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Green turtles illegal trade based on commercial law and state administrative law perspectives

Nomensen Freddy Siahaan[*], Universitas Mulawarman, Samarinda, East Kalimantan, Indonesia
Agustina Wati, Universitas Mulawarman, Samarinda, East Kalimantan, Indonesia

[*]Email for Correspondence: nomensen.freddy1989@gmail.com

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ABSTRACT

Environmental ecosystems are the most important element in human life. Without a beautiful and healthy environment, humans will not live well. However, humans are greedy for the sustainability of environmental ecosystems, such as the illegal trade in green turtles that are not revealed to the public. This illegal trade disrupts the cycle of life and has a vast network, which is allegedly more numerous. This paper is a Normative Legal Research. Normative Legal Research is a scientific procedure to find the truth based on the logic of the normative legal scientific. The scientific logic of normativeLegal Research is developed by the scientific concentrate and ways of thinking of normative jurisprudence and their objects are regulation themselves. In this case, both parties acting as Debtors and Creditors, namely the Seller and Buyer of Sea Turtles, have reached an agreement and fulfilled the elements of the agreement. Green turtles are animals that maintain the survival of seagrass and seaweed, which are protected by several regulations.

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INTRODUCTION

Environmental ecosystems are the most important element in human life because they are shelters and carry out daily activities (Barua & Sinha, 2023; Ma et al., 2021; Vargas-Hernández et al., 2023). Without a beautiful and healthy environment, humans will not be able to live well. But often humans are greedy and do not care about the sustainability of the environmental ecosystem where humans live so that it disrupts the cycle of life.

The illegal trade in green sea turtles that are not revealed to the public is suspected to be more numerous (Pertiwi et al., 2020; Pheasey et al., 2023). The practice is thought to have a wide network, as it is impossible to do it individually, activists say. This was in response to the move by police in Bali who arrested a green turtle trader. Police said the trafficking in protected animals had been going on since 1998. ProFauna Indonesia Foundation founder Rosek Nursahid suspects that the uncovered turtle trade is even "more" than the police found on April 30 which amounted to 21 green turtles. "And we also don't know how that escaped, which was not detected by officers?" In our opinion, the government must be firm, there is no use of sea turtles because it is clearly protected," Rosek told BBC News Indonesia.

Rosek suspects that this turtle trade practice has a network, because it is unlikely that it is carried out individually. "We don't believe that this is not networked, because the turtles are not from Bali, right from outside the island, from Madura, from Java, if in the past from Flores as well and Sulawesi. It means there are people," said Rosek. However, police said the arrest of the green turtle seller this time did not cooperate with groups or syndicates. "If I look at it, there is none. He played alone. So far it is still each," said Head of Public Relations of Bali Police, Kombes Stefanus Satake Bayu Setianto to journalist Ade Mardiyati reporting for BBC News Indonesia, Tuesday (02/05).

From the results of the investigation, the Directorate of Water and Air Police of Bali Police secured 21 green turtles that were still alive from a suspect with the initials MJ, a resident of Benoa, Badung, Bali. The turtles, said Stefanus, were obtained from the Madura area, East Java. In addition, there are also two packages of turtle meat that have been chopped and seasoned. Each package is sold at a price of Rp. 300,000. The police found out about MJ's illegal actions because there were reports from the surrounding community.

Kombes Stefanus said that in an average year there are two cases of catching green turtle sellers in Bali. He even mentioned that green turtles still have fans in Bali. Allegedly, there are still traditional Balinese ceremonies that use green turtles as part of the ceremony. "It means there is a demand," Stephen said.

According to one Balinese resident in Denpasar, who only wants to be called Wayan, the habit of consuming green turtle meat has been known since he was in elementary school around 1987 ago. The 45-year-old man admitted to eating turtle meat during "big ceremonies at the temple". "It used to be common to use turtles as offerings in ceremonies and large turtles were used," Wayan said.

However, now the conditions have changed. He said turtles should no longer be consumed and only used for glue ceremonies, even those that are small. The pekelem ceremony is a ritual ceremony for the sea, mountains, and Earth. "Actually, it's not just sea turtles that are used. Sometimes other types of animals are also used," said the father of one. For the earth, says Wayan, turtles will be slaughtered and planted or buried. As for the sea, turtles will be released into the sea in living conditions. For mountain range, turtles will also be released.

Kombes Stefanus said green turtles still have fans in Bali. From the results of an investigation by Yayasan ProFauna Indonesia in 1999, around 9,000 turtles were traded in Bali in just 4 months, from May to August, with the turtle trade center located in Tanjung Benoa. Rosek Nursahid believes that the use of turtles for commercial purposes is more than for traditional ceremonies – which use at least one turtle as a symbol. Even according to some pedandas—Hindu clerics/priests—whom Rosek met, the use of turtles in ceremonies was only done during the Great Tawur Ceremony which was held once a hundred years and that too "can be replaced". "Why do there always be dozens of turtles coming in every year? Means not for the sake of custom or ceremony. Means for commercial purposes used for satay, for lawar, which is sold mainly in South Denpasar... all the way to Benoa," Rosek said.

Among the Balinese people, turtle meat is generally processed into satay or lawar mixture, a typical Balinese food of a type of urap. Wayan admitted that even though he understands that green turtles are protected animals. He still wants to consume it if he can find a stall that sells processed turtle meat. "But it is indeed difficult to find a stall selling turtle meat. And even if there is, it is actually difficult to distinguish whether what they sell is turtle meat or ordinary pork because it tastes similar," Wayan said. Although he admitted that he last ate turtle meat decades ago, Wayan still remembers the taste and texture of the protected animal. "It feels good. It is similar to roast pork, but it's more fat."

The very important role of green turtles in marine ecosystems makes the reason why protection of green turtles is "very important and urgent" (Patrício et al., 2021; van De Geer et al., 2022). Green turtles "eat sponges" in the sea and when decomposed "become home to fish" (Mghili et al., 2023; Palmer et al., 2021). "In addition, green turtles also eat the tips of seagrass, plants that look like seaweed. Eating the tips of seagrass will open the way for sunlight to enter the sea. The rest, seagrass is also a place to spawn or attach eggs for fish. This is why the role of green turtles is important for cycles or ecosystems in the sea," said Jatmiko.

The behavior of sea turtles eating parts of seagrass also helped its spread. This means that if green turtles become extinct, seagrass beds will also disappear and automatically fish will no longer exist in the ocean. "Green turtles play a role in helping to nourish seagrass ecosystems in waters, where seagrass ecosystems are useful in sequestering marine carbon," said Ranny R. Yuneni, Marine Species Coordinator of WWF Indonesia Foundation.

Trade and utilization of all species of turtles in Indonesia has been prohibited since 1990 with Law Number 5 of 1990. Green turtles are also included in the list of protected animals according to Government Regulation Number 7 of 1999 concerning the Preservation of Plant and Animal Species, including through Fisheries Law Number 45 of 2009. WWF Indonesia stated that there has been a drastic decline in turtle populations, both in Indonesia and at the global level. "Efforts to protect sea turtles are important to prevent the extinction of this species because of the 1,000 baby turtles (hatchlings) born, the chance of surviving to reach adulthood is only 1 in 1,000," said Ranny (Mardiyati, 2023).

This is what is behind the author to study the aspects of the environmental ecosystem further analyzed from the perspective of Commercial Law and State Administration Law so that later the public better understands the validity of illegal turtle trade activities from the point of view of commercial law and State Administration Law. The purpose of this study is to find out how illegal turtle trade activities are reviewed based on Trade Law and illegal turtle trade activities are reviewed based on State Administration Law.

METHOD

This paper is a normative legal research. It is a scientific procedure to find the truth based on the logic of the normative legal scientific. The scientific logic of normative legal research is developed by the scientific concentrate and ways of thinking of normative jurisprudence and their objects are regulation themselves (Soekanto & Mamudji, 2003). The data used were regulations deemed relevant to the topic discussed.

RESULTS AND DISCUSSION

Analysis from a Commercial Law Perspective

A sale and purchase agreement is the most common agreement between members of the community. The form of a sale and purchase agreement is a series of rights and obligations of both parties, who promise each other, namely the seller and the buyer. The sale and purchase agreement is regulated in Articles 1457 to Article 1540 of the Civil Code (hereinafter referred to as the Civil Code). The definition of sale and purchase according to Article 1457 of the Civil Code is "An agreement, by which one party binds himself to deliver an object, and the other party to pay the price that has been promised."

From the definition of sale and purchase according to Article 1457 of the Civil Code mentioned above, it can be concluded that sale and purchase is a reciprocal agreement, where the seller promises to give up ownership rights to an item and the buyer promises to pay a sum of money in return. The title of an item that was originally owned by the seller, will change hands to the buyer if there has been a juridical surrender in accordance with the provisions of Article 1459 of the Civil Code. A sale and purchase agreement is deemed to have taken place between the two parties, immediately after which these persons reach an agreement on the property and its price, even though the property has not been delivered, nor the price has not been paid (Article 1458 of the Civil Code) (Haryati, 2015). These goods and prices are the main elements of the sale and purchase agreement.

In this context, according to the Author, there are elements of goods and prices that meet the category of buying and selling according to this Article. The goods traded are turtles and the price of turtle meat that has been chopped and seasoned per package is sold at a price of Rp. 300,000.

According to Article 1517 of the Civil Code, if the buyer does not pay the purchase price, then it is a default that gives reason to the seller to claim compensation or cancellation of the agreement according to the provisions of Articles 1266 and 1267 of the Civil Code the "price" must be a sum of money. If an agreement does not refer to these two things (goods and money), then it will change the agreement to exchange, or if the price is in the form of services, the agreement will become an employment agreement, and so on. In the sense of buying and selling, it is understood that on the one hand there are goods and on the other hand there is money.

Regarding the types of money, it can be explained that, although the sale and purchase takes place in Indonesia, it is not required that the price is fixed in rupiah, but it is allowed for the parties to set it in any currency (Ichsan, 1986). Obligatory sale and purchase in Article 1459 of the Civil Code explains that the title to the goods sold will not change hands to the buyer as long as there has not been a juridical transfer according to Articles 612, 613, and 616 of the Civil Code. From the nature of the obligator in the sale and purchase agreement, it can be translated into several things which in essence are also included in the nature of the obligator.

This can be seen from the object (what is the object), the price that has been agreed by both parties in the sale and purchase agreement, and the last is the rights and obligations of the parties. In this case there is a sale and purchase price agreed between the seller and the buyer. The goods traded are turtles and the price of turtle meat that has been chopped and seasoned per package is sold at a price of Rp. 300,000.

Based on the principle of consensuality in the sale and purchase agreement, since the agreement was reached regarding the sale and purchase of goods and prices, even though there has not been delivery of goods or payment, since then a sale and purchase agreement has been born. The principle of consensuality itself according to article 1458 of the Civil Code regulates as follows: "Buying and selling has taken place between the two parties as soon as they reach an agreement on the goods and prices even though the goods have not been delivered and the price has not been paid". According to the author, in this case there has been an agreement between the parties, namely the seller and buyer of the turtle and the buyer bought at a certain price. Means in other words fulfilling the element of agreement.

The word cosensuality comes from the Latin consensus which means agreement. The word agreement implies that the parties concerned have reached a conformity of will. This means that what is desired by the parties has achieved an equality, then from the conformity of the will an agreement is achieved. For example, the seller as the first party wants to give up property rights to an item after getting a certain amount of money in return. Similarly, on the second party as the buyer who wants the title to the goods must be willing to give a certain nominal amount (money) to the seller as the previous holder of property rights.

Sale and purchase which is obligatory in Article 1359 of the Civil Code, that the title to the goods sold will not transfer into the hands of the buyer as long as there has not been a surrender according to the provisions of Article 612 of the Civil Code which states that the delivery of movable objects is carried out by real delivery, Article 613 that the delivery of receivables on behalf of the company, is carried out by making an authentic deed or under hand. The nature of the obligatoir in the sale and purchase agreement according to the Civil Code means that the sale and purchase agreement will arise reciprocal rights and obligations to the parties. That is, when laying down to the seller the obligation to surrender title to the goods sold, further giving him the right to demand payment of the price that has become an agreement. While the buyer is obliged to pay the price in

exchange for his right to get the transfer of title to the goods purchased, in other words the title will pass from the seller to the buyer after the delivery is made.

Here there is a reciprocal relationship between the Seller and the Buyer where the Seller submits a number of goods, namely turtles as an object of trade and the Buyer pays a certain amount of money as a means of payment. But again the surrender can be made if the object of trade is a cause that is lawful or not prohibited by law. If it does not meet these elements so that automatically the goods cannot be handed over from the Seller to the Buyer.

Sale and purchase is an agreement that arises due to the existence of a legal relationship regarding property between two or more parties. Supporters of the treaty must have at least two specific people, each occupying a different place. One person becomes the creditor party and the other becomes the debtor party. It is the creditor and debtor who are the subject of the agreement. The creditor has the right to performance and the debtor must fulfill the performance of the creditor (Setiawna, 1987). In buying and selling, the creditor is the buyer and the debtor is the seller. This is not true because it only describes unilaterally, while buying and selling is a reciprocal agreement, both sellers and buyers in accordance with legal theory and practice consisting of, namely (Individual as a *persoon* or a particular human being) (Setiawan, 1987):

1) *Natuurlijke persoon* or a certain human being: The subject of buying and selling in the form of a person or human being must meet certain conditions to be able to carry out a legal act legally. A person must be capable of legal action, not weak in mind, not under guardianship or guardianship. If the child is not an adult, the child's parent or guardian must act.
2) *Rechts persoon* or legal entity: The subject of buying and selling which is a legal entity, can be both cooperation and foundation. A cooperation is a combination of people who in a legal association act together as a separate legal subject. While a foundation is a legal entity born by a statement for a specific purpose. In legal relations, foundations act as advocates of their own rights and obligations.
3) Replaceable *persoon*: Regarding the replaceable creditor persoon, it means that the creditor who was the original subject has been stipulated in the agreement, at any time can be replaced with a new creditor. This replaceable agreement can be found in the form of an "aan order" agreement or agreement by order. Likewise in the agreement "aan tonder" or agreement on behalf of related parties.

If analogous to the news above, Rosek suspects that this turtle trade practice has a network, because it is unlikely that it is done individually. "We don't believe that this is not networked, because the turtles are not from Bali, right from outside the island, from Madura, from Java, if in the past from Flores as well and Sulawesi. It means there are people," said Rosek. But according to the author, it is possible that the network that carries out illegal trade activities in sea turtles is a certain entity (not an individual) and indeed needs further investigation.

Meanwhile, according to the Civil Code, the parties to the agreement are regulated sporadically in Article 1340, Article 1315, Article 1317, Article 1318 of the Civil Code, including:

1) The parties to the agreement themselves.
2) Their heirs and those who derive rights from them
3) Third parties. Whereas if these subjects (trading business and buyer.) contain the prohibitions stipulated in Articles 1468, 1469, and 1470 of the Civil Code, then they cannot execute the sale and purchase agreement. Trading businesses that act as sellers in serving buyers can act directly without attachment to the company as a party that produces goods. However, there are also sellers who are domiciled as official dealers who act and move on behalf of the company or authorized agent, as in the sale and purchase agreement here. The agent itself is defined as a party who carries out duties as a dealer to serve consumers in meeting their needs (Ichsan, 1986).

Seeing in carrying out their duties, the existence of the seller has similarities in serving buyers to get what they want, but what concerns the issue of claims from buyers to goods that experience factory production errors is certainly not the same. If the subject of the sale and purchase agreement is the one who acts, who is active, then the object in an agreement can be interpreted as something that is treated by the subject, in the form of something that is important in the purpose of forming an agreement, namely in the form of goods. So the object of the sale and purchase agreement is what is required to the authorities (debtor), and the thing to which the entitled party (creditor) has rights.

In this case, the Debtor is the Turtle Seller and the Creditor is the Sea Turtle Buyer. According to the author, most likely this illegal trade activity is a party that meets the elements of categories 1 and 3, namely between the parties who enter into the agreement itself (Sellers and Buyers of Illegal Sea Turtles) or to avoid security officers, it may involve third parties in its circulation.

Article 1332 of the Civil Code states that only objects that are in trade can be the object of a sale and purchase agreement. Thus the object of the sale and purchase agreement is not only objects in the form of

property rights, but objects that are in their power and can be traded, provided that at the time of delivery the type and amount can be determined.

According to Gunawan Widjaja and Kartini Muljadi, the general provisions regarding the engagement to hand over something (Article 1235 of the Civil Code), and the provisions specifically regulated in the provisions of the sale and purchase (Article 1474), the seller has 3 (three) main obligations starting from the moment the sale and purchase occurs according to the provisions of Article 1458 of the Civil Code. According to the provisions, in principle the seller has an obligation to (Widjaja & Muljadi, 2004):

1) Maintain and care for objects that will be handed over to the buyer until the time of delivery
2) Deliver the property sold at a predetermined time, or if not at a specified time, at the request of the buyer.
3) Bear the objects sold.

Article 1474 of the Civil Code explains that, as a party, the seller has two important obligations in the implementation of the agreement. The obligation is to deliver an item and bear it. Regarding submission or levering in the Civil Code, adheres to the 'causal system', which is a system that depends the validity of levering on two conditions:

1) Submission or levering has been carried out by the one who has the right to do free (beschikking sbevoegd) against the person who is levering.
2) The validity of the title in the sale and purchase agreement that is the basis for levering (submission). From the conditions mentioned above, especially the validity of the title on which the levering is based, it is intended that the obligator agreement is the basis for the levering. The person who 'has the right to do free' is the owner of his own goods or a person authorized by him.

According to the author, how the seller bears the levering or delivery of the illegal turtle himself if it turns out that the buyer also agreed to buy it. And both parties must have known in advance that the illegal trade activities of green turtles violated the laws and regulations. So in this case both parties are fully responsible for the legal consequences attached to them.

Four legal conditions of the agreement according to Article 1320 of the Civil Code are the agreement of those who bind him, the ability to make an engagement, a specific question point, and a cause that is not forbidden. Furthermore, as detailed in the article Types of Agreements and Their Legal Conditions along with the elaboration of each point related to the legal terms of an agreement in the eyes of law. The legal terms of the agreement are the agreement, the ability to make alliances, the subject of questions, and the reasons that are not prohibited.

Agreement of the Parties

Their binding agreement is simplified into an agreement of the parties. If interpreted, agreement means the adjustment of free will between the parties regarding the main matters desired in the agreement. In this case, each party must have a free will (voluntary) to bind itself, where the agreement can be stated expressly or tacitly. The meaning of being free is to be free from error, coercion, and deception. If there is an element of error, coercion, or fraud, this means violating the legal terms of the agreement. This provision is as stipulated in Article 1321 of the Civil Code which explains that no consent has force if given by mistake or obtained by force or fraud.

According to the author, in this case, there has been an agreement between the parties, namely the Seller and the Buyer of Sea Turtles. Means in other words fulfilling the element of agreement.

Competence of the Parties

In the context of the ability to make an agreement, the subjects are the parties to the agreement. Article 1329 of the Civil Code states that every person has the authority to make an engagement, unless he is declared incompetent to do so. Regarding who is declared incompetent, Article 1330 of the Civil Code explains that those who are incompetent to make consent are minors; the person put under care; and women who have married in terms prescribed by law and in general all persons who by law are prohibited from making certain consents.

In the author's opinion, the parties who make the sale and purchase are legally capable, are both adults and not under supervision. It seems almost impossible if children who buy and sell turtles between provinces or maybe countries.

About a Certain Thing

Related to a particular subject or thing means what is an agreement or agreement by both parties. In essence, the goods referred to in the agreement are determined by type, namely goods that can be traded. This is in accordance with the provisions of Article 1332 of the Civil Code which explains that only tradable goods can be the subject of approval.

Then, Article 1333 of the Civil Code explains that an agreement must have a principal in the form of an item that is at least determined by the type. The amount of the item need not be certain, as long as the amount can then be determined or calculated. Of course in this case there are goods that are traded and the object of sale here is turtles.

Halal Reasons

The meaning of a cause that is not forbidden or lawful in the context of the agreement relates to the content of the agreement or the objectives to be achieved by the parties involved. The content of an agreement must not contradict the law, decency, or public order. This is in accordance with the provisions of Article 1337 of the Civil Code which explains that a cause is forbidden, if the cause is prohibited by law or if the cause is contrary to decency or public order.

This is where the problem occurs. The object of the turtle trade turned out to violate the provisions of laws and regulations. The turtle trade is not in accordance with Government Regulation Number 7 of 1999 concerning the Preservation of Plant and Animal Species, including through Fisheries Law Number 45 of 2009. And this is reinforced by the argument that if these subjects (trading businesses and buyers.) contain the prohibitions stipulated in Articles 1468, 1469, and 1470 of the Civil Code, then they cannot execute the sale and purchase agreement.

Analysis from the Perspective of State Administrative Law

Legal protection of sea turtles in Indonesia is regulated in various laws and regulations:

1) Starting from the ratification of CITES (1973) through Presidential Decree Number 43 of 1978 concerning ratification (Convention On International Trade in Endangered species of Wild Fauna and Flora) which was signed in Washington on March 3, 1973.
2) Article 21 paragraph (2) of Law No. 5/1990 states that everyone is prohibited from:
    a) Capture, injure, kill, store, possess, keep, transport, and trade, protected animals alive;
    b) Keeping, possessing, keeping, transporting, and trading dead animals;
    c) Removing protected animals from one place in indonesia to another place within or outside Indonesia;
    d) Trade, store, or possess the skin, body or other parts of protected animals or goods made from such animal parts or remove them from a place in indonesia to another place within or outside Indonesia;
    e) Take, damage, destroy, trade, store or possess eggs and/or nests of protected animals; and
    f) Green turtle or Latin (chelonia mydas) is one of the animals covered based on the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No P.20/MENLHK/SETJEN/KUM.1/6/2018 concerning protected plant and animal species.

Green turtles are one of the animals that maintain the survival of seagrass and seaweed. Based on several existing regulations, turtle protection has been regulated in Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems and Regulation of the Minister of Environment and Forestry Number P.106/MENLHK/SETJEN/KUM.1/12/2018 concerning the Second Amendment to the Minister of Environment and Forestry Number P.20/Menlhk/Setjen/Kum.1/6/2018 concerning Protected Plant and Animal Species. This LHK Regulation is a revision of the annex to Government Regulation Number 7 of 1999 concerning Plant and Animal Preservation. Some of the above rules are the basis of regulations that establish the protection status of sea turtles, where everyone is prohibited from catching, injuring, killing, possessing, keeping, transporting and trafficking turtles.

There is an assumption in the community related to turtle meat that is beneficial to health as well as turtle eggs, which then increases the number of illegal trade in green turtles. The need for good cooperation from the Government with the community is expected to reduce the high number of turtle trade. The government is also expected to encourage community participation by organizing socialization in helping to maintain natural classes so that turtle ecosystems can be maintained and also prevent marine pollution so that sea turtles can continue to regenerate and provide benefits to the Indonesian sea and also at the same time can increase protection of sea turtles from illegal trade activities.

In addition to several existing regulations in Indonesia, the Regional Government also plays a role in the protection of green turtles by issuing policies in Regional Regulations, several regions that already have Regional Regulations and Village Regulations including Sukabumi Regency which has Regional Regulation Number 5 of 2009 concerning Turtle Conservation in Sukabumi Regency, then in Wonocoyo Village, Trenggalek Regency which has Village Regulations on Sea Turtle Conservation Areas.

CONCLUSION

The seller submits goods like turtles for trade, and the buyer pays a certain amount. However, the surrender can only be made if the trade is lawful or not prohibited by law. If the goods do not meet these elements, they cannot be handed over. Green turtles are protected under existing regulations, such as Law No. 5 of 1990 and Regulation of the Minister of Environment and Forestry Number P.106/MENLHK/SETJEN/KUM.1/12/2018. The government should directly supervise the illegal trade in protected green turtles to prevent disturbance to the life cycle and environmental ecosystem.

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