

NO PAPER NO GO: A BOOST IN INDONESIA'S QUARANTINE LAW TO TACKLE WILDLIFE CRIME

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Indonesia is an important hotspot for wildlife trade in the Southeast Asian region. It has come to be recognised as one of the most significant for wild-sourced animal specimens, supplying both legal and illegal wildlife trade (Nijman and Shepherd, 2015; Janssen and Blanken, 2016; Krishnasamy and Zavagli, 2020).

Being a major archipelago, there are huge challenges in monitoring the country's borders to control the movement of wildlife and wildlife products sourced both domestically and internationally (OECD, 2019). Indonesia's Agriculture Quarantine Agency (BKP) plays a crucial role in preventing numerous attempts at cross-border wildlife trafficking, both international and domestic.

TRAFFIC's data, collected from media and other open and closed sources, show that between 2015 and 2019, there was a total of 1,436 wildlife seizure incidents in Indonesia. Of these, 102 cases (7.1%) involved the participation of the BKP, more than half of them (53 cases) were from 2018 and 2019. At least 43 cases involved protected species.¹ The sheer number of wildlife seized is astonishing. In Lampung, for example, the BKP seized 27,546 songbirds in 2019, and in 2020 alone (as of July), this number stood at an incredible 33,140. Openly available information on successful prosecution and conviction outcomes, however, is rare, but TRAFFIC's current data indicate that of the 102 cases involving the BKP, seven secured convictions in court, four of which involved use of the then current Act No. 16 of 1992 on Animal, Fish, and Plant Quarantine (Act No. 16).

In 2018, Indonesia saw two landmark prosecutions with convictions under Act No. 16 involving crime related to two non-native species: the Radiated Tortoise *Astrochelys radiata* and the Ploughshare Tortoise *Astrochelys yniphora*. Both are endemic to Madagascar, Critically Endangered and prohibited from commercial international trade through their listing in Appendix I of CITES² (TRAFFIC, 2018). This was the first time the quarantine law had been used to overcome a loophole in the primary wildlife law (Act No. 5), which does not have clear provisions to penalise crimes involving

¹ Number of protected species in seizures prior to August 2018 is based on the protection list of 1999

² CITES is the Convention on International Trade in Endangered Species of Wild Fauna and Flora



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A globally threatened Javan Myna *Acridotheres javanicus* among a seizure of song birds made by the Lampung Agriculture Quarantine Agency.

species not native to Indonesia. The seriousness of this loophole is evidenced in a 2015 survey which discovered approximately 5,000 individual tortoises and freshwater turtles openly for sale in Jakarta over a four month period, many of which were CITES-listed non-native species and very likely illegally imported (Morgan, 2018).

In October 2019 Act No. 21 was passed, replacing Act No. 16. Act No. 21 is superior to its predecessor, providing clear powers for BKP to tackle wildlife crime more effectively. Shortly afterwards, the new quarantine statute was used in December 2019 during the prosecution of a case involving the trafficking of four African Lion *Panthera leo* cubs, one Leopard *P. pardus* cub and tens of tortoises Testudinidae (Romadhoni, 2020). While penalties in the 2018 Malagasy tortoise cases under Act No. 16 were deemed weak, with less than a year's worth of imprisonment (to be served on probation) and fines of between IDR1 million (~USD 66)³ and IDR5 million (~USD 329), this case, whose outcome was announced in July 2020, was significantly tougher, with a cumulative penalty of 11.5 years imprisonment and IDR4 billion in fines (~USD 68,164) on the four persons found guilty. This was made possible through the enhanced penalties provided under Act No. 21. There is no lower limit for the penalty provisions under the new Act, so the severity of the punishment is testament to the seriousness with which the judge and prosecutors treated the crime.

This brief sets out to highlight the strengths under Indonesia's new quarantine law (Act No. 21), as well as opportunities for strengthening the prosecution of wildlife cases. As evidenced by the number of seizures made by BKP, and the provisions within Act No. 21 which permit wildlife-related enforcement and prosecution, it is time this tool is utilised to the fullest in combatting wildlife trafficking in the country.

³ USD values are based on IDR-USD conversion rate at the time of sentencing or at current value where provisions are described, based on www.oanda.com

Table 1: Key differences between Act No. 21 (2019) compared to Act No. 16 (1992) regarding wildlife trade

Subject	Act No. 16	Act No. 21
Newly defined terms.	-	<ul style="list-style-type: none"> · Wild Plants and Animals · Endangered Plants and Animals · Foreign Invasive Type
Requirement to produce documents mandated by other laws.	None, but provision under Article 13 of Regulation 82 includes document requirements by other Ministerial laws.	Articles 33–35 require every person who imports, exports, or moves within Indonesia, animals, and animal products to present not only a health/sanitisation certificate, but also any other documents required under other Ministerial laws, making them an essential border measure in detecting and prosecuting wildlife trafficking.
Penalties.	<p>Penalties divided into two categories. The first is criminal offences (committed intentionally) with maximum penalty of three years imprisonment and IDR 150 million (~USD 10,200) fine.</p> <p>The second is violations (offence due to negligence) with maximum penalty of one-year imprisonment and IDR 50 million (~USD 3,400) fine.</p> <p>No minimum penalty limits.</p>	<p>Penalty severity no longer varies by criminal offences and violation, but rather by import, export, movement from area to area, incineration cost, and BKP seal tampering offences.</p> <p>Penalties for BKP seal-tampering and failure to produce health certificate from transit points are new additions.</p> <p>Highest maximum penalty is for import offences—10 years imprisonment and IDR 10 billion fine (~USD 683,530).</p> <p>No minimum penalty limits.</p>
Quarantine actions on animals for the purpose of exhibition, circus and/or contest.	None.	Article 65 mandates quarantine actions on specimens temporarily entering and exiting Indonesia (or areas within Indonesia) for the purpose of exhibition, circus and/or contest.
Requirements for routine post-entry inspection on wildlife and endangered species.	None, but Article 83 of Regulation 82 mandates routine and continuous post-entry inspection of wildlife.	Article 32 mandates routine and continuous quarantine actions for wildlife and endangered species kept for breeding or under controlled conditions.
Destruction of wildlife and endangered species.	Article 65 of Regulation 82 permits a Minister's consideration of destruction of a protected species (under the law) rejected from its destination country.	Article 49 requires for destruction of wildlife and endangered species to be co-ordinated with the agency in charge of conservation and natural resources.
Grace period to furnish documentation.	Articles 21–24 of Regulation 82 allow <u>between three to seven days</u> to fulfil documentation requirements, depending on missing document(s).	Article 44(3) allows <u>three working days</u> from the day the owner receives a letter that specimens are being held for not fulfilling <u>any documentation requirement</u> .
Time frame for removal of rejected specimens.	Articles 21–24 of Regulation 82 allow <u>between 24 hours to three days</u> for the removal of rejected specimens depending on the type of missing document and type of specimens.	Article 45(4) requires rejected specimens to be removed by the owner <u>within three working days</u> of rejection by the quarantine agency.
Ending an investigation.	Article 30(3)(f) states that an investigator has the power to stop an investigation in the event there is insufficient evidence of a breach in quarantine law.	Article 83(2)(f) simply states that an investigator can stop an investigation with no requirement to prove insufficient evidence.

BRIEF ON INDONESIAN QUARANTINE LAW

Indonesia's quarantine law on animals, fish, and plants provides powers for quarantine actions not only for imports and exports of goods, but also for the movement of goods within the country. As such, all goods under the purview of the quarantine law are required to enter/exit the country or an area⁴ within the country strictly through legally designated entry and exit spots such as seaports, harbour crossings, land ports, airports, and post offices. A suite of supplementary regulations and administrative protocols are applied in tandem to the main quarantine law, covering among others, areas of health, safety, quarantine, documentation, and taking and moving animals and plants.

⁴Defined in Act No. 21 as an administrative area of government, part of an island, an island, or group of islands within a sovereign territory of the Republic of Indonesia

A health certificate (or sanitisation certificate for products of animal origin) is required from not only the country or specific area from which the goods originate but also from each transit country and domestic area. This allows for the tracking of goods' travel routes and potentially the detection of suspicious shipments whose origins are questionable.

Perhaps the biggest strength of the quarantine law in combatting wildlife trafficking, as is the case globally, is that its purview is not selective of species according to legal protection status. The law mandates quarantine actions by BKP on every animal (and products of animal origin) imported from, exported into, and moved within Indonesia.

AMENDED 2019 QUARANTINE STATUTE

In October 2019, the older Act No. 16 of 1992 on Animal, Fish, and Plant Quarantine (Act No. 16) was replaced by Act No. 21 of 2019 on Animal, Fish, and Plant Quarantine (Act No. 21), strengthening the BKP's position to safeguard Indonesia against illicit wildlife movements. Provisions for animal quarantine under the law are further prescribed under Regulation No. 82 of 2000 on Animal Quarantine (Regulation 82) and Regulation No. 17 of 2017 on Animal Quarantine Documentation (Regulation 17). In fact, many of the changes reflected under Act No. 21 appear to be a result of collating provisions under Act No. 16 and Regulation 82.⁵

Act No. 21 explicitly declares the supervision and control of wildlife and endangered animals to be within its scope.⁶ It also explicitly states “the prevention of illegal entry or exit of wild plants and animals, endangered plants and animals, and genetic resources into or from the Republic of Indonesia or movement thereof within the region of the Republic of Indonesia” as an objective of the quarantine law.⁷ This is a significant acknowledgement that the purview of Indonesia's quarantine legislation reaches beyond just combatting the introduction and spread of diseases and pests, but now also serves as a control mechanism against illicit movements of wildlife. Many improvements have been introduced in the new law; some key sections are highlighted in Table 1.

ACT NO. 21: CLOSING THE LOOPHOLE IN ACT NO. 5

As of December 2018, Act No. 5 of 1990 on Conservation of Living Resources and their Ecosystem (Act No. 5), Indonesia's primary wildlife law, provides legal protection status to 904 wildlife species, all of which are native to Indonesia. This renders Act No. 5 ineffective in combatting wildlife offences involving non-native species, despite it being the primary basis of regulation and control over wildlife trade. Act No. 21 makes up for this shortcoming by having under its purview legal mandates for the movement of all animal species both across international borders as well as within the country. The increased maximum penalties for offences under Act No. 21 are also superior compared to penalties provided under Act No. 5: an IDR10 billion (~USD683,530) fine and 10 years imprisonment for undocumented imports compared to an IDR200 million (~USD13,670) fine and 5 years imprisonment for illegal transportation of animals. Act No. 5 does not provide penalties for the illegal possession of non-protected species, except for offences of introducing non-endemic species into sanctuary reserves and national parks' Core Zones.

⁵ New supplementary regulations for Act No. 21 are underway and have yet to be established

⁶ Refer Act No. 21, Article 4(g) on scopes under quarantine regulations

⁷ Refer Act No. 21, Article 7(f) on objectives of quarantine implementation

RECOMMENDATIONS AND CONCLUSION

Although enhanced in many ways, Act No. 21 still has room for improvement. As a standalone, it gives cause to different interpretations in its implementation. While many of the changes reflected under Act No. 21 appear to be a result of collating provisions under Act No. 16 and Regulation 82, there are still provisions which require standardisation with the supplementary regulations. For example, the provisions under Act No. 21 and Regulation 82 on the grace period given to owners to furnish missing documentation and the time period for removal of rejected specimens should be synchronised. The inclusion of newly defined terminologies such as “wild plants and animals” and “endangered plants and animals” into supplementary quarantine regulations is also important to ensure clarity and standardisation in requirements for special documentation and quarantine actions. It is important that the establishment of regulations supplementing Act No. 21 is carried out as soon as possible to avoid any confusion and interruptions in execution of enforcement efforts.

As the BKP has powers to control the movement of any animals into, within and out of the country, it is crucial that Indonesia's quarantine law recognises the definition of threatened species conforming to international standards such as the IUCN⁸ Red List of Threatened Species™, beyond those contained within Act No. 5. This would provide clarity for the regulation on movement of native as well as non-native species which are not protected under Act No. 5.

Unchanged from Act No. 16 is that penalties for offences under Act No. 21 do not have minimum terms and amounts. This essentially means offenders could still get away with light punishments regardless of high maximum penalty provisions. It is also currently only a punishable offence not to carry health/sanitisation certificates. This is inconsistent with the powers vested in the BKP to inspect other documents beyond said certificates.⁹ It is also unclear under Articles 33(1)(a), 34(1)(a), and 35(1)(a) the circumstances under which health/sanitisation certificates can be inspected by the BKP. The provisions simply state that health certificates are required when carrying goods into and out of the country or an area within. There is no clarity on the prosecution for illegal possession at premises, for example, and parameters that qualify goods as having been taken into or out of a country or area. There is also ambiguity on the scope of routine quarantine inspections on wildlife and endangered species in captivity as mandated by Article 32.

Furthermore, it is imperative that Act No. 21 clearly provides the BKP with the powers of arrest, which it currently does not. As reflected by seizure data, the

⁸ International Union for Conservation of Nature

⁹ Refer Articles 33(2), 34(2) and 35(2) of Act 19 on requirement for other documents mandated by law



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Officials from the BKP releasing seized birds.

BKP continues to be involved in interdicting a growing number of wildlife crimes. Their role in combating wildlife trafficking can only be strengthened with the power to arrest perpetrators to pursue investigations and prosecution.

The addition of provisions for the temporary entry and exit of specimens for exhibitions, circuses and contests should also be clarified. As Act No. 21 requires that movement of specimens should be accompanied by other documents legally mandated by other Ministries, it should clearly define the circumstances and provisions under which specimens for exhibitions, circuses, and contests will be allowed entry or exit. These provisions should be within the parameters of Regulation No. 8 of 1999 on Utilisation of Plants and Wildlife and Decision No. 447/Kpts-II/2003 on Procedures for Taking or Capturing and Circulating Wild Plants and Animals under the purview of the Ministry of Forestry.

Indonesia's recognition of the importance of the quarantine agency in combatting wildlife trafficking shows the progressive nature with which the country is handling the issue. Few others in the region have followed suit. It is fundamental, however, to recognise that legislation is only as effective as the actions and commitment it receives from law enforcement agencies and the courts, among others. While regular seizures provide some deterrence in terms of losses to perpetrators, improved conviction rates are vital in deterring the recurrence of wildlife trafficking. Furthermore, there are currently joint operations and arrests made in wildlife cases involving the BKP and other agencies such as the Police, Directorate General of Environmental and Forestry Law Enforcement (GAKKUM), and Natural Resources and Conservation Center (BKSDA). Capacity building efforts could be beneficial to understand better each organisation's statutes and to recognise the opportunities for multi-law prosecutions. Armed with these initiatives, and with further enhancements to Act No. 21 as illustrated above, Indonesia has the potential to become the gold standard for how quarantine agencies should evolve as a recognised partner internationally in monitoring and controlling wildlife trafficking while upholding health and safety controls.

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