized sustainably for the present and future generations. Protection of the economic life support system, species, and ecosystems is the main priority of this issue. However, the determination of conservation areas by the government often does not meet the requirements as wildlife protection areas. Problems such as neglected community rights, encroachment, hunting, wildlife trade, and forest fires and so on are serious threats that can cause the extinction of plants and animals.<sup>4</sup> Therefore, stronger and more effective measures are needed to protect Indonesia's natural heritage.

These animals are very difficult to find in their natural habitat. Many habitats and the extinction of several animal species have been damaged by various irresponsible human actions. Human activities, especially forest conversion for plantation development, mining, settlement expansion, transmigration, and other infrastructure development, are the biggest threats to the sustainability of these animals. Various activities often cause conflicts between humans and animals, which often cause casualties on both sides and often even cause animals to be displaced from their habitat. Hunting and illegal trade in animals and their derivative products are other human activities that directly cause the loss of animals from their natural habitat.<sup>5</sup> Illegal hunting and trade of wildlife and their derivatives are other human activities that directly cause these animals to be removed from their natural habitat. The increase in commercial demand for illegal wildlife products ranging from skins, bones, fangs, and meat has led to increased hunting of these animals.

Cases of wildlife trafficking began to emerge when a network of illegal hunting and sales of rare animals was discovered, which initially occurred on a small scale but then developed

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<sup>2</sup> Salim, *Dasar-Dasar Hukum Kehutanan*, (Jakarta: Sinar Grafika, 2008), p. 41.

<sup>3</sup> Abdullah Marlang, and Rina Maryana, *Hukum Konservasi Sumber Daya Alam Hayati dan Ekosistemnya*, (Bogor: Mitra Wacana Media, 2015), p. 88.

<sup>4</sup> Ahmad Redi, *Hukum Sumber Daya Alam Dalam Sektor Kehutanan*, (Jakarta: Sinar Grafika 2014), p. 2.

<sup>5</sup> *Ibid*, p. 1.

into a big business due to high demand in both domestic and international markets.<sup>6</sup>The Aru Islands are an area targeted by hunters to carry out illegal trade, one of which is the discovery of several endemic bird species, such as the Maluku Perling (*Aplonis Mysolensis*), Eagle (*Accipitriidae*), Kingfisher (*Alcedinidae*), Pigeon (*Columbidae*), Parrot (*Psittacidae*), and Greater Bird of Paradise (*Paradisaea Apoda*).<sup>7</sup>The bird of paradise is very famous and appreciated for its beauty. However, the high level of hunting and the high selling price make this bird often hunted for trade, both as goods for sale and souvenirs, resulting in its population continuing to decline. One of them is the case of protected wildlife trade in the Maluku Province. The animals are the Yellow-rumped Cockatoo (*Latin name Cacatua Sulphurea*) alive, the Black-headed Kasutri bird (*Lorius Lory*) tied to a wooden perch, the Black-headed Lory (*Chalcopsitta Atra*), the Green-headed Katsuri bird (*Lorius Lory*), the Green-headed Parrot (*Ecletus Rotatus*) and the Red-headed Parrot (*Ecletus Rotatus*). In reality, these animals are often traded out of the Maluku Province.

Maluku Province, especially Ambon City, is an area with a high level of biodiversity, including protected endemic animals. However, this richness has made it an easy target for the rampant illegal wildlife trade. One prominent case is the trade of protected birds such as the Yellow-billed Cockatoo (*Cacatua sulphurea*), Black-headed Parrot (*Lorius lory*), Black Parrot (*Chalcopsitta atra*), and Moluccan Parrot (*Eos bornea*), which are traded without official permits. Modes of trade include the use of social media as a means of promotion and transaction, with perpetrators disguising their activities through digital communication and hidden shipments by sea. Two concrete cases were revealed by the authorities, namely against the defendant Eman Suratman and the defendant Najwa alias Mama Putri, who were both caught red-handed trading protected birds in a live state, contrary to the provisions of Article 21 paragraph (2) letter a jo. Article 40 paragraph (2) of Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems. This phenomenon reflects weak supervision, low public understanding of animal protection laws, and the suboptimal deterrent effect of existing law enforcement. Therefore, an in-depth analysis of penal and non-penal policies in tackling wildlife trade crimes, especially in Ambon City, is needed as a form of scientific contribution and applicable policy solutions.

## METHODS OF THE RESEARCH

This research uses a normative legal research method that focuses on the study of relevant laws and regulations. The approaches used include statute approach, conceptual approach, and case approach. The legal materials used consist of primary, secondary, and tertiary legal materials. Data collection techniques were carried out through literature studies of legal documents, books, journals, and experts' opinions.

## RESULTS AND DISCUSSION

### A. Policy for Combating Wildlife Trade Criminal Acts in Ambon City

#### 1. Crime Prevention Policy Concept

The concept of prevention policy is a systematic, planned, and structured effort carried out by the state or authorized agencies in preventing, reducing, and handling crimes that occur in society. Overall, this policy is part of criminal policy, which includes a series of

<sup>6</sup> Aholiab Watloly. Konsep Diri Masyarakat Kepulauan. *Jurnal Filsafat* 22, no. 2 (2012).

<sup>7</sup> Yanti Amelia Lewerissa. "Kebijakan Kriminal Perburuan Burung Wallacea Di Kepulauan Aru" *Sasi* 27, no. 3 (2021): 303-313.

rational and scientific-based efforts to control and overcome crime, so as not to damage the existing social order. This policy is one part of law enforcement policy. Meanwhile, law enforcement policy itself is part of social policy and legislative policy that aims to achieve public welfare.<sup>8</sup> Muladi stated that criminal policy can be called a crime prevention policy because its scope is very broad and the problems are quite complicated. This is understandable, because basically crime is a humanitarian problem as well as a social problem that requires special understanding. Crime is a social problem that continues to develop and is closely related to various conditions and structures in society that are very complicated in nature.<sup>9</sup>

According to Barda Nawawi Arief, efforts or policies to prevent and handle crime are included in the realm of criminal policy. In addition, this criminal policy is not affected by broader social policies, namely policies or efforts for social welfare and community protection.<sup>10</sup> In crime prevention, it is done through penal means, namely criminal law. Thus, criminal law policies, especially those related to the judicial aspect, must consider and direct towards the objectives of social policy, namely social welfare and community protection (welfare social defense).

The Sudartos, to put forward regarding criminal policy, namely: a) In a narrow sense, all principles and all methods form the basis for responding to violations of the law in the form of criminal acts; b) In a broad sense, this is the overall function of law enforcement, including the way the Courts work and the work of the police; c) In a broad sense he argues that all policies made by laws and formal institutions aim to maintain the central norms of society.

On another occasion, he found a simple definition of criminal politics as "the rational effort of society to overcome crime." This definition comes from Marc Ancel's definition, formulated as "a rational organization for the control of crime by society."<sup>11</sup> Based on the understanding expressed by Marc Ancel, G. Peter Hofnagels argues that "criminal politics is a rational organization for social responses to crime". There are various other definitions. From the perspective of criminal law policy, efforts to combat crime can be carried out using the following approaches: 1) Penal Approach in Criminal Policy: Penal policy according to Marc Ancel states that this "politics" is a science and art, and in the end, practical uniform regulations are better formulated, not only providing legislators, but also to the Courts involved in the law, as well as organizers or implementers of Court decisions. Based on Sudarto's understanding, he said that the implementation of "criminal law policy" means celebrating the election to achieve better criminal law in the sense of meeting the requirements of justice and efficiency; 2) Non-Penal Approaches in Criminal Policy: Non-penal policy or an approach outside criminal law, is an effort made through coaching and other non-formal education. This approach emphasizes more on the preventive aspect, which focuses on prevention, mitigation, and control before the crime occurs; 3) Integrated Approach in Criminal Policy: The integrated approach is a combination of penal and non-penal approaches.

From the explanation, it can be seen that criminal policy focuses on firm action after a crime has occurred. This includes determining what should be categorized as criminal and

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<sup>8</sup> Andi Rusandi Purnama, *Kebijakan Penanggulangan Tindak Pidana Lingkungan Hidup: Bunga Rampai Kebijakan Pidana di Indonesia*, (Surabaya: LaksBang Pressindo, 2018), p. 134.

<sup>9</sup> Paul Hadisuprpto, *Juvenile Delinquency*, (Bandung: Citra Aditya Bakti, 1997), p. 732.

<sup>10</sup> *Ibid*, p. 97.

<sup>11</sup> Marc Ancel, *Social Defence: A Modern Approach to Criminal Problems*, (London: Routledge and Kegan Paul Ltd, 1998), p. 209.

what sanctions should be given to violators. In contrast, non-criminal policy tends to prevent before a crime occurs, by focusing on addressing the factors that trigger the emergence of crime directly or indirectly.

## 2. Wildlife Trade Crime

Indonesia is blessed by God Almighty with abundant natural resources, both on land, at sea, and in the air. Natural resources in Indonesia are divided into two types, namely biotic and abiotic natural resources. Biotic resources consist of all living things, including resources from plants and animals. These two types, together with the non-living elements around them, create a balanced ecosystem. Indonesia's biotic natural resource wealth is truly amazing, making it one of the countries with the highest biodiversity in the world. In terms of wildlife, Indonesia ranks first in the world for the number of mammal species, reaching 515 species. In addition, Indonesia ranks fourth globally for the number of bird species, namely 1,539, and ranks third in the world for reptiles, with 600 species.<sup>12</sup>In fact, around 45% of the world's total fish can be found in Indonesian waters. The distribution of fauna in Indonesia is divided into three geographic regions: fauna in the West, Central, and East. With a very high level of flora and fauna diversity, Indonesia is known as a country rich in biodiversity. One of the actions that still often occurs and violates the law in animal protection is the trade in protected animals. Illegal trade in protected animals is considered one of the largest transnational crimes in the world, after drug trafficking, weapons, and human trafficking. This crime involves an organized criminal network and has strong financial support.

One of the legal regulations related to the issue of endangered species trade is Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems (hereinafter abbreviated as the Conservation of Natural Resources and Their Ecosystems Law). This regulation explains the principles of implementing the preservation of biological natural resources and ecosystems, which aims to maintain the sustainability and utilization of natural resources and ecosystems in a balanced and sustainable manner. The purpose of this regulation is to change the way people think to love and protect the environment more, including biological natural resources and the ecosystems within it.<sup>13</sup> Criminal liability for perpetrators of protected wildlife trade is regulated in the Conservation of Natural Resources and Their Ecosystems Law. However, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (Law on the Prevention and Eradication of Money Laundering) regulates criminal liability for corporations and individuals.<sup>14</sup> One way to identify the intentional and negligent conduct of a company based on psychological issues and mental attitudes is to determine whether the differences in the actions of the directors are actually related to corporate politics or to the actual activities of the company. The legal entity must be responsible for the actions of the directors.

There are still many people in Ambon City who do not understand the law regarding wildlife protection, as in the case of Najma alias Mama Putri and Eman Suratman. Najma was arrested in August 2023 for trading 12 Moluccan parrots (*Eos Bornea*) without an

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<sup>12</sup> Lilik Mulyadi, *Hukum Pidana dalam Perspektif*, (Jakarta: Sinar Grafika, 2019).

<sup>13</sup> Abdullah Marlang, Rina Maryana, *Hukum Konservasi Sumber Daya Alam Hayati dan Ekosistemnya*, (Bogor: Mitra Wacana Media, 2015), p. 88.

<sup>14</sup> Eva Syahfitri Nasution, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Pencucian Uang." *Jurnal Mercatoria* 8, no. 2 (2015): 132-144. <https://doi.org/10.31289/mercatoria.v8i2.652>

official permit, which she bought from the people of Seram and South Buru for resale. Meanwhile, in June 2024, Eman Suratman was caught selling seven protected species such as the Yellow-billed Cockatoo, Black-headed Parrot and Black Parrot, which he obtained from Fakfak and smuggled using the ship he worked on. Both cases were uncovered through undercover operations by police and Natural Resources Conservation Center officers, and demonstrate the weak understanding of the law and supervision of the local animal trade. Their actions violated Minister of Environment and Forestry Regulation No. P.106/Menlhk/Setjen/Kum.1/12/2018 on protected plant and animal species.

### 3. Policy for Combating Wildlife Trade Crimes in Ambon City

The comprehensive policy of animal and plant protection in Indonesia is regulated by Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems (Biological Natural Resources and Ecosystems Conservation Act). Biological natural resources and their ecosystems include living and non-living elements (both physical and non-physical). All of these elements interact with each other and can influence each other, including in terms of extinction which is an element that cannot be replaced by others. Conservation efforts and actions carried out aim to protect species diversity, including ensuring that these elements do not become extinct, so that each element can play a role in the ecosystem and is always available for use for human welfare.<sup>15</sup>

In Ambon City, legal policies related to wildlife trade are protected by a combination of local regulations and national laws. Until now, there has been no Ambon City Regional Regulation that specifically regulates wildlife trade. However, there are several regulations related to the management of natural resources and the environment, such as:

Ambon City Regional Regulations: 1) Ambon City Regional Regulation Number 3 of 2017 concerning Public Order and Security, which regulates guidance, control, and supervision in the field of public order; 2) Ambon City Regional Regulation Number 8 of 2017 concerning the State, which regulates the State government and the authority of the State; 3) Ambon City Regional Regulation Number 25 of 2012 concerning the Organization and Work Procedures of the Ambon City Regional Disaster Management Agency, which regulates the organization and work procedures of the regional disaster management agency. These regulations do not directly regulate wildlife trade, but can provide a legal basis for actions related to public order and natural resource management.

## B. Basic For Judges' Considerations in Criminal Decisions Against Wildlife Traders

### 1. Criminal and Penalty

The use of the words "punishment" and "criminal" often experiences difficulties in different assessments. When examined more deeply, both in terms of meaning, significance, and the goals to be achieved, there are fundamental differences between these two terms. The term "punishment" comes from the Dutch word "straf", which in the context of the verb means the action of "being punished". The word "punishment" is a common and frequently used term, so it has varying meanings and can change according to context. This term does not only appear in the context of law, but is also often used in everyday life in the fields of education, morals, religion, and others. Moeljatno stated that the use of both terms is conventional, so Moeljatno does not agree with the use of the terms. According to Moeljatno,

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<sup>15</sup> Jhon Sahusilawane and Lesly Latupapua "Konservasi Satwa Liar Berbasis Kearifan Lokal di Negeri Hutumuri Kecamatan Leitimur Selatan Kota Ambon." *Jurnal Inovasi Penga* 3, no. 2 (2023): 461-468.

the word "criminal" should replace the term "straf", and the phrase "threatened with criminal" comes from the phrase "wordt gestraf". This is not only related to criminal law, but also related to civil law. So Moeljatno emphasized:<sup>16</sup> Punishment in criminal law is usually synonymous with "sentencing" or the giving or imposition of a sentence by a judge. Thus, the term punishment can be narrowed in its meaning. Imposition in this case is the same as "sentence conditionally" or "*voorwaardelijk veroordeeld*", which is the same as a conditional sentence.<sup>17</sup> In several Indonesian laws and regulations, both pure criminal law and administrative penal law, it seems that the use of the terms "criminal" and "punishment" is more often used, even in the Concept of the Criminal Code which is abbreviated as the New Criminal Code. Because the term "criminal" is a more specific term, there needs to be a limitation of the main understanding or meaning that can describe its characteristics or properties. Roeslan Saleh describes criminal punishment as "a reaction to a crime in the form of suffering or misery that is deliberately inflicted by the state on the perpetrator of the crime", while R. Soesilo describes criminal punishment as "an unpleasant feeling (misery) imposed by a judge with a verdict, on people who violate the criminal law."<sup>18</sup> The following are several criminal definitions according to legal experts as follows: 1) According to Sudarto, punishment is suffering that is deliberately imposed on people who commit acts that meet certain requirements; 2) According to Alf Ross, punishment is aimed at causing suffering to the person concerned; 3) According to Sir Rupert Cross, punishment is suffering, pain given to someone who has been punished for an act; 4) According to Burton M. Leiser, criminal punishment is a punishment for a crime imposed on a person or another person who has been judged/sentenced for violating the rules or breaking a law.

From the several definitions above, it can be concluded that criminal acts contain the following elements or characteristics: 1) Basically, punishment is suffering, sadness, or other unpleasant consequences that are the result of suffering; 2) The punishment was given intentionally by a person or body that has power (by the authorities); 3) This punishment is imposed on someone who has committed a crime according to the law.<sup>19</sup>

The three components are clearly visible from the definition above, except for Alf Ross, who explicitly adds that punishment must also be a statement of reproach against the perpetrator. The purpose of Alf Ross's addition is to clearly distinguish between punishment and action (treatment). According to Alf Ross, the "concept of punishment" is based on two conditions or objectives, namely: 1) Criminal punishment is aimed at imposing suffering on the person concerned; 2) The punishment is a statement of condemnation of the perpetrator's actions.

According to Hulsman, closely related to the criminal justice system, criminal justice can be defined as "statutory rules relating to penal sanctions and punishment".<sup>20</sup> All provisions of the Law that regulate the application or implementation of criminal law so that someone is subject to sanctions (criminal law) are included in the criminal system if criminal law is broadly defined as the process of giving or imposing criminal law by a judge. Thus, all regulations related to Substantive Criminal Law, Formal Criminal Law, and Criminal Implementation Law can be considered as part of the criminal system.

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<sup>16</sup> Wawan Purwanto, "Perkembangan Teori Pidana di Indonesia," *Jurnal Hukum dan Pembangunan* 48, no. 3 (2018): 455-470.

<sup>17</sup> *Ibid.*, p. 2.

<sup>18</sup> Bambang Waluyo, *Pidana dan Pidana*, (Jakarta: Sinar Grafika, 2000), 9.

<sup>19</sup> Raden Soesilo, "Fungsi Pidana dalam Sistem Peradilan Pidana" *Jurnal Kriminologi Indonesia* 9, no. 1 (2014): 43-56.

<sup>20</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: Citra Aditya Bakti, 1996).

Punishment, or punishment, is intended to encourage convicts to regret their actions and become good citizens who obey the law, respect moral, social and religious values, so as to create a safe, orderly and peaceful society.<sup>21</sup>In terms of criminal law in Indonesia, the main law is the Criminal Code. Therefore, the types of crimes regulated in Article 10 of the Criminal Code are: a) Principal criminal offences include: 1) Death penalty; 2) Imprisonment; 3) Imprisonment; 4) Criminal fine. b) Additional penalties include: 1) Revocation of certain rights; 2) Confiscation of certain goods; 3) Announcement of the judge's decision.

Punishment is conventionally divided into two main theories, namely retributive theory and utilitarian theory. Retributive theory highlights that punishment is given as a form of retribution for criminal acts that have been committed, with the aim of fulfilling justice (Kant, Hegel). On the other hand, utilitarian theory views punishment as an effort to prevent crime in order to protect society, is progressive and aims to be rehabilitative. Subsequently, a combination theory emerged that combines aspects of retribution, general deterrence, and reparation for the offender. In this model, punishment is not only repressive, but also educative and corrective, especially in the context of modern correctional systems. This approach rejects traditional methods of imprisonment that result in physical and mental suffering, and emphasizes a gradual process of rehabilitation to help offenders return to being productive members of society. In the realm of the new Criminal Code, the purpose of punishment is to prevent crime, guide the convicted person, solve social problems, and reduce guilt, without degrading human dignity. In sentencing, judges need to consider the principles of legality, culpability, proportionality, and individualized sentencing arrangements. Sentencing alternatives such as restorative justice and social work reflect the fairer direction of modern sentencing. In cases related to the environment such as wildlife trafficking, punishment also serves as an educational tool for the community and a form of protection for natural resources. Therefore, punishment does not only function as a means of revenge, but also as a means of achieving legal order, social justice, and sustainable protection of ecosystems.

## 2. Study of Decisions Against Wildlife Traders

Crimes related to wildlife protection are one type of environmental crime that is highly considered in the Indonesian criminal law system. This crime threatens the sustainability of certain species in addition to threatening the balance of the ecosystem and the sustainability of human life. Therefore, criminal law plays an important role in securing natural resources because it prohibits illegal hunting, possession, transportation, and trade of protected animals. To implement laws prohibiting wildlife trade, strictness in the application of criminal standards is needed. Not only must punishment be imposed, but it must also be able to provide a deterrent effect to the perpetrators and society as a whole and be a means of legal education to raise awareness of the importance of conservation. In this case, the Court's decision serves as an important tool to show the extent to which the purpose of punishment has been achieved. To gain a better understanding of how punishment is used in wildlife trade cases, it is necessary to conduct an investigation into the Court's decision. The purpose of this study is to look at legal considerations, the application of standards, the types of punishment imposed, and the extent to which rehabilitative, preventive, and educational elements of punishment are used.

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<sup>21</sup> Gatot Supramono, *Hukum Acara Pengadilan Anak*, (Jakarta: DPukulbatan, 2000), p. 200.

One specific example that is relevant to study is Decision Number 327/Pid.B/LH/2023/PN Amb, which involved a defendant in a criminal act of trading in the Maluku Parrot, a protected wildlife. Another decision, Decision Number 242/Pid.Sus-LH/2024/PN Amb, will be discussed in detail and descriptively. It contains information about protected wildlife that is closely related to the Protection of biological natural resources in Indonesia as regulated in Article 21 Paragraph 2 Letter a of Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems, which states that everyone is prohibited from catching, injuring, killing, keeping, possessing, maintaining, transporting and trading protected animals either alive or dead.

In Case Decision Number 327/Pid.B/LH/2023/PN Amb, there is Article 21 paragraph (2) letter a in conjunction with Article 40 paragraph (2) of the Republic of Indonesia Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations: 1) a). Declaring that the Defendant Najma alias Mama Putri has been proven legally and convincingly guilty of committing the crime of "trading in protected animals in a living condition" as stated in the sole indictment of the Public Prosecutor; b). To sentence the Defendant to imprisonment for 1 (one) month and a fine of IDR. 500,000 (five hundred thousand rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 1 (one) month; 2) Determining that the length of the arrest and detention period served by the Defendant is deducted in full from the sentence imposed; 3) Determine that the Defendant remains in detention; 4) Determine the evidence in the form of: -1 (one) wooden drum whose sides are all covered with iron rams containing 12 (twelve) Maluku parrots (Latin name *Eos Borneo*) Returned to Natural Resources Conservation Center; 6. Charge the Defendant to pay court costs of IDR. 5,000,- (five thousand rupiah);

Decision Number 242/Pid.Sus-LH/2024/PN Amb Taking into account, Article 21 paragraph (2) letter a Jo Article 40 paragraph (2) of the Republic of Indonesia Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations: 1) Declaring that the Defendant Eman Suratman alias Eman has been proven legally and convincingly guilty of committing the crime of "trading in protected animals in a living condition" as stated in the sole indictment of the Public Prosecutor; 2) Sentencing the Defendant to imprisonment for 1 (one) year and a fine of Rp. 2,000,000 (two million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 3 (three) months; 3) Determining that the length of the arrest and detention period served by the Defendant is deducted in full from the sentence imposed; 4) Determine that the Defendant remains in detention; 5) Determine the evidence in the form of: a) 1 (one) white plastic sack used as a 50 kg rice sack tied with rope, inside which there is 1 (one) yellow-crested cockatoo (Latin name *cacatua sulphurea*) in a living condition; b) 1 (one) blue and white plastic sack used as a 10 kg rice sack, tied with rope, inside which there is 1 (one) black-headed lory bird (Latin name *Lorius lory*) in a living condition, tied to a wooden perch; c) There is 1 (one) blue and white plastic sack used as a 20 kg rice sack tied with a rope; d) 1 (one) black parrot (*lating name Clalcopsitta Atra*) tied up alive; d) 1 (one) green cloth bag tied with a string inside which contains 1 (one) Papuan green-headed Kasturi bird (*lating name Lorius Lory*) alive; e) 1 (one) bird cage made of iron in which there are 3 (three) black parrots (*lating name Clalcopsitta Atra*) alive; f) 1 (one) cage made of iron containing 1 (one) green parrot (*lat. name Ecletus Rotatus*) and 1 (one) red parrot (*lat. name Ecletus Rotatus*)

alive. Returned to their habitat through the Maluku Province Natural Resources Conservation Center; g) 1 (one) unit of yellow Samsung A155F brand cellphone with SIM card; h) 2 (two) bird cages made of iron were destroyed; 6). Charge the Defendant to pay court costs amounting to Rp. 5,000 (five thousand rupiah). This shows that this wildlife trade has extraordinary benefits, and of course it will make the perpetrators addicted to continue doing it because the work is easy and the benefits that really guarantee economic growth. Although he has the risk of punishment and can be imprisoned, his opinion is not too important because the punishment given is quite light for a fairly large case.

### 3. Basic Considerations of Judges in Handing Down Criminal Verdicts Against Wildlife Traders

Judges in imposing criminal penalties must be in order to uphold truth, justice and legal certainty. Judges must impose penalties to uphold truth, justice and legal certainty. So, it is not just a formality, revenge, or work habits. In terms of criminal procedure law, the main goal is to find material truth. In fact, the broader goal of seeking and finding material truth is only the ultimate goal of the entire Indonesian legal order, namely to realize a safe, peaceful, just and prosperous society.<sup>22</sup>As enforcers of law and justice, judges are also required to explore, follow, and understand the legal values that exist in society. Because they are the formulators and diggers of these values, judges must plunge into society to know, feel, and be able to live the legal feelings and sense of justice that exist in society, so that they can make decisions that are in accordance with the law and sense of justice.

Based on Law Number 48 of 2009 concerning judicial power, Article 50 paragraph (1) states that a court decision must not only contain the reasons and basis for its decision, but must also contain an article from relevant legislation or an unwritten legal source used as a basis for the court.<sup>23</sup>In addition, the position of an impartial judge also known as an impartial judge must be discussed in relation to the independence of the judge. Since the judge must side with the right when making a decision, the term "impartial" must be interpreted non-literally. An impartial judge in this case is considered to be impartial in his considerations.<sup>24</sup>The verdict is referred to as a final verdict is the final result of the examination of a trial case in the Court. The Court's decision is the output in the trial process in the Court hearing which will go through an examination process involving the examination of witnesses, defendants, additional evidence, and other evidence.<sup>25</sup> With this Court decision, the parties in the criminal case, especially the defendant, can be sure regarding the legal certainty of their status and can also take legal action in the legal efforts taken such as appeal or cassation, pardon, and so on. The Court's decision can be in the form of a criminal sentence imposed on the defendant if the panel of judges is of the opinion that the defendant has been legally and convincingly proven to have committed the crime charged against him. An acquittal (*vrijspraak*) is imposed on the defendant if the panel of judges is of the opinion that the defendant has not been legally and convincingly proven to have committed the crime charged against him.<sup>26</sup>

The judge's decision is closely related to how the judge expresses his/her opinion or consideration based on the facts, evidence, and the judge's belief about the case. Therefore,

<sup>22</sup> Prasetyo Teguh, *Hukum Pidana*, (Jakarta: Raja Grafindo Persada, 2011), p. 32.

<sup>23</sup> Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, (Yogyakarta: Liberty, 2009), p. 63.

<sup>24</sup> Satjipto Rahardjo, *Hukum dan Masyarakat*, (Bandung: Citra Aditya Bakti, 2012), p. 56.

<sup>25</sup> Hamzah, Andi. *Hukum Acara Pidana Indonesia*. (Jakarta: Sinar Grafika, 2008) h.

<sup>26</sup> <https://www.undp.org/id/indonesia/projects/gef-combatting-illegal-wildlife-trade-ciwt>.

the judge plays an important role in making the Court's decision.<sup>27</sup> The Court's decision must consider the aggravating and mitigating factors. The judge uses this consideration when making his/her decision, whether it is regarding the sentence or other matters. Article 197 letter (d) and 197 letter (f) of the Criminal Procedure Code regulates the consideration of the aggravating and mitigating factors for the defendant.

In Article 197 letter d reads: "A summary of the facts and circumstances and the evidence obtained from the trial examination which forms the basis for determining the defendant's guilt." Meanwhile, Article 197 letter f reads: "Articles of the statutory regulations that are the basis for the criminalization or action and the statutory regulations that are the legal basis for the decision, accompanied by aggravating and mitigating circumstances for the defendant."

Judges have the responsibility to receive, examine, decide, and resolve every case submitted to them as law enforcers. Justice seekers really want cases submitted to the Court to be decided by professional judges with high moral integrity so that they can make decisions in accordance with the law. Chapter IX of the 1945 Constitution, Articles 24 and 25 and Law Number 48 of 2009 stipulate the existence of an independent judicial power. This is clearly stated in Article 24, especially in the explanation of Article 24 paragraph 1 and Law No. 48 of 2009 concerning Judicial Power, which stipulates that judicial power is an independent state authority to organize trials to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia to implement the Republic of Indonesia's Constitutional State.<sup>28</sup>

In law enforcement efforts against environmental crimes, especially wildlife trafficking in Ambon City, judges play a central role in ensuring the fulfillment of substantive justice and protection of biodiversity. This study analyzes two decisions of the Ambon District Court, namely Decision No. 327/Pid.B/LH/2023/PN Amb and Decision No. 242/Pid.Sus-LH/2024/PN Amb, which respectively tried the defendants Najma alias Mama Putri and Eman Suratman for 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. Judges in both cases applied a juridical approach by assessing the fulfillment of the elements of the offense formally, and strengthening the evidence based on the indictment, witness testimony, defendants, and evidence. The main element that was emphasized was the act of trading protected wildlife in a live state, which was proven in both cases.

But more than that, the judge also prioritized non-juridical considerations such as the defendant's socio-economic condition, legal status as a first offender, health condition, and cooperative attitude in the trial. This reflects the application of the principles of corrective and restorative justice, as well as a humanistic approach in sentencing. In Najma's case, the defendant was only sentenced to 1 month imprisonment and a fine of IDR.1,500,000, while in Eman Suratman's case, a heavier punishment was imposed in the form of 1 year imprisonment and a fine of IDR. 2,000,000 in lieu of 3 months imprisonment. The judges considered that these criminal offenses not only violate positive law, but also threaten ecological sustainability, and therefore punishments that have a deterrent effect are still needed.

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<sup>27</sup> [https://www.komisiyudisial.go.id/frontend/publication\\_detail/95](https://www.komisiyudisial.go.id/frontend/publication_detail/95).

<sup>28</sup> Nurliansyah R. M. Akbar, *Dasar Pertimbangan Hakim dalam Pengambilan Putusan atas Perkara Wanprestasi*, Skripsi, Universitas Muhammadiyah Yogyakarta, 2015, <https://repository.umy.ac.id/handle/123456789/16493>.

These decisions confirm that Law Number 5 of 1990 is more effective than Law Number 32 of 2004, as it provides a direct criminal law basis in the context of wildlife protection. In addition, the judges demonstrated a commitment to sustainable development goals (SDGs), environmental protection, and ecological justice that are integrated into the national legal system. Thus, judicial practices in wildlife trafficking cases in Ambon City reflect a form of progressive law enforcement that does not only comply with positive legal norms, but also considers substantive justice, ecological protection, and the sociological conditions of society.

## CONCLUSION

The study shows that the criminal justice response to wildlife trade crimes in Ambon City remains inadequate in creating a strong deterrent effect. Analysis of Decision No. 327/Pid.B/LH/2023/PN Amb and No. 242/Pid.Sus-LH/2024/PN Amb reveals that although the judges fulfilled formal legal elements and imposed criminal sanctions under Law Number 5 of 1990 on the Conservation of Living Natural Resources and Ecosystems, the penalties were relatively lenient compared to the ecological damage caused. However, the decisions also reflect a progressive judicial approach by considering not only legal factors but also socio-economic conditions, the health of the defendants, their remorse, and their status as first-time offenders. This shows the application of corrective and restorative justice principles in environmental crime sentencing. To effectively combat wildlife crime, a dual policy approach is needed—penal measures must be strengthened through proportional sentencing and improved enforcement, while non-penal efforts should focus on legal education, public awareness, and community empowerment. Furthermore, the study confirms that Law Number 5 of 1990 is more applicable and enforceable than Law Number 32 of 2004 in handling wildlife-related criminal cases. Therefore, future wildlife protection efforts in Ambon City and similar biodiversity-rich regions must adopt an integrated, humanistic, and ecologically conscious legal framework to ensure sustainability, legal certainty, and environmental justice.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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