

The Urgency of Law Enforcement against the Trade in Protected Wildlife within the Framework of Maqashid al-Shariah

Sitti Hartika Sari¹, Andi Cakra Cindrapole², Arianty Anggraeny Mangarengi³

^{1,2,3} Faculty of Law, Universitas Muslim Indonesia, Indonesia

Surel Koresponden: muh.ibnu.fr@gmail.com

Abstrak: Perdagangan satwa liar yang dilindungi merupakan kejahatan lingkungan yang masih sering terjadi di Indonesia, meskipun telah diatur dalam Undang-Undang Nomor 5 Tahun 1990. Penelitian ini bertujuan untuk menganalisis penegakan hukum terhadap perdagangan satwa liar yang dilindungi, faktor-faktor penghambatnya, serta urgensinya dalam perspektif Maqāshid al-Syarī'ah. Penelitian ini menggunakan metode hukum empiris dengan pendekatan sosio-legal, melalui wawancara dengan aparat Balai Pengamanan dan Penegakan Hukum Lingkungan Hidup dan Kehutanan Wilayah Sulawesi serta studi kepustakaan. Hasil penelitian menunjukkan bahwa penegakan hukum belum berjalan efektif karena masih banyak pelanggaran dan efek jera terhadap pelaku masih lemah. Hambatan yang ditemukan meliputi keterbatasan sumber daya aparat, lemahnya koordinasi antar lembaga, aturan hukum yang belum sepenuhnya mengikuti perkembangan teknologi, rendahnya kesadaran hukum masyarakat, faktor ekonomi, dan tingginya permintaan pasar. Dalam perspektif Maqāshid al-Syarī'ah, penegakan hukum terhadap perdagangan satwa liar penting dilakukan karena berkaitan dengan upaya menjaga kemaslahatan, mencegah kerusakan, menjaga jiwa, menjaga keturunan, dan menjaga keseimbangan lingkungan. Oleh karena itu, diperlukan penguatan penegakan hukum secara terpadu melalui pendekatan represif, preventif, dan edukatif berbasis nilai-nilai Maqāshid al-Syarī'ah agar perlindungan satwa liar dan kelestarian lingkungan dapat terwujud secara adil dan berkelanjutan.

Kata Kunci: Hukum; Satwa; Maqāshid.

Abstract: The trade in protected wildlife is an environmental crime that still frequently occurs in Indonesia, despite being regulated by Law Number 5 of 1990. This study aims to analyze law enforcement against the trade in protected wildlife, its inhibiting factors, and its urgency from the perspective of Maqāshid al-Syarī'ah. This study uses an empirical legal method with a socio-legal approach, through interviews with officials from the Sulawesi Regional Environmental and Forestry Law Enforcement and Security Agency and literature studies. The results of the study indicate that law enforcement has not been effective because there are still many violations and a weak deterrent effect on perpetrators. Obstacles found include limited apparatus resources, weak coordination between institutions, legal regulations that have not fully kept up with technological developments, low public legal awareness, economic factors, and high market demand. From the perspective of Maqāshid al-Syarī'ah, law enforcement against the trade in wildlife is important because it is related to efforts to maintain public welfare, prevent damage, protect lives, protect descendants, and maintain environmental balance. Therefore, it is necessary to strengthen law enforcement in an integrated manner through a repressive, preventive, and educational approach

based on the values of Maqāṣid al-Syarī'ah so that wildlife protection and environmental sustainability can be realized in a fair and sustainable manner.

Keywords: *Law; Animals; Maqāṣid.*



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A. INTRODUCTION

The environment is an important element that supports the sustainability of life for all living creatures, including humans, animals, and plants in an integrated ecological system. From the perspective of Indonesian national law, the importance of environmental protection has received constitutional legitimacy as affirmed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that everyone has the right to a good and healthy environment. This provision not only places the environment as a basic right of citizens, but also as an obligation of the state to guarantee its sustainability through effective policies and law enforcement. [1].

Indonesia is known as one of the countries with the highest levels of biodiversity in the world. Its vast tropical rainforests provide habitat for numerous flora and fauna species, including protected endemic wildlife. Globally, Indonesia holds a strategic position as one of the world's lungs, playing a vital role in maintaining ecosystem balance and climate stability [2]. However, this ecological wealth faces a serious threat in the form of increasing environmental crime, particularly the illegal trade in protected wildlife.

The trade in protected wildlife shows a growing trend, both through conventional mechanisms in traditional markets and through digital platforms. This illegal activity includes capturing, keeping, transporting, and trading animal parts such as skin, bones, and internal organs. Empirical reality shows a significant gap between applicable legal norms and practices on the ground. Weak oversight, low levels of enforcement, and minimal public legal awareness are key factors driving the continuation of these illegal practices. In fact, in some cases, owning exotic animals is still considered a symbol of social status, further exacerbating the situation [3].

Normatively, the state has established a firm legal framework through Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems. Article 21 of this law explicitly prohibits all activities related to the capture, maintenance, transportation, and trade of protected wildlife. Furthermore, Article 40 stipulates criminal sanctions in the form of imprisonment and relatively heavy fines for perpetrators. However, the effectiveness of this norm remains questionable, given the persistently high number of violations. This indicates that the law is not yet fully capable of fulfilling its function as an instrument of social control or as a means of social engineering.

From a criminological perspective, weak law enforcement against wildlife trafficking is not only due to limited law enforcement personnel, but also to structural and cultural factors, such as lack of coordination between institutions, limited resources, and low public awareness of the importance of conservation. Empirical data shows that a large proportion of traded wildlife dies during capture and distribution due to inhumane treatment. This situation not only threatens the survival of the species but also disrupts the balance of the ecosystem as a whole [4].

If this situation continues unchecked, serious ecological degradation will occur, including disruption of the food chain, the extinction of certain species, and a decline in environmental quality. These impacts ultimately harm not only the ecological aspect but also threaten the sustainability of human life at large. Therefore, strategic efforts are needed to strengthen law enforcement that is oriented not only toward repressive aspects, but also toward preventive and educational ones.

In this context, the Maqāṣid al-Syarī'ah approach becomes relevant as a normative framework for assessing the urgency of wildlife protection. Maqāṣid al-Syarī'ah, as the primary objective of Islamic law, aims to safeguard five fundamental aspects of life: religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), lineage (ḥifẓ al-nasl), and property (ḥifẓ al-māl). Protection of the environment, including wildlife, can be contextualized as part of efforts to preserve life (ḥifẓ al-nafs) and maintain the sustainability of generations (ḥifẓ al-nasl) [5].

Furthermore, Islamic teachings strictly prohibit all forms of damage to the earth, as affirmed in Surah Ar-Rum, verse 41 of the Qur'an, which states that damage on land and at sea is caused by human actions. This verse contains a moral and theological message that humans, as caliphs on earth, have a responsibility to maintain the balance of nature and refrain from destructive exploitation. Therefore, the trade in protected wildlife is not only a violation of positive law but also contradicts the ethical values and principles of Islamic law.

Based on this description, the urgency of law enforcement against the trade in protected wildlife is based not only on the need for ecological protection but also on moral and religious demands within the framework of Maqāṣid al-Syarī'ah. The gap between legal norms and empirical reality demonstrates the need for a more comprehensive, integrative, and values-based reformulation of law enforcement strategies to achieve sustainable and equitable environmental protection.

B. METHOD

This research is an empirical legal research with a socio-legal approach that aims to examine the effectiveness of law enforcement against the trade of protected wildlife in social reality. This approach is used to analyze the gap between normative provisions (law in books) and field practices (law in action), while integrating it with the perspective of Maqāṣid al-Syarī'ah as a normative analytical framework in assessing environmental protection as part of safeguarding the soul (ḥifẓ al-nafs) and the sustainability of generations (ḥifẓ al-nasl). The research was conducted at the Environmental and Forestry Law Enforcement and Security Center in Sulawesi Region, specifically Section I Makassar, with a population of law enforcement officers who

have the authority to handle criminal acts of wildlife trade. The sample was determined purposively, namely one Head of Section I Makassar and one investigator selected based on their competence and experience. Data sources consist of primary data obtained through in-depth interviews with informants, as well as secondary data obtained through library studies of relevant laws and regulations, literature, and research results. Data collection techniques were conducted through field research and library research. Furthermore, the obtained data were analyzed qualitatively using a descriptive-analytical approach through the stages of reduction, presentation, and drawing conclusions. This was done to identify patterns, constraints, and the effectiveness of law enforcement, as well as to assess its urgency within the framework of Maqāshid al-Syarī'ah..

C. DISCUSSION

1. The Reality of Law Enforcement Against the Trade in Protected Wildlife

Law enforcement against the crime of trafficking in protected wildlife in Indonesia is normatively well-founded through Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems. This regulation explicitly prohibits and imposes criminal sanctions on all activities related to the capture, maintenance, transportation, and trade of protected wildlife. However, empirically, the implementation of this legal norm still faces various complex and multidimensional challenges. Based on field findings, wildlife trafficking practices still occur openly, both through conventional mechanisms in traditional markets and through digital media such as social media and marketplaces, indicating a significant gap between legal norms (*das sollen*) and social reality (*das sein*).[6].

This condition indicates that the law has not fully fulfilled its function as an instrument of social control. From a sociological perspective, this phenomenon reflects the low level of legal effectiveness, which can be measured by the level of public compliance with applicable norms. This non-compliance is influenced not only by weak law enforcement but also by internal societal factors, such as a lack of legal awareness and a low internalization of environmental conservation values. As a result, the law tends to be viewed as merely a formal rule that lacks strong binding power in social life [7].

In terms of enforcement, law enforcement officials face significant limitations, both in terms of the quantity and quality of human resources. The limited number of personnel is disproportionate to the vast areas under surveillance, particularly in forest areas that serve as primary wildlife habitats. Furthermore, limited facilities and infrastructure, such as patrol facilities, monitoring technology, and logistical support, also hamper the effectiveness of field supervision and enforcement. In many cases, authorities only act after a violation has occurred, resulting in a reactive rather than a preventative approach.

Furthermore, coordination between law enforcement agencies is also a crucial issue. Handling wildlife trafficking crimes involves various institutions, such as the police, prosecutors, and forestry agencies. However, in practice, this coordination often fails to function optimally, either in terms of information exchange, policy synchronization, or

enforcement. This results in a slow, unintegrated law enforcement process, potentially leading to overlapping authority [8].

From a judicial perspective, the effectiveness of law enforcement is also influenced by the sentencing patterns applied. Criminal sanctions imposed on wildlife traffickers are generally relatively light and do not reflect the extent of the ecological damage caused. In many decisions, judges tend to prioritize the formal aspects of the act without linking it to the long-term impact on environmental sustainability and ecosystem sustainability. As a result, the sentences imposed have not been able to provide a significant deterrent effect, preventing perpetrators from repeating their actions [9].

Furthermore, there are also issues in the evidentiary process, which often hinder law enforcement. The complex, organized nature of environmental crimes, often involving cross-regional and even international networks, makes it difficult for authorities to gather strong evidence. Often, the main perpetrators go unpunished, while only field personnel with relatively minor roles in the illegal trade chain are apprehended.

From an economic perspective, the trade in protected wildlife is a highly profitable activity with relatively low legal risk. High market demand for exotic animals and certain animal parts, whether for collection, consumption, or traditional medicine, is a key driver of the continuation of this illegal practice. As long as there is an imbalance between potential economic benefits and the threat of legal sanctions, the illegal trade will persist [10].

Sociologically, low public legal awareness is also a dominant factor in reinforcing the practice of wildlife trafficking. Owning exotic animals is often perceived as a symbol of social status or prestige, especially among certain groups. This perception indicates a distortion of values in society, where economic and symbolic interests are prioritized over ecological responsibility and compliance with the law. The lack of education and outreach regarding the importance of wildlife conservation further exacerbates this situation.

On the other hand, developments in information technology have introduced a new dimension to the practice of wildlife trafficking. Digital platforms facilitate illegal transactions with wider reach, greater anonymity, and make monitoring more difficult for law enforcement officials. This increasingly sophisticated modus operandi demands adaptations in law enforcement strategies, including the use of digital technology in monitoring and enforcement processes. Thus, the reality of law enforcement regarding the trade in protected wildlife demonstrates that the problem faced is not a single issue, but rather the result of a complex interaction between legal, institutional, economic, technological, and cultural factors [11].

2. Factors Influencing Weak Law Enforcement

Weak law enforcement against the trade in protected wildlife is a complex issue influenced by various interconnected factors, including structural, substantive, cultural, and external factors such as economic and technological developments. This complexity demonstrates that the failure of law enforcement is not solely due to the weakness of law enforcement

officials, but also to the legal system as a whole, which has not been able to respond effectively and adaptively to the dynamics of environmental crime. [12].

From a structural perspective, the limited number of law enforcement officers is a major obstacle to optimal supervision and enforcement. Indonesia's vast territory, consisting of thousands of islands with diverse geographical conditions, particularly forested and remote areas, makes comprehensive oversight difficult. The disproportionate number of personnel relative to the size of the working area results in many poaching and illegal trade activities going undetected. Furthermore, minimal state budget support results in limited operational facilities, such as patrol vehicles, monitoring equipment, and other supporting technology. These limitations result in law enforcement tending to be incidental and unable to reach all crime-prone areas [13]. Furthermore, structural weaknesses are also reflected in the suboptimal coordination between law enforcement agencies. Handling wildlife trafficking crimes involves various institutions, such as the police, prosecutors, forestry agencies, and other conservation organizations. However, in practice, sectoral egos, a lack of information exchange, and the failure to establish an integrated coordination system are common. As a result, case handling is ineffective and can even lead to overlapping authorities, which actually hinders the law enforcement process [14].

From a legal substance perspective, although existing regulations explicitly stipulate prohibitions and sanctions, these provisions are deemed insufficient to address evolving criminal modus operandi. Existing laws remain limited in accommodating modern forms of crime, particularly those based on digital technology. Wildlife trafficking is no longer confined to conventional methods, but also through social media and e-commerce platforms, which are difficult to effectively monitor. The lack of specific regulations regarding digital-based illegal trade creates legal loopholes that perpetrators exploit to evade prosecution. Furthermore, the legal substance issue is also related to the suboptimal provisions regarding criminal liability that can reach the intellectual actors or key networks in the illegal trade. In many cases, it is the field actors who are caught, while the main actors controlling the trade networks are not touched by the law. This demonstrates a weakness in the criminal law's construction, which is unable to comprehensively prosecute perpetrators, including in terms of providing evidence and tracing the flow of illegal transactions [15].

From a cultural perspective, low levels of public legal awareness are a dominant factor reinforcing the continued practice of wildlife trafficking. The public generally lacks an adequate understanding of the importance of protecting wildlife as an integral part of the ecosystem that must be preserved. The prevailing perception still views wildlife as an economic commodity that can be bought and sold or as a symbol of social status for its owner. This situation indicates that conservation values have not been properly internalized in society.

The lack of education and outreach from the government and relevant institutions regarding the ecological impacts of the wildlife trade exacerbates this situation. Public ignorance of protected species and the legal consequences of illegal possession and trade is one factor driving law violations. Thus, law enforcement faces challenges not only at the apparatus level but also at the level of collective public awareness. Furthermore, economic factors also play a significant role in driving the wildlife trade. High market demand for exotic animals and

certain animal parts creates lucrative economic opportunities, especially for communities living near forest areas with relatively low economic status. Illegal hunting and trade are often used as alternative sources of income because they are considered quicker and more profitable than legal employment.

This economic inequality is exacerbated by the lack of sustainable livelihood alternatives for local communities. Without policy interventions that provide viable economic solutions, communities will tend to remain involved in these illegal activities. Therefore, economic factors cannot be separated from law enforcement issues, as the two are closely related in determining societal behavior.

In addition to these factors, developments in information technology also present new challenges for law enforcement. Digitalization has transformed wildlife trade patterns, making them more covert, organized, and difficult to track. Perpetrators exploit the anonymity of cyberspace to conduct transactions securely without detection by law enforcement. This requires increased technological capacity and regulatory updates to accommodate digital-based crimes. Furthermore, the weak deterrent effect of sanctions also exacerbates the situation in law enforcement. When perpetrators do not experience severe legal consequences, the tendency to repeat their actions increases. In this context, law enforcement requires not only legal certainty but also justice and benefits that can provide a preventative impact for society at large. Therefore, weak law enforcement against the trade in protected wildlife is the result of a complex interaction between various interconnected factors, ranging from weak institutional structures, limited legal substance, low public awareness, economic pressures, and technological developments [16]. From the perspective of Maqāsid al-Syarī'ah, law enforcement against the trade in protected wildlife is highly urgent because it is directly related to the fundamental objectives of sharia, namely realizing the welfare (jalb al-maṣāliḥ) and preventing harm (dar' al-mafāsīd). The maqāsid framework is not only oriented towards protecting humans in a narrow sense, but also encompasses the entire order of life, including environmental sustainability as a shared living space. In this context, wildlife protection can be positioned as an integral part of efforts to preserve the soul (ḥifz al-nafs), preserve offspring (ḥifz al-nasl), and even more broadly maintain the ecological balance that is a prerequisite for the continuation of human life [17].

The illegal wildlife trade is essentially a form of excessive exploitation (i'tida') of other living creatures and their ecosystems. This practice not only causes suffering and death of animals, but also triggers food chain imbalances, species extinction, and environmental degradation, which have systemic impacts on human life. Within the framework of Maqāsid al-Syarī'ah, such actions fall into the category of fasād fī al-ardd (damage to the earth), which is expressly prohibited. This prohibition has both theological and ecological dimensions, because environmental damage will ultimately harm humans as part of that system. Furthermore, environmental protection from an Islamic perspective can also be linked to the concept of humans as vicegerents on earth (khilāfah fī al-ardd), which carries a moral responsibility to protect, care for, and not damage God's creation. Thus, the trade in protected wildlife is not only a violation of positive law but also a form of betrayal of the divine mandate. Therefore, law enforcement against this crime has a social dimension of worship ('ibādah ijtimā'iyah) aimed at maintaining the balance and harmony of life.

In the context of protecting life (*ḥifẓ al-nafs*), ecosystem damage due to the loss of wildlife has the potential to have indirect impacts on human safety, such as increasing the risk of ecological disasters, the spread of zoonotic diseases, and disrupting natural food sources. This demonstrates that wildlife protection is fundamentally part of efforts to maintain human survival. Meanwhile, from the perspective of protecting descendants (*ḥifẓ al-nasl*), environmental sustainability is a crucial factor in ensuring that future generations can enjoy a decent and balanced share of natural resources.

Furthermore, the urgency of law enforcement is closely related to the principle of justice (*al-‘adl*) in Islam. When the law is not consistently enforced, social inequality and legal uncertainty will emerge, damaging the social order. In the context of the wildlife trade, injustice is felt not only by humans but also by other living creatures who become victims of exploitation. Therefore, law enforcement must be viewed as an instrument for upholding universal justice that encompasses all creation.

Law enforcement, from the perspective of *Maqāṣid al-Syarī‘ah*, cannot be separated from a holistic approach, emphasizing not only repressive aspects through the imposition of criminal sanctions, but also preventive and educational aspects. Preventive efforts can be implemented by raising public awareness of the importance of wildlife conservation as part of religious teachings, while an educational approach can be implemented through the integration of environmental values into formal and non-formal education. In this regard, the law functions not only as a coercive tool but also as a means of fostering moral awareness and social ethics. Furthermore, the *Maqāṣid* approach also emphasizes the importance of social justice and economic well-being (*al-maṣlaḥah al-‘āmmah*). Therefore, law enforcement against the wildlife trade needs to be balanced with policies that provide alternative livelihoods for communities that have traditionally depended on this activity. Without sustainable economic solutions, law enforcement has the potential to generate social resistance and will be ineffective. Thus, an approach that integrates legal, social, and economic aspects is crucial in realizing the overall objectives of Sharia.

Furthermore, in the development of contemporary Islamic legal thought, the concept of *maqāṣid* has expanded to include environmental protection (*ḥifẓ al-bi‘ah*) as one of the essential objectives of Sharia. This perspective further strengthens the argument that wildlife conservation efforts are not merely an ecological issue but also a religious obligation that must be enforced through effective legal instruments. Therefore, the urgency of law enforcement against the trade in protected wildlife, from the perspective of *Maqāṣid al-Syarī‘ah*, lies not only in compliance with positive law, but also in efforts to maintain ecological balance, uphold justice, and achieve sustainable human well-being [18].

D. CONCLUSION

Law enforcement against the trade in protected wildlife in Indonesia has a strong legal basis, but its implementation remains ineffective. Empirical evidence shows a gap between applicable legal provisions and practice on the ground, as evidenced by the continued prevalence of illegal trade, both through conventional markets and digital media. This situation indicates that the law is not yet fully capable of functioning as an instrument of social control and has not provided an optimal deterrent effect for perpetrators. This weak law enforcement is influenced by various

multidimensional factors, including limited law enforcement resources, weak coordination between institutions, the unresponsiveness of legal substance to developments in technology-based crimes, and low public awareness and compliance with the law. Furthermore, economic factors and high market demand for wildlife contribute to the continuation of these illegal practices, making this problem increasingly complex and difficult to address partially.

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