

Criminal Law Enforcement Model for the Crime of Killing Protected Elephants (*Elephas Maximus*)

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Abstract. *The purpose of this study is to analyze and explain the criminal law enforcement model for the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya, and the inhibiting factors and efforts to enforce criminal law against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya. This study uses an empirical juridical research method with a qualitative approach. Based on the research that has been conducted, it can be concluded that the model of Criminal Law Enforcement for the Crime of Killing Protected Elephants (*Elephas Maximus*) in Aceh Jaya is using the Due Process Model. This is because the court has provided space for each defendant to present their defense before the trial as a form of protection of the human rights of the defendants and the judiciary also applies the principle of presumption of innocence. Factors that inhibit law enforcement, reviewed from Court Decision Number 51/Pid.B/LH/2021/PN Cag regarding the killing of protected elephants in Aceh Jaya, namely: a) Lack of personnel from the Natural Resources Conservation Agency (BKSDA); b) Lack of community participation. Criminal penalties against the perpetrators are considered insufficient to deter them. Other law enforcement alternatives include revoking permits for plantation activities, particularly those within conservation areas.*

Keywords: *Criminal Law; Criminal Act; Elephant Killing; Law Enforcement Model.*

1. Introduction

Biological natural resources consist of animal and plant nature, where these natural resources, both individually and collectively, have functions and benefits as elements that form the environment whose presence cannot be replaced, even the elements of biological natural resources and their ecosystems are interdependent and influence each other, so that damage or disturbance experienced by one of the elements will result in disruption of an ecosystem. Based on Article 3 of Law Number 31 of 2009 concerning Protection and Management of the Environment (Hereinafter referred to as Law 31/2009), it states that environmental protection and management aims to ensure the continuity of life of living creatures and the sustainability of the ecosystem.

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Forests are a vital ecosystem for living things, including humans, primarily as a life support system. They are also the largest ecosystems, capable of supporting various other ecosystems within them. Article 6 of Law Number 41 of 1999 concerning Forestry (hereinafter referred to as the Forestry Law) states that forests serve conservation, protection, and production functions.

Elephants are a species that primarily feed in forests. They also rely heavily on forests for habitat, breeding, shelter, and more. Continued forest destruction increasingly threatens the elephant population. This situation forces elephants to survive and continue their lives even as their habitats begin to disappear.

The reduction in elephant habitat is clearly visible due to the change from elephant habitat to monoculture plantations (oil palm and rubber) which have destroyed the habitat of the Sumatran Elephant. This results in elephants being trapped in small blocks of forest that are insufficient to support their lives in the long term. This has become a trigger for conflict between humans and elephants. One of the elephant conflict areas in Aceh is Aceh Jaya Regency, according to the Sampoiniet Conservation Response Unit (CRU), there were 19 (nineteen) incidents of conflict between wild Sumatran elephants and residents that occurred in the Aceh Jaya Regency area until August 2023, and damaged various types of crops owned by the Community, because the conflict occurred in the location of residents' plantations.¹

Conflicts between elephants and residents in Aceh Jaya have prompted residents to take various measures to prevent the destruction of their gardens. One approach is to install electric wires on each side of the garden fence. This is considered dangerous for elephants, as contact with the electrified wire can cause death.

This is proven through Court Decision Number 51/Pid.B/LH/2021/PN Cag which sentenced several people to death for committing criminal acts deemed to have violated the provisions of the Biological Conservation Law Article 21 paragraph (2) which states that "Everyone is prohibited from capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected animals in a living condition." Elephants based on the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.20/MENLHK/SETJEN/KUM.1/6/2018 are a protected animal species with the Latin name (*Elephas maximus*).

Based on the description above, it is deemed necessary to conduct this research, with the aim of explaining the model of criminal law enforcement against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya, and the inhibiting factors and efforts to enforce criminal law against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya.

¹ Samsul Rizal, Coordinator of the Sampoiniet Conservation Response Unit (CRU), Interview, November 7, 2023.

2. Research Methods

The approach used in this study is a qualitative approach, in terms of the qualitative approach, the method used in this study is the empirical juridical research method. The data for this study are sourced from primary and secondary data. The method used to collect the data is by interviewing respondents and informants who have been determined using purposive sampling techniques and data collected by searching for library data (Court Decisions). This research was conducted in Aceh, specifically in Aceh Jaya Regency. The collected data were then analyzed qualitatively and described descriptively analytically. Data analysis was carried out based on systematic juridical analysis.

3. Results and Discussion

3.1. Model of criminal law enforcement against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya.

Hasnul Fuad as Judge of the Calang District Court in an interview session stated that "the process of making efforts to uphold or function legal norms in real terms as guidelines for behavior in traffic or legal relations in social and state life."²In line with the aforementioned judge's opinion, Zulfitriadi, an investigator with the Aceh Jaya Police Resort, stated that "Law enforcement is a process of realizing legal desires. What is meant by legal desires here is nothing other than the thoughts of the law-making body, formulated in legal regulations."³

Zulfitriadi continued that "Legal regulations are the formulation of the thoughts of law makers which are poured into legal regulations which will also determine how law enforcement is carried out."⁴Based on the respondents' views above, it can be said that law enforcement is a process of realizing legal objectives for legal subjects by law enforcement officers so that public order is achieved in the social system of society.

Law enforcement itself must be interpreted within the framework of 3 (three) concepts, namely as follows:⁵

- a. The total enforcement concept demands that all values behind legal norms be enforced without exception;
- b. The concept of full law enforcement (full enforcement concept) which recognizes that the total concept needs to be limited by procedural law and so on for the sake of protecting individual interests;
- c. The concept of actual law enforcement emerged after it was believed that there was discretion in law enforcement due to limitations, both related to infrastructure, the quality of human resources, the quality of legislation and the lack of public participation.

²Hasnul Fuad, Judge of Calang District Court, Interview, January 7, 2025

³Zulfitriadi, Police Investigator, Aceh Jaya Resort, Interview, January 7, 2025.

⁴Zulfitriadi, Police Investigator, Aceh Jaya Resort, Interview, January 7, 2025.

⁵ Mardjono Reksodipuro, 1997, *Kriminologi dan Sistem Peradilan Pidana (Kumpulan Karangan Buku Kedua)*, Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi Universitas Indonesia, Jakarta, hlm. 5.

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The model for enforcing criminal acts can be seen in the following description, including:

a. *Crime Control Model*(CCM)

Crime Control Model(CCM) is based on the statement that criminal behavior should be prosecuted, and the criminal justice process is a positive guarantee for public order. Parcker stated that the doctrine used by CCM is what is known as the Presumption of Guilt (presumption of guilt). With this doctrine, CCM emphasizes the importance of affirming the existence of power and the use of power against every crime from the perpetrator of the crime and therefore the implementation of the use of power in the hands of government officials/police, prosecutors and judges must be as maximum as possible even if it means sacrificing human rights.

b. *Due Process Model*(DPM)

This model is a reaction to the CCM which essentially emphasizes individual rights by attempting to limit the authority of the authorities. In other words, it can be said that the criminal process must be supervised or controlled by human rights and not only emphasized on maximum efficiency as in the CCM but also on the procedure for resolving cases. This limitation on government power reflects the ideology or ideals of the DPM which contain what are called mythoritarian values or the meaning of the ideals of arbitrariness.

In contrast to CCM which is based on the Presumption of Guilt, DPM is based on the Presumption of Innocence as the basis of the value of the justice system by DPM, which demands a formal investigation process for a case by finding facts objectively where the case of a suspect or defendant is heard openly in court and the assessment of the public prosecutor's accusations will only be carried out after the defendant has had a full opportunity to present facts that refute or reject the accusations against him. So what is important is proof in court with demands for how the process ends for a case is not so important in DPM.

c. *Family Model*(FM)

The Family Model is a critique of the two previous models, John Griffiths, a professor from Yale University in California who obtained this model, said "Both models proposed by Packer, whatever their updates, remain within the framework of a model called the Adversary system or Battle model". The Family Model is a metaphor that exists in our family, namely even though one of our family members beats him, he remains in love without treating him as a special criminal person. Likewise, criminals, if they are punished, should not be considered as special criminals who are then ostracized from members of society, but they remain in an atmosphere of love. Thus, if we compare it with the Battle Model, which considers that criminals are essentially enemies of society or enemies in society and the function of punishment is the Xile of Offender or the isolation of criminals, it is seen that the basic values in the Battle Model are in accordance with family values in the family model where the function of punishment is as Oppealing capacity of Selft Control or trying to control so that they have the capacity to improve themselves and remain within the framework of family affection (continuum of love).

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Based on the description of the criminal law enforcement model above, then referring to Court Decision Number 51/Pid.B/LH/2021/PN Cag which sentenced several people to death for committing criminal acts which were deemed to have violated the provisions of the Biodiversity Conservation Law Article 21 paragraph (2), it can be said that the Criminal Law Enforcement model for the Crime of Killing Protected Elephants (*Elephas Maximus*) in Aceh Jaya uses the Due Process Model.

Referring to the criminal enforcement model mentioned above, a third enforcement model, the Family Model, should be applied to the cases discussed in this study. This model is expected to ensure that defendants remain accepted by society despite their criminal conduct. This process can be implemented by relevant parties to provide moral support to the defendants so they don't feel isolated upon returning to the community.

3.2. Inhibiting factors and efforts to enforce criminal law against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya

a. Factors inhibiting the enforcement of criminal law against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya

Enforcement is influenced by several factors, including the following factors that influence law enforcement:

1. Law

What is meant by law is anything that gives rise to rules that have coercive power, that is, if violated, there will be firm and real sanctions.⁶ Law has universal reach because with law we can find several different theories from each individual.⁷

2. Public

Law enforcement originates from the community and aims to achieve peace within society. Therefore, viewed from a certain perspective, the community can influence compliance with the law. Indonesian society, in particular, has distinct opinions regarding the law. As citizens, the community requires awareness and compliance with laws and regulations. Good laws do not guarantee their implementation if citizens' awareness and compliance with the law do not support their implementation.⁸

3. Culture

Culture plays a vital role in society and humanity. Society has both material and spiritual needs. To meet these needs, culture, which originates within the society itself, is largely responsible. However, human capabilities are limited, and thus, the ability of culture, the product of human creation, to meet all these needs is also limited.⁹

⁶ Yulies Tina Masriani, 2004, Pengantar Hukum Indonesia, Sinar Grafika, Jakarta, hlm. 13

⁷ Satjipto Raharjo, 1986, Ilmu Hukum, Penerbit Alumni, Bandung, hlm. 8

⁸ Ramly Hutabarat, 1985, Persamaan di Hadapan Hukum (Equality Before the Law) di Indonesia, Ghalia Indonesia, Jakarta, hlm. 78

⁹ Soerjono Soekanto, 1990, Sosiologi Sebagai Suatu Pengantar, Rajawali Persada, Jakarta, 1990, hlm. 178

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Cultural factors, which are actually integrated with societal factors, are deliberately distinguished because this discussion will focus on the value systems that form the core of spiritual or non-material culture. As a system, law encompasses structure, substance, and culture.

Structure encompasses the framework or form of the system, such as the formal legal institutions, the relationships between these institutions, rights and obligations, and so on. Substance encompasses the content of legal norms, their formulation, and the procedures for enforcing them, which apply to both law enforcers and justice seekers. Legal culture (system) essentially encompasses values, which are abstract concepts of what is considered good (and therefore adhered to) and what is considered bad (and therefore avoided).¹⁰

4. Facilities and Amenities

Without certain resources and facilities, law enforcement cannot proceed smoothly. These resources include educated and skilled personnel, good organization, adequate equipment, sufficient finances, and so on. Without these resources, law enforcement will be impossible to achieve its goals.¹¹

5. Law Enforcement Officers

Law enforcers in Indonesia have several positions to assist and manage law enforcement factors so that the intent of a law can run smoothly and fairly, including the Police, Prosecutors, and Judges.¹²

The above description provides an understanding of several interrelated factors that can influence law enforcement towards improvement. Based on the factors influencing law enforcement, several factors hinder it, as reviewed in Court Decision Number 51/Pid.B/LH/2021/PN Cag concerning the killing of protected elephants in Aceh Jaya. These factors include the following:

1. Lack of personnel at the Natural Resources Conservation Agency (BKSDA)

These obstacles include weak enforcement by the BKSDA due to insufficient personnel, inadequate facilities, and suboptimal oversight, which directly impact the process of implementing forest and wildlife protection efforts. These factors are contributing to the killing of protected elephants in Aceh Jaya, thus preventing enforcement of preventative measures against criminal acts.¹³

For this reason, it is necessary for the Natural Resources Conservation Agency (BKSDA) to be more active and to increase personnel and infrastructure facilities in carrying out its duties and obligations in order to reduce the killing of elephants results in the destruction of ecosystems protected by law.

¹⁰ Ibid, hlm. 59

¹¹ Soerjono Soekamto, Op. Cit, hlm. 37

¹² Bambang Poernomo, 1988, Hukum Acara Pidana Indonesia, Amarta Buku, Yogyakarta, hlm. 25.

¹³ Ujang Wisnu Barata, Kepala BKSDA Aceh, Wawancara, 16 April 2025.

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2. Lack of community participation

The public is directly involved in the crime of killing protected elephants, as they themselves are the ones committing these crimes. Certainly, some members of the public are aware of the killing of protected elephants, but they fail to report it to law enforcement or the Natural Resources Conservation Agency (BKSDA), which is responsible for prosecuting these crimes.

This lack of public participation has led to the killing of protected elephants in Aceh Jaya, as outlined in Court Decision No. 51/Pid.B/LH/2021/PN Cag. If the public fully participated in law enforcement, it's safe to say that the killing of protected animals like elephants would no longer occur.

b. Efforts to enforce criminal law against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya

The suboptimal implementation of law enforcement in this country has serious implications, including the emergence of legal apathy in society, resulting in anarchy. The phenomenon of mob violence or vigilantism by some members of society is a clear reflection of the public's pessimism and apathy towards the stagnation of law enforcement. Some argue that the ineffectiveness of law enforcement and justice in our country is due in part to the positivistic nature and format of the law. Truth is viewed and measured more in terms of formal and procedural truth, without considering the sense of justice within society.

Based on Court Decision Number 51/Pid.B/LH/2021/PN Cag., the Panel of Judges has decided a case of the murder of a protected elephant in Aceh Jaya with a lenient verdict. This is considered to fuel apathy towards the law, which could lead to similar crimes in the future. Weak law enforcement against perpetrators of the crime of killing protected animals is considered to worsen the situation in nature conservation. This is because perpetrators will not hesitate to commit similar crimes, considering law enforcement to be lax, even if they receive punishment for their crimes.

Criminal penalties against the perpetrators are considered insufficient to deter them. Other alternative law enforcement measures that can be implemented by law enforcement officials include revoking permits for plantation activities, particularly those within conservation areas. This will reduce criminal activity and potentially reduce the killing of elephants, which are protected under Indonesian law.

Based on the description in the previous discussion, it has been stated that there are 3 (three) elements that should be considered in enforcing the law against the crime of killing protected elephants in Aceh Jaya, including the following: Legal certainty; justice; benefit.

The three elements of law enforcement mentioned above have not yet been met in law enforcement by law enforcement officers regarding the crime of killing protected elephants. This is because law enforcement fails to achieve a sense of justice. Justice, from a criminal law perspective, can be defined as a balance between the perpetrator and the victim. For example, the criminal incident in this study must be viewed from two perspectives. First, justice from the perspective of the perpetrator, as determined by Court Decision Number 51/Pid.B/LH/2021/PN Cag. The perpetrator has been legally and convincingly declared guilty

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of killing an elephant, thereby violating the Law on the Conservation of Biological Natural Resources and Ecosystems. Therefore, the perpetrator has been sentenced to prison. The punishment for the perpetrator of this crime is considered to have met the principle of justice because the punishment is applied to those who violate statutory provisions.

Second, justice should also provide balance to perpetrators whose gardens have been damaged by elephants. This means that those who commit the crime of killing elephants should be compensated for the damage caused by elephants or restored to their original condition. This aims to ensure that convicts can continue earning a living after serving their prison sentences.

So far, the BKSDA, as a conservation agency, has only enforced the law unilaterally without regard for the value of justice for perpetrators of crimes. Therefore, it can be said that law enforcement efforts do not prioritize the values of justice for everyone.

Based on the above perspective, it can also be seen from a utility perspective that law enforcement also does not provide benefits to the parties. As explained above, justice from the perpetrator's perspective is not taken into consideration, resulting in no legal benefits for perpetrators of criminal acts. This should be considered by law enforcement officials as a form of fulfilling the elements of law enforcement and realizing the objectives of the law itself.

4. Conclusion

There are three models of criminal law enforcement, including: the Crime Control Model, the Due Process Model, and the Family Model. The criminal law enforcement model used for the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya is the Due Process Model. This is because the court has provided space for each defendant to present their defense before the trial as a form of protection for the human rights of the defendants and the court also applies the principle of presumption of innocence. Therefore, the Due Process Model is a step taken by the state in enforcing criminal acts. Factors inhibiting criminal law enforcement against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya include the lack of personnel from the Natural Resources Conservation Agency (BKSDA), and the lack of community participation. In addition, there are also efforts to enforce criminal law against the crime of killing protected elephants (*Elephas maximus*) in Aceh Jaya, namely by imposing criminal sanctions on the perpetrators of the crime, but the punishment carried out by law enforcement officers is considered insufficient to create a deterrent effect and does not pay attention to the elements of justice and legal benefits.

5. References

Books:

Bambang Poernomo, 1988, *Hukum Acara Pidana Indonesia*, Amarta Buku, Yogyakarta.

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Mardjono Reksodipuro, 1997, *Kriminologi dan Sistem Peradilan Pidana (Kumpulan Karangan Buku Kedua)*, Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi Universitas Indonesia, Jakarta.

Ramly Hutabarat, 1985, *Persamaan di Hadapan Hukum (Equality Before the Law) di Indonesia*, Ghalia Indonesia, Jakarta.

Satjipto Raharjo, 1986, *Ilmu Hukum*, Penerbit Alumni, Bandung.

Soerjono Soekanto, 1990, *Sosiologi Sebagai Suatu Pengantar*, Rajawali Persada, Jakarta, 1990.

Yulies Tina Masriani, 2004, *Pengantar Hukum Indonesia*, Sinar Grafika, Jakarta.