

Juridical Analysis of The Judge's Decision in The Case of Protected Animals at The Denpasar District Court

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ABSTRACT

Objective: To analyze the considerations and inhibiting factors in criminal cases regarding protected animals in the Denpasar District Court, specifically in Decision Number 809/Pid.Sus/2024/PN Dps. **Method:** The case is analyzed based on the judge's considerations, including elements of intentionality, the defendant's ignorance, incorrect application of cumulative articles, and the use of justice and societal usefulness in decision-making. **Results:** The judge's considerations focused on intentionality, ignorance of the legal requirement for permits, and the application of the wrong articles. The defendant was not found guilty of committing a criminal act as the judge balanced legal certainty with justice and societal impact. **Novelty:** The case highlights the impact of outdated legislation, lack of coordination among law enforcement agencies, and the role of social media in facilitating the trade of protected animals.

INTRODUCTION

There are many cases of protected animal trade, some perpetrators cannot be convicted due to lack of public attention, but there are a handful of cases that have finally reached the court table, including the Denpasar District Court Decision Number 809/Pid.Sus/2024/PN.Dps, which is known as the Hedgehog case, where the defendant kept protected animals in the form of 4 (four) Hedgehogs because the defendant had a hobby with animals and had no intention of selling them. The animals owned and maintained by the defendant are protected animals in the form of protected wildlife as stipulated in Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems. One of the forms of consequences that disrupt and harm people's future is the animal business which causes disruption of ecosystem balancers and biological diversity, especially animals or rare animals whose conditions are very risky if not used properly [1], [2].

Problem Formulation

By looking at the above background, the formulation of the problem can be taken first, the basis for the judge's consideration in the criminal case of protected animals in the Denpasar district court, second, the factors inhibiting the judge in deciding the criminal case of protected animals in the Denpasar district court.

Purpose of Writing

This study aims to find out the basis of judges' considerations in criminal cases of protected animals, and the factors inhibiting judges in deciding criminal cases of protected animals.

RESEARCH METHOD

The research in the context of writing this thesis is normative research supported by empirical legal research (field). Normative legal research finds the truth based on the logic of legal science from its normative side. The empirical approach is research based on practice that occurs in the field, especially in the Denpasar District Court. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or in the form of an effort to find law that is tailored to a certain case [3].

RESULTS AND DISCUSSION

The Basis of Judge's Consideration in the Protected Animal Criminal Case at the Denpasar District Court

If the law is unclear, incomplete, or even non-existent, then the judge must search for the law or make a legal discovery. Judges are positions that have the responsibility to receive, process, and decide cases so that they do not cause problems again in the future. In mastering the law in accordance with the system adopted in Indonesia in the examination in court sessions. The judge must actively ask questions and give the opportunity to the defendant represented by the Legal Counsel to ask questions of the witnesses, as well as the Public Prosecutor. All of this is meant to find the material truth and in the end it is the judge who is responsible for everything he decides [4], [5].

A judge is obliged to uphold law and justice impartially. The judge in providing justice must first examine the truth of the event submitted to him and then give an assessment of the event and relate it to the applicable law. After that, the judge can only make a verdict on the incident. Today's increasingly complex life requires law enforcement and justice to meet the community's sense of justice. For the figure of a judge, it is very decisive through his decisions because in essence it is the judge who exercises the legal power of the judiciary for the implementation of judicial functions.

A judge's decision or statement pronounced in an open court hearing is called a court decision, as stipulated in Article 1 point 11 of the Criminal Code which states that: "A court decision is a judge's statement pronounced in an open hearing which can be in the form of a criminal or free or free from all lawsuits in the case and in the manner regulated in this law".

According to Alikodra, animals are all animals that live on land, water, and air that still have wild properties, both those that live freely and are maintained by humans, animals can also be interpreted as animals that live wild in the wild without human intervention. According to the Director General of Forest Protection and Nature Conservation, animals are all kinds of animal natural resources that come from animals that live on land, water, and air. Animals are better known as animals or animals, for example, cats, dogs, chickens, tigers, and many more, including animals that have a preserved or extinct population [5], [6].

Animals are divided into two types, namely protected animals and unprotected animals. While protected species are classified as endangered animals and animals whose

populations are rare, protected animals can be said to be rare, because their populations are small and need to be protected. Another meaning is a rare animal whose existence is almost extinct or whose existence is difficult to find. According to Johar Iskandar in his book entitled *Biodiversity of Animal Species*, it is stated that protected animals are types of animals that are very small and have a very slow level of development, both due to the influence of their habitat and ecosystem. One of the efforts to protect animals and the threat of extinction is to designate certain types of animals as protected animals, in Johar's opinion, based on Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems [7].

The panel of judges at the Denpasar District Court through Decision Number 809/Pid.Sus/2024/PN Dps handed down a free verdict (*vrijspraak*) against defendant I Nyoman Sukena because it was not legally and convincingly proven guilty of committing a criminal act as charged against him by the public prosecutor. I Nyoman Sukena was charged with a single charge, namely a criminal act as referred to in Article 21 paragraph (2) letter a jo Article 40 paragraph (2) of the KSDA-HE Law jo Government Regulation Number 7 of 1999 concerning the Preservation of Plant and Animal Species as reregulated in the Regulation of the Minister of Environment and Forestry Number: P.106/MENLHK. SETJEN/KUM.1/12/2018 concerning the Second Amendment to the Regulation of the Minister of Environment and Forestry Number: P.20/MENLHK/SETJEN/KUM.1/6/2018 concerning Protected Species of Plants and Animals, because they own and maintain protected animals in the form of four Javan Hedgehogs.

Article 21 paragraph (2) letter a of the KSDA-HE Law states that everyone is prohibited from capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a live state. Meanwhile, Article 40 paragraph (2) of the KSDA-HE Law states that anyone who deliberately 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 of 5 (five) years in prison and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). Based on the single indictment, the Panel of Judges considered the elements of the article charged, namely first, the element of whom, and the second regarding the element of deliberately capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a living state. There are several things that need to be considered for the considerations of the Panel of Judges in Decision Number 809/Pid.Sus/2024/PN Dps which lead to the defendant's acquittal from the charges, or in other words the defendant is acquitted. First, in considering the element of intentionality in the article on which the indictment is based, namely Article 21 paragraph (2) letter a jo Article 40 paragraph (2) of the KSDA-HE Law, the Panel of Judges is of the opinion that the element of "intentionality" must be interpreted broadly which is not only "intentionality as intention", but also "intentionality as certainty" or "intentionality as a possibility". However, of the three theories of intentionality, the Panel of Judges did not explain the location of the gap between the element of intentionality in the indictment against the

defendant and the theory of intentionality in question. The Panel of Judges in its consideration explained that "the element of intentionality can be interpreted as "willing and knowing", where the use of the word "could" in the consideration indicates that there are other possibilities known to the Panel of Judges in interpreting the "intentionality", but in its consideration it is not explained the reason as to why the element of "intentionality" must be interpreted or interpreted as "wanting and knowing". The element of "intentionality" that was not fulfilled as referred to by the Panel of Judges in its consideration included three things, namely first regarding the intentional intention to keep protected animals, second regarding trading protected animals in a state of life or continuing to exploit them for personal gain, and third regarding the defendant knowing and thinking that keeping the hedgehog was an unlawful act, which according to the Panel of Judges were not fulfilled. Second, the Panel of Judges accepted the reason that the defendant did not know about keeping the Javan Hedgehog with a valid permit, because in the village of Bongkasa where the Defendant lived, socialization about the Javan Hedgehog including protected animals had not been carried out and must have a valid permit if they wanted to keep it. Third, the application of the wrong cumulative article. Fourth, the Panel of Judges views that in assessing the defendant's actions, it does not only prioritize the approach of legal certainty but also looks at the sense of justice and usefulness in society."

Based on the aspect of legal certainty (in the sense of written law), the defendant should not be sentenced in the form of a criminal conviction because as the author has said before, that the acts as referred to in Article 21 paragraph (2) letter a of the KSDA-HE Law as the basis for the indictment are cumulative, which means that the defendant can be convicted if all the acts referred to in the article are fulfilled. Meanwhile, in the verdict, it was explained that it was true that the defendant kept four Javan Hedgehogs which are protected animals, but the elements of "trading" and "exploiting" were not met. Therefore, in this case, the legal arguments of the Panel of Judges in its consideration regarding not prioritizing legal certainty show the inconsistency of the position of the Panel of Judges and its lack of clarity in considering and assessing the defendant's actions based on the indictment. So that the legal certainty that was not put forward by the Panel of Judges under the pretext of seeing a sense of justice and usefulness in the community in the decision of this case is wrong. Because in this case, actually the Panel of Judges can still make a fair decision, namely a free verdict (*vrijspraak*) without having to obscure legal certainty [8], [9], [10], [11].

A court decision can be used as a reference or precedent for other judges in handling the same or similar case. So in this case, a quality criminal case verdict should be an obligation that must be realized by the judge in deciding a case. Quality decisions reflect the skills and professionalism of judges as a strong foundation in deciding a case to realize justice through their decisions. Court decisions are needed to provide answers and solutions to legal issues submitted to the judge, thus the judge is not allowed to refuse to examine a case submitted to him on the grounds that he does not know the law and this is an implementation of the principle of *ius curia novit* which means that the judge

is considered to know the law, so that the judge in his decision must contain adequate considerations with logical arguments and can accepted by the litigants, the wider community, and academics [12], [13].

Factors Inhibiting Judges in Deciding Protected Animal Criminal Cases at the Denpasar District Court

The crime of poaching against protected animals is a serious issue in ecosystem sustainability and biodiversity. Although there have been laws governing wildlife protection, enforcement of related laws is still hampered by several key factors. The number of cases of crimes against wildlife in Indonesia is a sign that there is still a weak law enforcement implemented through Law No. 5 of 1990 concerning the Conservation of Natural Resources (SDA) and its Ecosystems. The inhibiting factors in efforts to control wildlife referred to in Law No. 5 of 1990 include the following: a) Material factors of the law, Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems has made criminal sanctions quite heavy, However, in the implementation in the field, it can be said that it has not been effective. In the reality on the ground, law enforcement has been carried out through the threat of imprisonment which is lighter than those stated in the law so that it is not enough to have a deterrent effect against criminals against wildlife. Therefore, the perpetrator does not rule out the possibility of repeating his actions. b) Law Enforcement Apparatus Factors, There is no legal protection for protected species that are outside the protected area. c) Facilities and Facilities Factors, d) Community Factors, Public knowledge about protected animals is still low. e) Mass Media Factor. Mass media has a crucial role in shaping public opinion and accelerating public awareness [14], [15], [16].

In addition to the inhibiting factors above, there are still other inhibiting factors, namely from the international side. The occurrence of cases of trade in protected animals is not only within the domestic reach or throughout Indonesia, but there are several cases of trade in protected animals that occur abroad or internationally. Animals that are illegally hunted in domestic forests are sent or transacted abroad with the parties concerned. Law enforcement in Indonesia has difficulty handling and settling the case, if the evidence or the perpetrator is abroad. This is because the legal rules that are the basis of the protected animal trafficking case do not regulate cases that occur abroad. If law enforcement officials cannot be free to handle cases of trafficking in protected animals monitored from Indonesia to abroad, it will make the case difficult to solve and no longer achieve effective goals [17], [18].

CONCLUSION

Fundamental Finding : The judge's considerations in Decision Number 809/Pid.Sus/2024/PN Dps focused on four key points: intentionality, the defendant's ignorance regarding the required permit for maintaining the Javan Hedgehog, the application of the wrong cumulative article, and the overall assessment of the defendant's actions, which included not only legal certainty but also the sense of justice and societal usefulness. **Implication** : This case highlights the need for a more comprehensive

approach in legal assessments that balances strict legal application with the broader societal context and sense of fairness, beyond just the letter of the law. **Limitation** : The case is limited by the outdated legislation and the lack of coordination between relevant law enforcement agencies, which could hinder the effective enforcement of laws protecting endangered species. **Future Research** : Future research could explore the effectiveness of current legal frameworks in addressing wildlife protection, the role of social media in animal trafficking, and ways to enhance coordination among law enforcement agencies.

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