

Criminal Law Policy Against the Purpose of Conservation of Biological Natural Resources and Their Ecosystems in Indonesia

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Criminal Law Policy Against the Purpose of Conservation of Biological Natural Resources and Their Ecosystems in Indonesia

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Abstract

Indonesia is very rich in various natural resources, including the biodiversity contained therein. It is realized that natural resources which are scattered in various parts of Indonesia will one day be scarce and extinct if their management is carried out in an unsustainable and sustainable manner. Article 3 of Law No. 5 of 1990 states that the conservation of living natural resources and their ecosystems aims at realizing the preservation of living natural resources and the balance of their ecosystems so that they can better support efforts to improve people's welfare and the quality of human life. To prevent this condition, Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems contains a criminal law policy as part of a conservation policy.

Indonesian environmental law already recognizes the concept of punishment in the form of recovery for the consequences of a crime, but this mechanism is not accommodated in Law No. 5 of 1990. The concept of punishment in the form of recovery for the consequences of a crime is a concrete for to support conservation goals to realize sustainable natural resources. biological natural resources and the balance of their ecosystems so that they can better support efforts to improve people's welfare and the quality of human life. Because the concept of punishment in the form of recovery for said crime is a relevant criminal law policy, meaning that there is conformity or harmony with demands, needs, and developments in society between the criminal law policies that are enacted to conserve living natural resources and their ecosystems.

Keyword: *Criminal Law Policy, Purpose of Conservation of Living Natural Resources and Their Ecosystems.*

INTRODUCTION

Along with the increasing level of human need and interest in the use of natural resources, the pressure on natural resources is becoming greater. This is if the management is carried out in an unsustainable and sustainable manner, it will have an impact on the degradation of natural resources. As a result of the degradation of natural resources, also has an impact on the loss of some of the functions of the area, damage to the habitat of wild plants and animals also has an impact on increasing the rate of scarcity/extinction of wild plants and animals, besides that it has a broad impact on reducing the quality of life and increasing threats to human life. The existence of this threat is the importance of implementing conservation policies for living natural resources and their ecosystems.

Conservation of living natural resources is the management of living natural resources which is used wisely to ensure the continuity of their supply while maintaining and increasing the quality of their diversity and value. Conservation policies in Indonesia have been protected through legal instruments Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems. The main issue in conservation policy is preventing extinction that can occur at all levels of biodiversity both ecosystems, species, and genetics. Extinctions, especially those of a mass nature, must be prevented. Even though they have self-renewal or renewable properties, living natural resources have irreversible if they are used excessively to a level that exceeds their capacity.

The provisions of Article 3 of Law No. 5 of 1990 state that the conservation of living natural resources and their ecosystems aims to strive for the realization of the preservation of living natural resources and the balance of their ecosystems so that they can better support efforts to improve people's welfare and the quality of human life. To support the realization of conservation goals, Law No. 5 of 1990 contains criminal law policies as part of conservation policies. However, based on data that still shows a high level of threat to biodiversity from scarcity/extinction of ecosystems, species, and genetics, this can certainly hinder conservation goals. In 2018, the Indonesian Minister of Environment and Forestry ("Minister of Environment and Forestry") said that crimes against wildlife/ wildlife crime ranked third as the biggest

crime after narcotics and trafficking in persons.¹ Based on this condition, the authors are interested in discussing whether the current criminal law policy is oriented towards the goal of conserving living natural resources and their ecosystems.

METHOD

This research is normative juridical research that is prescriptive, using a statutory approach and a conceptual approach. This study uses legal materials, including laws and regulations, literature, and journals that are related to the issues discussed. In collecting legal materials, researchers used library research, namely by examining laws and regulations, literature, and inventorying them, which were then processed and analyzed to be arranged logically and systematically to obtain conclusions that were by the research objectives.

RESULTS AND DISCUSSION

Indonesia is very rich in various natural resources, including the biodiversity contained therein. It is realized that the natural resources which are scattered in various parts of Indonesia will one day run out and become extinct if their management is carried out in an unsustainable and sustainable manner. The provisions in Article 33 paragraph (3) of the 1945 Constitution state that "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". It is this goal that will guide conservation policies to create the greatest possible prosperity for the people, including for future generations, as well as the preservation of living natural resources and their ecosystems. As regulated in Article 3 of Law No. 5 of 1990 Concerning the Conservation of Living Natural Resources and Their Ecosystems, states that conservation aims to strive for the realization of the preservation of living natural resources and the balance of their ecosystems so that they can better support efforts to improve people's welfare and the quality of human life.

The State of Indonesia is a State of law, while the function of law in a state of the law is "Social Control" (Control of people's behavior), which means that the law functions to regulate human behavior in the life of the nation and state, to create an

¹ Tsatina Maharani, "**Menteri LHK: Kejahatan Satwa Liar Peringkat Ke-3 di Indonesia,**" <https://news.detik.com/berita/d-3998884/menteri-lhk-kejahatan-satwa-liar-peringkat-ke-3-di-indonesia>, diunduh pada 1 Nopember 2022.

orderly, orderly and peaceful atmosphere.² Conservation policies aim to control people's behavior so that the use of natural resources is sustainable and sustainable, so to support the realization of these conservation goals a criminal law policy is used as part of the conservation policy.

³ Barda Nawawi Arief in his book entitled *Bunga Anthology of Criminal Law Policies* states that: "Criminal law policy is a direct translation of the term penal policy, but sometimes the term penal policy is also translated into criminal law politics".³ About criminal law politics, Sudarto argues as follows: "Implementing "criminal law politics"² means holding elections to achieve the best results of criminal legislation in the sense of fulfilling the requirements of justice and efficiency. On another occasion he stated that carrying out "criminal law politics" means, "efforts to realize criminal laws and regulations that are by the circumstances and situation at one time and for the future."⁴

Criminal law policy must be understood as a whole and as part of society because the legal basis itself is in society. So, the operation of criminal law in a society must be understood how the interaction of law with the social and political life of society. Regarding the criminal law policy contained in Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems, in general, it contains criminal provisions against crimes/violations of protected animals and plants and their areas. As for the punishment arrangements for these crimes/violations, only cumulative imprisonment and fines are imposed. Regarding punishment, it does not have a direct impact on efforts to preserve and sustain living natural resources and their ecosystems as a result of the impact of a crime/violation of the provisions of the crime. If you understand criminal law policy as the interaction of law with the social and political life of the people, then in a context like this, based on customs in Indonesian society, the most important thing is recovery from conditions that have been disrupted as a result of these crimes/violations. Indonesian environmental law already recognizes the concept of punishment in the form of recovery for the

² Naavi'u Emal, Maaliki, Eko Sopyono, *Kebijakan Hukum Pidana dalam Menanggulangi Tindak Pidana Berita Bohong*, Jurnal Pembangunan Hukum Indonesia , Volume 3, Nomor 1, Tahun 2021, hal.60.

³ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Penerbit: Citra Aditya Bakti, Bandung, 2002, hal.23.

⁴ *Ibid*,...hal.25.

consequences of a crime, but this mechanism is not accommodated in Law No. 5 of 1990.

The concept of punishment in the form of recovery for the consequences of a crime is a concrete form to support conservation goals to realize the preservation of natural resources and biodiversity and the balance of its ecosystem so that it can better support efforts to improve people's welfare and the quality of human life. Because the concept of punishment in the form of recovery for a crime is a relevant criminal law policy, meaning that there is conformity or harmony with the demands, needs, and developments in society between the criminal law policies that are in force to conserve living natural resources and their ecosystems. The use of relevant criminal law policies is a national effort to achieve social policy, namely the achievement of social welfare and protection for the community.

CONCLUSIONS

Indonesian environmental law already recognizes the concept of punishment in the form of recovery for the consequences of a crime, but this mechanism is not accommodated in Law No. 5 of 1990 concerning Conservation of Living Natural Resources and Their Ecosystems. So thus, it can be said that the current criminal law policy is not yet oriented towards the goal of conserving living natural resources and their ecosystems, because the criminal law policies that are regulated are not yet relevant, meaning that there is no conformity or harmony with demands, needs, and developments in society between policies criminal law enacted to conserve living natural resources and their ecosystems.

It is necessary to amend Law no. 5/1990 concerning the Conservation of Living Natural Resources and their Ecosystems by including additional penalties that are oriented towards conservation goals, namely in the form of punishment in the form of reparation for the impact of criminal acts on protected animals and plants and their areas.

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