

## CHAPTER ONE

### INTRODUCTION

#### A. Background

The illegal trading of endangered animal is one of the main problems especially in environmental issue. The illegal trading towards endangered fauna caused many problems, such as a massive state financial loss that makes this act considered as an extraordinary crime. Besides harming the country from losing potential natural resources, the crime involves an international network, like a drug crime.<sup>1</sup> The animals protected in Indonesia has been illegally traded. In conditions of dead nor alive, these animals have a high economic value. Throughout Indonesia, these are the cases of the illegal trading of endangered animals. The Directorate General of Law Enforcement of the Ministry of Environment and Forestry of Indonesia (*Direktorat Jenderal Penegakan Hukum Kementerian Lingkungan Hidup dan Kehutanan Indonesia*) formulated a data from 2009 until 2018, explaining about the kinds of animals that had been traded widely in Indonesia.<sup>2</sup>

No	Taxa (Group of Animal)	Number of Types
1.	Birds	116
2.	Reptiles	85
3.	Mammals	65
4.	Other species	39

<sup>1</sup>UNODC. "World Wildlife Crime Report Trafficking in protected species". 2016, p. 23.

<sup>2</sup>Annisa Arum Larasati, Thesis: "Perdagangan Illegal Satwa Liar Dilindungi di Indonesia Berdasarkan Data Kasus Selama Tahun 2009-2018" (Bogor: Institut Pertanian Bogor, 2019), p.9

The data of *SIPP (Sistem Informasi Pelaporan Kerja)* shows the cases of illegal trading of endangered animal cases in Indonesia; it was consisting of the kinds of animals that have been trafficked in Indonesia with the number of cases in each individual. The data was analyzed by the animal care organization *Yayasan Inisiasi Alam Rehabilitasi Indonesia (YIARI)* from the *SIPP* data from 2011 until 2018.<sup>3</sup>

No.	Name of Animal	Number of Cases
1.	<i>Harimau Sumatera</i> (Sumateran Tiger)	57
2.	<i>Trenggiling</i> (Pangolin)	42
3.	<i>Penyu</i> (Sea Turtle)	41
4.	<i>Kukang Jawa</i> (Javaneese Lemur)	30
5.	<i>Kucing Hutan</i> (Wild Cat)	23
6.	<i>Nuri Bayan</i> (Electus Parrot)	23
7.	<i>Gajah</i> (Elephant)	21
8.	<i>Kijang</i> (Roe)	21
9.	<i>Rusa</i> (Deer)	18
10.	<i>Beruang Madu</i> (Bear)	17
11.	<i>Kakatua Jambul Kuning</i> (Yellow-Crested Cockatoo)	16
12.	<i>Penyu Hijau</i> (Green Sea Turtle)	15
13.	<i>Beruang</i> (Bear)	14
14.	<i>Cendrawasih</i> (Bird of Paradise)	13
15.	<i>Rangkong</i> (Hornbill)	13
16.	<i>Alap-Alap</i> (Falcons)	13
17.	<i>Elang Brontok</i> (Changeable Hawk Eagle)	13
18.	<i>Buaya Muara</i> (Saltwater Crocodile)	12
19.	<i>Elang Bondol</i> (Brahminy Kite)	12
20.	<i>Landak</i> (Porcupine)	12
21.	<i>Siamang</i> (Gibbon)	11
22.	<i>Merak Hijau</i> (Green Peacock)	10
23.	<i>Blangkas</i> (Horseshoe Crab)	8
24.	<i>Elang</i> (Eagle)	8
25.	<i>Kukang Sumatera</i> (Sumateran Lemur)	8
26.	<i>Kasturi Kepala Hitam</i> (Black-capped	8

<sup>3</sup>Annisa Arum Larasati, Thesis: “Perdagangan Illegal Satwa Liar Dilindungi di Indonesia Berdasarkan Data Kasus Selama Tahun 2009-2018” (Bogor: Institut Pertanian Bogor, 2019), p.10

	Lorry)	
27.	Orangutan Kalimantan	8
28.	<i>Perkici Merah</i> (Red-flanged Lorikeet)	8
29.	<i>Perkici Hijau</i> (Green-flanged Lorikeet)	7
30.	<i>Elang Ular Bido</i> (Crested-serpent Eagle)	6
31.	<i>Penyu sisik</i> (Hawksbill Sea Turtle)	6
32.	<i>Macan Tutul</i> (Leopard)	6
33.	<i>Kakatur Putih</i> (White Cockatoo)	6
34.	<i>Jelarang Hitam</i> (Black Giant Squirrel)	6
35.	Binturong	6
36.	Other species	231

These are the representation of how cruel and serious the illegal trading of endangered animals in Indonesia.<sup>4</sup>

There was one case reported in the newsletter, Kompas.com, in 2018 *Balai Konservasi Sumber Daya Alam* (BKSDA) of Maluku has resulted around 1.189 species which consist of 1.177 bird species that were rescued with the other species and some endangered plants. It was stated that the animals were rescued during the security checking of the patrol, the help from Maluku society, and security officer's security patrol in the harbor and airport in North Maluku region. There are 80 cases of cases handled by BKSDA Maluku throughout 2018 consisting of 39 arrests, 21 cases from findings, and 20 cases handover of flora and fauna.<sup>5</sup> In 2019, there were several other cases which were also reported by BBC News Indonesia, such as forty one *Komodos* were rescued in Surabaya, East Java by the police of that region which the *Komodos* are advertised

<sup>4</sup>Annisa Arum Larasati, Thesis: "Perdagangan Illegal Satwa Liar Dilindungi di Indonesia Berdasarkan Data Kasus Selama Tahun 2009-2018" (Bogor: Institut Pertanian Bogor, 2019), p.10

<sup>5</sup>Kompas.com, 2018, "BKSDA Maluku Selamatkan 1177 Ekor Satwa Dilindungi Sepanjang Tahun 2018", taken from <https://regional.kompas.com/read/2019/01/03/15292511/bksda-maluku-selamatkan-1177-ekor-satwa-dilindungi-sepanjang-2018>, accessed on Monday, September 23<sup>rd</sup>, 2019, 13:26 PM.

freely on the *Facebook* application, a baby *Orangutan* were hidden in a suitcase by a Russian who was later caught in the airport in Bali, approximately 5.050 species of pig nose turtle were rescued under the smuggling in Papua, which later known that this species has been smuggled in the area of Papua and Timika.<sup>6</sup> Indonesia is challenged by a major effort in managing and protecting endangered endemic species. Several endemic species, such as tigers, rhinoceros, orangutan and elephants, are already listed as critically endangered on the IUCN Red-list. In Indonesia, especially in Sumatera islands, in the province of Aceh, Riau, Jambi, and South Sumatra are places where the human and wildlife conflict in the spotlight. The Sumatran tiger (*Panthera Tigris Sumatrae*) is one of the global rarest cats after the extinction of the Javan tiger (*Panthera Tigris Sondaica*) and the Balinese tiger (*Panthera Tigris Balica*) during the 20th century, therefore, the Sumatran tiger is the only endemic tiger species left in Indonesia. However, the species has suffered a drastic population decline due conflicts such as habitat loss, poaching, and illicit trade domestic and overseas. There are three main triggers regarding the population decline:

1. Habitat loss due to human activity involving the development zones such as logging and land conversion.
2. Illegal hunting and trade of animals and their specimens.

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<sup>6</sup>BBC News Indonesia, 2019, “Komodo, orangutan, hingga kukang, mengapa perdagangan satwa langka terus terjadi?” taken from <https://www.google.com/amp/s/www.bbc.com/indonesia/amp/indonesia-47746441> accessed on Wednesday 27<sup>th</sup>, 2019, 11:25 AM.

### 3. Lack of environmental awareness.<sup>7</sup>

Environmental problems today arise because of the ignorance of humans. It causes environmental damage that becomes a big problem for human and has become a global issue in this era. Indonesia is a country which has a variety of flora and fauna. But, the wealth of such natural resource is not followed by the awareness of society. Society is meant to conserve the natural resources, in fact; the exploitation of the flora and fauna is still happening until nowadays. The illegal trade of protected animals, endangered one is quite massive in Indonesia in recent years. Some cautions encourage the illegal trading towards endangered animals becomes in demand. With the passage of time, the young adult tends to have poaching as their activity to earn some money, selling and collecting several endangered animals' accessories is considered as a high-value business, even though it is illegal. As it was cited from Liputan6.com there were five teenagers suspected because of the involvement in illegal trading towards endangered species. The teenagers were later arrested with the evidences of rare animals such as sea eagles, kite rice fields, *Brontok* eagles, and one estuarine crocodile. In the action, those teenagers used social media to make offers and sale and purchase transactions. They are later known as members of a networking group with hundreds of members. This practice is far different from the past where the buyer of

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<sup>7</sup>Wilson Novarino, 2017, "The attitude, norm and perception of communities towards Sumatran tiger conservation initiatives in Aceh" *Journal of Indonesian Natural History* December 2017 Vol.5 No.1 & 2, Department of Biology, Andalas University, Indonesia, p. 10-11.

this endangered animal is the elderly people who used to fill his spare time. For their actions, the five suspects were charged under the law on living natural resources and ecosystems with the threat of a fine of Rp. 100 million and criminal confinement for five years in prison.<sup>8</sup>

Switzerland authorized animal protection in their national constitutions in different ways. Animal protection reforms have been in the Switzerland government concern for decades. Animal protection was considered as a federal issue since 1973, as a result, the government emerged its federal actions regulating the exploitation of animals by increasing the law enforcement.<sup>9</sup> As it was stated in:

*Code Civil Suisse Article 641 (a):*

- 1) *Les animaux ne sont pas des choses,*
- 2) *Sauf disposition contraire, les dispositions s'appliquant aux choses sont également valables pour les animaux.*<sup>10</sup>

English translation:

Swiss Civil Code Article 641 (a)

- 1) Animals are not objects.
- 2) Where no special provisions exist for animals, they are subject to the provisions governing objects.<sup>11</sup>

The effectiveness of a law is determined by comparing or linking the regulation of an action in the implementation of law itself. The Law

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<sup>8</sup>Liputan6.com, 2018, "Polisi Tangkap 5 Remaja Penjual Satwa Langka" taken from <https://www.liputan6.com/news/read/3606330/polisi-tangkap-5-remaja-penjual-satwa-langka>, accessed on Monday, September 23<sup>rd</sup>, 2019, 13:28 PM.

<sup>9</sup>Evans, Erin. "Constitutional Inclusion of Animal Rights in Germany and Switzerland: How Did Animal Protection Become an Issue of National Importance?". *Society and Animals* Vol. 18, Issue 3, No. 231, 2010, University of California Irvine, p.231.

<sup>10</sup> *Code civil suisse du 10 décembre 190, Article 641a.*

<sup>11</sup>Swiss Civil Code 10 December 1907, Article 641a

No. 5 of 1990 concerning Conservation of Natural Resources and their Ecosystems has been enforced since it was ratified. When discussing the effectiveness of law in society, it means discussing how the law is implemented to achieve the legal impact, that the law reaches its goal to change the behavior of society which in the end becomes a legal behavior. Besides referring the legal matters, it is necessary to explore deeper to where the law is implemented, as it was concluded from the news, Kompas.com, hobbies and prestige to raise social status are the main triggers of rampant hunting of endangered animals in Indonesia. This condition is followed with a lack of knowledge of society in the rural area of Indonesia.<sup>12</sup>

There was a previous study relating to the illegal wildlife trade in Indonesia namely, “*Perbandingan Hukum antara Pengaturan Perlindungan Satwa Liar yang Dilindungi di Indonesia dan di Australia Dikaitkan dengan Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*” a study and research by Raden Fini Rachmarafini Rachmat, which is discussing the legislations of Indonesian and Australian regulations of animal protection linked to CITES through a comparative approach, which is explained by the author whereas each regulation concerning the protection of protected wildlife in

Indonesia and Australia have the same core.<sup>13</sup> This research is aimed as the

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<sup>12</sup>Kompas.com, 2011, “Hobi dan Gengsi Penyebab Perburuan Satwa Dilindungi” taken from <https://nasional.kompas.com/read/2011/12/22/14190461/hobi.dan.gengsi.penyebab.perburuan.satwa.dilindungi> accessed on Sunday, October 13, 2019, 9:18 PM.

<sup>13</sup>Raden Fini Rachmarafini Rachmat, 2006, *Perbandingan Hukum antara Pengaturan Perlindungan Satwa Liar yang Dilindungi di Indonesia dan di Australia Dikaitkan dengan Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*,

continuation of the mentioned previous study as it attempts to compare between Indonesian and Switzerland legislations on animal protection which both countries have enforced their animal protection laws but resulted in different impacts.

## **B. Statement of Problems**

Considering the research background above, the author formulated two questions to be researched, namely:

1. What is the legal basis of eradication towards illegal trading of endangered animals in Indonesia and Switzerland?
2. What are the similarities and differences between the legal basis of eradication towards illegal trading of endangered animal in Indonesia and Switzerland?
3. What are the lessons learnt from the efforts of Switzerland to optimize the agenda of eradication of illegal trading of endangered animals in Indonesia?



### **C. Objectives of Research**

Based on the research questions above, there are three objectives to be achieved, namely:

1. To understand the legal basis of eradication towards illegal trading of endangered animals in Indonesia and Switzerland.
2. To compare the similarities and differences between the legal basis of eradication towards illegal trading of endangered animal in Indonesia and Switzerland.
3. To learn from the efforts of Switzerland in optimization of the effort to eradicate the illegal trading towards endangered animals in Indonesia.

### **D. Benefit of Research**

There are two advantages that could be reached from this research namely:

#### **1. Theoretically**

This research is beneficial in order to educate the society regarding the awareness of illegal trading towards endangered animals.

#### **2. Practically**

This research provides a better understanding of the law regarding the animal protection in the focus of the illegal trading of endangered animals.