

Comparison of Wildlife Protection Law between Indonesia and the United States

Lusi Apriyani¹, Fahmi Yoesmar AR², Marta Erwandi³

¹ Faculty of Law, Sriwijaya University, Indonesia. E-mail: apriyani.lusi@gmail.com

² Faculty of Law, Sriwijaya University, Indonesia. E-mail: fahmiyoesmar_ar@fh.unsri.ac.id

³ Faculty of Law, Sriwijaya University, Indonesia. E-mail: martaerwandi@gmail.com

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ABSTRACT

Indonesia is known as one of the richest countries for its biodiversity. Plants, animals, and forest are very diverse in every region in Indonesia. Unfortunately, from time to time the numbers of biodiversity have been decreased along with the development of Indonesia. Nowadays, numbers of Sumatera Tigers and Orang Utan are not more than 400 since they were traded, captured, and killed in the name of economic development. Even wildlife habitat, forest, were converted to non-forestry use. Theoretically, Indonesia has Conservation Act which is the Law Number 5 of 1990 on Conservation of Biodiversity and Ecosystem in which providing protection to the biodiversity. However, this law mostly talks about conservation system rather than providing legal protection to the wildlife and its habitat. In addition, the law seems to stand on its own, meaning only Biodiversity Law regulates protection to wildlife. Other acts like Forestry law, Environmental law, Plantation law, and Mining law do not provide wildlife protection. While both flora and fauna are the most vulnerable elements affected by activities which are regulated by those laws. The existence of the conditions above indicates that the legal protection of wildlife needs to be improved. One of the improvement efforts is to reform the Indonesian wildlife protection law. The law reform of Indonesia wildlife protection can be done through comparative approach toward legal framework of wildlife protection of Indonesian and United States.

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1. Introduction

Indonesia is a tropical country which is rich in its biodiversity. According to, World Wildlife Fund (WWF), Indonesia is habitat for 12% mammals, 16% reptiles and amphibians, 17% birds, 10% plant, and 25% fish.¹ At least 300.000 species are spread

¹ World Wildlife Fund. Species. Available online from: <http://www.wwf.or.id/program/spesies/>. [Accessed May 23, 2017].

over land and water of Indonesia territory. However, those numbers continue to decline with the increased human activity. Human needs for clothing and food demand rapid economic development. The development, certainly, uses natural and biological resources. As a result, animals are hunted and their habitat is used for development purposes.

Currently, the number of wildlife in Indonesia is decreasing. For instance, the number of Sumatran tigers is now only 400 remaining in the island of Sumatra. Those numbers do not all live in conservation areas but also outside conservation areas. The Sumatran tiger (*Panthera tigris sumatrae*) has been categorized as Critically Endangered by the International Union for Conservation of Nature (IUCN) which means endangered in the near future. Other animals included in the Critically Endangered list of IUCN are *Rhinoceros Sondaicus* or *Badak Jawa* which is became the target of hunting for its horns. *Pongo Abellii* or *Sumatran Orangutan* is also included in the Critically Endangered list. Orangutans are becoming scarce since their habitat was converted to plantations and settlers. Orangutans are hunted to be killed since they considered as pests by plantation companies and the local people. *Dermochelys coriacea* or *Penyu Belimbing* is listed as belongs to the Vulnerable category in the IUCN list.

Those are only a small number of examples from many others extinct animals and endangered animals. With the increased of human development activities and the lack of government efforts in maintaining the number of fauna species in Indonesia, it is not impossible if the next five to ten years many animals are extinct.

The condition is exacerbated by the increasingly widespread forest area of Indonesia that is converted into plantations, especially oil palm plantations. Indonesia, which has a vast tropical forest area and become a habitat for dozens of species of animals, does not have a strong commitment to maintain the existence of flora and fauna and their habitat. The government's seemingly half-hearted commitment can be seen from its legislative products that do not try to include legal norms that can protect the flora, fauna and their habitat. For example, Law Number 32 of 2009 on Environmental Protection and Management does not talk about the protection of flora and fauna, whereas the environment is not only about humans, but also other creature.

This is because of since the beginning of the formulation of the law on environmental management namely Law No. 23 of 1997 which was before being replaced by Law No. 32 of 2009, the frame of thought of the formation of the rule is human and development. The replacement of Law no. 23 of 1997 with Law No. 32 Year 2009 does not yet mean that the most recent legislative product has considered the protection of flora and fauna on the impact of development. UU no. 32 of 2009 contains more legal norms only protecting people from the impact of development. The legal policy of the formation of environmental law is directed to sustainable development that is capable of maintaining economic growth. In other words, the existence of environmental legislation is to ensure the preservation of natural resources in order to be used for economic development-prosperity as big as possible. The legislators have forgotten that there are other factors that support the existence of the environment; the animals and plants that maintain the balance of the environment. However, those elements are not given full protection in environmental management.

The lack of seriousness of the government in providing protection against wildlife and plant species can not only be proven from the contents of the law of environmental protection and management, but from other laws and regulations such as mining law

and forestry law which do not yet contain legal norms details on the protection of animals and their habitats regarding activities that threaten their differences.

Indeed, Indonesia has Law Number 5 of 1990 on the Conservation of Biodiversity and Ecosystems (or Conservation Act) that regulate the preservation of flora and fauna. However, this law is more focuses on conservation activities and does not regulate the protection of wildlife from the negative impacts of development. In addition, the law seems to stand on its own; it is not integrated with forestry law, environmental law, plantation law and mining law, even though both flora and fauna are the most vulnerable elements affected by those activities. This indicates that the protection of the law toward wildlife needs to be improved. One of the improvement efforts is to reform the Conservation Act through comparative approach study to the wildlife protection law of the United States.

The law of wildlife protection of the United States is integrative; consisting of laws relating to each other. Wildlife is not only protected by specific laws but also protected by laws that regulate activities which harm human environment, including wildlife. The regulations that provide wildlife protection law are the Endangered Species Act (ESA), the National Environmental Protection Act (NEPA), and National Forest Management (NFMA). In addition, the model of wildlife protection in the United States is to establish special areas for wildlife such as the National Wildlife Refuge System, National Land, Acquisition Plan, wilderness areas, wild and scenic rivers, and national parks. Through comparison of wildlife protection law in United States and Indonesia, it is expected to find an integrative wildlife protection law formulation and appropriately applied in Indonesia.

2. Method

Research on “Comparison of Wildlife Protection Law between Indonesia and the United States” is a normative juridical study. It was conducted through literature review on legislation, court decisions, or other legal documents, as well as other researches, and other references. In this study, authors used statute approach and comparative approach. The authors, first, examined the legislation both Indonesia and United States, then, compared the legal frameworks of wildlife protection from both countries. Normative materials were collected by library research through reviewing legal materials from primary law sources, secondary law sources and tertiary law sources.

3. Comparison of Wildlife Protection Law between Indonesia and the United States

Indonesia is famous for its tropical forests. The fact that tropical forests are the best place to grow palm oil has made many companies invest in Indonesia to build palm oil plantations. Particularly, since the enactment of investment laws in Indonesia (*Undang-Undang No. 1 Tahun 1967 tentang Penanaman Modal Asing, dan Undang-Undang No. 6 Tahun 1968 tentang Penanaman Modal Dalam Negeri*), companies have had more opportunities to use Indonesian forest land for non-forestry use functions. Moreover, Indonesian forestry statutes allow forest lands to be converted for non-forestry use. Furthermore, the Indonesian government has had a relaxed approach to giving such permits to companies. This condition has led to an increased demand for converting forest in Indonesia to palm oil plantations.

Indonesia is also famous for its biodiversity. Unfortunately, forest conversion threatens the number of wildlife species in Indonesia. In other words, forest conversion causes both habitat loss and the deliberate, direct killing of wildlife. Because forest land is where many species live and obtain food, forest conversion practices that degrade forest lands naturally affect wildlife species. Added to that, threats to wildlife are not limited to the process of forest conversion. They also extend to the period when forest land has been converted to plantations. One example is the Orangutan, which is considered a pest and therefore hunted and killed by palm oil plantations.

These destructive practices continue because the Indonesian regulatory scheme favors private interests and suffers from a lack of specificity and clarity. The government has enacted laws that allow for forest conversion and those laws provide substantial flexibility for any individual company to use forest land. In addition, Indonesian forestry legislation conflicts and overlaps with other Indonesian legislation. Further, there is no specific statute that regulates wildlife protection in depth.

On the surface, Indonesian law may appear to limit forest conversion. For example, under Indonesian law, an individual company may convert only 20,000 ha for one province or 100,000 ha for the total area in Indonesia. Importantly, however, the current legislation on forest conversion does not address the total aggregate amount forest conversion allowed in the country. Most of the regulations on forest conversion take form of ministerial decrees, which have tendency to be revised annually and impose no criminal sanctions. And despite provisions limiting how individual companies conduct forest conversion, many companies seem to obtain forest conversion permits beyond these limitations—likely due to the manipulation of the system, which is enabled by overlapping statutes or lack of clarity in the law.

Since the enactment of Law No. 32 of 2004 on Local Government, in which local governments have authority to manage their own natural resources, many companies apply to local governments for forest conversion permits. These local governments are not required to consult with the central government before they issue permits, which have resulted in an increase in forest conversion activities in many forest areas in Indonesia as local governments are drawn to the economic benefits of these businesses. Also, the Zoning Act does not specify the amount of forest that can be converted, and it establishes no limits on zones. This lack of specificity and overlapping is exacerbated by lack of coordination among ministries.

In contrast to Indonesia, the United States has taken some effective measures to prevent these kinds of issues. The U.S national forest system goal is to ensure that forest is directed for multiple use sustained yield and diversity mandate preserved by its statutes, while Indonesia forest management purpose is to maximize the utilization of forest land. The U.S Federal forest land is fully managed by federal government; the government does not give forest concession rights to individual company, whereas Indonesia gives forest concession rights for companies which is preserved by the Indonesian forestry legislations.

Added to that, the U.S. has many layers and has interrelated statutes governing the U.S. forest management. For instance, in issuing special use permit or forest management plan, the action agencies must comply with some statutes; they should comply with the National Forest Management (NFMA) mandates, National Environmental Protection Act (NEPA) procedures, and Endangered Species Act (ESA). For example, in preparing forest management plan, federal agencies must comply with the principles in NFMA. And under NEPA, federal agencies are required to analyze

whether the action will impact the human environment. In addition, Environmental analysis impact is prepared by the agencies, while in Indonesia it is prepared by the applicant. Environmental analysis impact is prepared by the agencies, while in Indonesia prepared by the applicant which has tendency to be bias.

United States also has more statutes and measures that directly protect wildlife. First, Endangered Species Act (ESA) provides direct protection, prohibiting any agency action that jeopardizes the existence of endangered species. Secondly, the U.S protects wildlife by land set asides like the National Wildlife Refuge System, National Land Acquisition Plan, and others systems, like wilderness areas, wild and scenic rivers, and national parks.

Indonesia can learn from this integrated and cooperative U.S. framework to ensure wildlife protection through reforming forestry law. This kind of reform could address the protection of wildlife by clearly and unequivocally regulating the number of permits issued for forest conversion and the total of national forest that cannot be converted. In addition, Indonesia can improve on the limited listing approach used by the ESA, by supplementing protections by list with a specific statute that more broadly protects biodiversity and wildlife habitat. Also, Indonesia can adopt the U.S conservation system.

3.1. Indonesian Wildlife Protection Law

Indonesia lacks a specific statute aimed at protecting wildlife, which contributes to the problem of habitat degradation and endangerment of species. Law enforcement in wildlife protection in Indonesia is very low. It is illustrated by weak sentencing towards conservation crimes.² For instance, in June 2004, District court of Liwa imposed 3 years imprisonment and fine Rp 200.000 (\$20) towards three hunters that killed four wild elephants; and in July 2004, District court of Rengat sentenced five members of killer and trader syndicate with 1-year imprisonment because they killed and sold Sumatran Tiger fur.³

Actually, Indonesia has framework on conservation of wildlife. However, this instrument does not provide protection to wildlife holistically, including prevent harm from negative impacts of development. Generally speaking, the Act No. 5 of 1990 on Conservation of Biodiversity and Ecosystem⁴ talks about wildlife conservation duty; but, this legal framework only protects wildlife limited in designated areas.

Pursuant to Article 20 of Law No. 5 of 1990, animal species is classified into two groups: protected animal and non-protected animal.⁵ Added to that, the protected animal is grouped into: animals in danger of extinction, and animal whose population rarely.⁶ Article 13 of the Act No. 5 of 1990 provides that the preservation of animal shall be in natural sanctuary area (*kawasan suaka alam*) by let its population being balance naturally,⁷ while the preservation outside natural conservation area by managing and

² Conservation crimes are crime that against the Act No. 5 of 1990 on Conservation of Biodiversity and Ecosystem.

³ Wyandra Yustham. (2009) *Kejahatan Konservasi: Telaah Yuridis atas Pembunuhan Satwa Langka Dilindungi*. Available online from: <http://www.hukumonline.com/berita/baca/hol21707/kejahatan-konservasi-telaah-yuridis-atas-pembunuhan-satwa-langka-dilindungi>. [Accessed May 23, 2017].

⁴ Law No. 5 of 1990 on Conservation of Biodiversity and Ecosystem

⁵ Article 20 (1). [Law No. 5 of 1990]

⁶ Article 20 (2). [Law No. 5 of 1990]

⁷ Article 13 (2). [Law No. 5 of 1990]

breeding them to prevent the extinction.⁸ The natural sanctuary area (*kawasan suaka alam*) is described as areas that have peculiarity in its terrestrial and waters areas that has main function as preservation of biodiversity area and also as protective of life support system area.⁹

The natural conservation area itself is divided into two different areas: a strict nature reserve (*Cagar Alam*) and wildlife sanctuary (*Suaka Margasatwa*).¹⁰ However this statute does not clearly define both areas as two different things: a strict nature reserve is defined as a natural conservation area in which due to its geographic landscape has peculiarity of plant, animal, and ecosystem or particular ecosystem need to be protected and its development occur naturally,¹¹ and wildlife sanctuary is defined as a natural conservation which has characteristic of diversity and/ or the uniqueness of its wildlife species, and in order to maintain the continuity of this uniqueness the government can develop designation of the habitat.¹²

Besides natural sanctuary area (*kawasan suaka alam*), Law No. 5 of 1990 also categorizes natural conservation area (*kawasan pelestarian alam*) which is areas has peculiarity in its terrestrial and waters area that have a protective function of life support systems, the preservation of biodiversity, and sustainable use of natural resources and its ecosystem.¹³ This natural sanctuary area is divided into three group areas: national park, forest park, and natural tourism park.¹⁴

The Act No. 5 of 1990 also regulates prohibitions action towards wildlife that any individual prohibits to:

- a. Catch, hurt, killed, keep, possess, pet, transport, and sell protected alive species;
- b. Keep, possess, pet, transport, sell protected death species;
- c. Exclude protected species from Indonesian region to other region, inside or outside Indonesia;
- d. Sell, keep or possess skin, body or others part of protected species bodies, or goods made from this animals' parts or exclude them from a region in Indonesia to other regions;
- e. Take, destroy, exterminate, sell, keep or possess any eggs and/ or nest of protected species.¹⁵

Nevertheless, this statute does not discuss the prevention measures that the government must take in order to preclude threat of extinction of wildlife and degradation of habitat caused by development in forest lands. Those classifications of designation area for wildlife discussed above can cause confusion since there is no big differences for each classification. Moreover, Law No. 5 of 1990 does not discuss further about types of activity conducted for each area. Furthermore, this statute does not address the protection of wildlife and habitat outside the designated areas.

Regarding forest areas and wildlife protection, Indonesian forestry law provides for protection of biodiversity, but it is still limited because this statute does not require the government to provide diversity of plant and animal in its forest management, which

⁸ Article 13 (3). [Law No. 5 of 1990]

⁹ Article 1 (9). [Law No. 5 of 1990]

¹⁰ Article 14. [Law No. 5 of 1990]

¹¹ Article 1 (10). [Law No. 5 of 1990]

¹² Article 1 (11). [Law No. 5 of 1990]

¹³ Article 1 (13). [Law No. 5 of 1990]

¹⁴ Article 29. [Law No. 5 of 1990].

¹⁵ Article 21(2). [Law No. 5 of 1990].

makes the protection of wildlife is less strong in sense of development in forest area. Regardless there is no diversity of plant and animal mandates that the government must provide in forest management, wildlife can benefit from the restriction of activities are illegal use of forest land, illegal logging, illegal clear-cutting forest trees, illegal exploration and exploitation of forest lands, grazing livestock in forest area which is not determined to be grazing area, throwing objects that could cause a fire and damage and harm the continuity of forest function, illegally excluding, bringing, and transporting plant and wildlife which is not protected under the law and is originally from the forest.¹⁶ Additionally, some provisions in Law No. 41 of 1999 are discussed about forest protection that the operator of activity in forest should insure the protection of forest.¹⁷ For those who held activities in forest area which cause forest damage entitle to pay fee for reclamation and rehabilitation.¹⁸

Despite both forestry law and conservation of biodiversity law provide criminal sanctions towards prohibit actions against wildlife, those statues does not provide enough protection for wildlife and habitat because those statutes still broad and does not provide prevention of threat to wildlife in forest management plan stage. For example, the statute requires the proponents of projects to conduct biological assessment and requires the government in its determination to take hard look to biodiversity analysis.

Added to that, Law No. 5 of 1990 does not regulate government to allocate national fund for the purposes of maintain wildlife and habitat. It also does not discuss the determination of protected animal process by the government. Also, it does not talk about how to control the number of non-protected animal in order to balance the ecosystem. In brief, the legal frameworks of wildlife protection in Indonesia is still suffers deficiencies. Therefore, the author will discuss the U.S laws regarding with forest management and wildlife protection in the next sections in order to draw conclusion lessons that Indonesia can learn from the U.S legal frameworks.

3.2. United States Protection Framework on Wildlife and Habitat

The United States has different kinds of efforts to protect its wildlife and habitat. The U.S. has a direct legal framework to preserve endangered species namely Endangered Species Act (ESA); national program named National Refuge System; national funding for habitat preservation called National Land Acquisition Plan; and Wilderness system in which wildlife can benefit from this area.

In the first establishment of the U.S. Forest Policy, its forest statutes did not take into account the wildlife protection. Since the enactment of NFMA, forest management plan begins to include diversity of plants and animals' principles. Added to that, the enactment of Endangered Species Act (ESA) affirms the duty of federal agencies to protect wildlife.

Pursuant to Endangered Species Act, the federal agency has duty to conserve the endangered species and threatened species towards establish "listing" process, prohibits "taking" the endangered species, and designates critical habitat for listed species as well. In addition, under Section (10)a of this act, landowners entitle to

¹⁶ Article 50. [Law No. 5 of 1990].

¹⁷ Article 48 & Article 49. [Law No. 5 of 1990].

¹⁸ Article 45 Law No. 41 of 1990 on Forestry.

prepare Habitat Conservation Plan (HCP) if the activities in their land would likely harm the continuity existence of wildlife.

ESA prohibits any person including federal agencies to “take” listed and/ or threatened species; “take” means to kill, hunt, harm, or harass.¹⁹ The U.S. Fish and Wildlife Service (FWS) interpret “harm” also as significant habitat modification.²⁰ The exception for “take” action only for the purpose of scientific research and incidental take.²¹ The determination for this exception shall be made through a consultation.²² Added to that, 50 C.F.R. § 17.3 provides protection of habitat in which the modification and degradation of endangered and threatened species habitat constitutes violation of “take” under ESA.

The determination of endangered or threatened species is established by the listing process. The listing proposal of species can be initiated by any “interested person” or the Secretary of Interior.²³ The decision to list the species as endangered or threatened species must be made by the Secretary of Interior on the basis of “best scientific and commercial data available.”²⁴ The determination to list the species as threatened or endangered species at least involves three steps: the-90 day determination, the 12-month status review, and the final decision.²⁵

First, within 90 days after the Secretary receives the listing petition, he should conduct preliminary evaluation to determine whether the petition is made based on “substantial scientific or commercial information.”²⁶ If the petitioner is failed to show substantial evidence, the agency issues a “federal register” that the process ends and it can be moved to appeal.²⁷ In reverse, if the agency found that the petition is satisfied the requirements threshold, then the agency must publish the decision into the federal register as well along with the agency comments towards the proposal.²⁸

After the proposal is passed the 90-day determination process, the agency must review the status of the proposed listing species along with evaluation information of the species within twelve months after receiving the petition.²⁹ At the end of the day, the agency must make decision whether the petition is warranted, not warranted, or warranted but precluded;³⁰ and it must be published in federal register as well. Then, if the petition is warranted, the next step that should be taken by the agency is final decision process. Within one year after the publication of the proposed rule, the agency must decide the status of the proposed listing species.³¹

Besides the listing endangered and threatened species instruments, the ESA also has critical habitat designation tool. The ESA requires the agency to designate the endangered and threatened species habitat as critical habitat concurrently with the

¹⁹ 16 U.S.C. § 1532.

²⁰ 50 C.F.R 402.02.

²¹ 16 U.S.C. § 1539.

²² 16 U.S.C § 1537.

²³ 16 U.S.C § 1533(b)(3)(A).

²⁴ 16 U.S.C §1533(b)(1)(A).

²⁵ Dale D. Goble & Eric T. Freyfogle. (2010). *Wildlife Law: Cases and Materials* (2nd ed). Foundation Press, P.1137.

²⁶ 16 U.S.C. 1533(b)(3)(A).

²⁷ 16 U.S.C. 1533(b)(3)(A).

²⁸ 16 U.S.C. 1533(b)(3)(A).

²⁹ 16 U.S.C § 1533(b)(3)(B).

³⁰ 16 U.S.C § 1533(b)(3)(B).

³¹ 16 U.S.C § 1533(b)(6)(A).

listing determination.³² The Act regulates four conditions to designate the habitat as critical habitat: “at the time of a species is listed,” separate time from the listing decision only if there is a need to conserve the habitat, the designation of habitat can be delayed if the habitat is not “determinable” due to lack of information, or the designation of critical habitat is not needed.³³

Regarding with a proposed activity which involving agency action will likely “take” endangered or listed animal, the agencies have to prepare biological assessment and consult with Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS).³⁴

The ESA does not provide definition of biological assessment, but the hand book defines it as:³⁵

Information prepared by, or under the direction of, a federal agency to determine whether a proposed action is likely to (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat.

This biological assessment is written by technical experts working for action agencies.³⁶ This technical document will be used by the Service (FWS or NMFS) to give biological opinion towards the proposed actions. It is a reflection document consists of “a carefully planned action” suggestions, assessment of “a disorganized biological assessment suggests a poorly planned project.”³⁷ Briefly, the biological assessment must provide scientific analysis of impacts from the proposed action toward endangered and threatened species and critical habitat as well.

Besides the protection of endangered and threatened species under the ESA, the U.S has some others regulatory framework to protect particular species not essentially listed under ESA, namely Marine Mammal Protection Act of 1972, Wild Horses and Burros Act of 1971, Migratory Birds Conservation Act, and Lacey Act. All these legal frameworks show that the U.S. concern to protect its biodiversity, nevertheless, those statutes still do not provide enough protection for non-listed species.

Another strength point from the United States framework on wildlife protection is the U.S has constituted National Wildlife Refuge System in which federal lands allocated for preservation of habitat, federal funding for wildlife management under National Land Acquisition Plan, and several other federal land management systems, such as wilderness areas, wild and scenic rivers, and national parks.³⁸

The first legal basis to increasing public awareness for protecting endangered wildlife was in 1964 when Congress added a provision in the Land and Water Conservation Fund Act allowing public monies for “the acquisition of land, waters, or interests in land or waters” for the purpose of preservation of threatened fish and wildlife.³⁹

³² 16 U.S.C § 1533 (a)(3), (b)(6)(C).

³³ 16 U.S.C. §1533(b)(6).

³⁴ 16 U.S.C § 1537.

³⁵ J. Peyton Doub. (2012). *The Endangered Species Act: History, Implementation, Successes, and Controversies*, CRC Press, P. 119.

³⁶ *Id.* at 119.

³⁷ *Id.* at 120.

³⁸ Freyfogle, *supra* note 124 at 926.

³⁹ *Id.* at 1089.

The U.S has financial system for the purpose of acquisition and land management as habitat named The U.S has National Land Acquisition Plan in which Land and Water Conservation Fund will provide money for federal, state, and local government to purchase land for the purpose of recreational, clean water, preservation of wildlife habitat, scenic vistas, preservation of archaeological and historic sites, maintenance of pristine nature of wilderness areas.⁴⁰ This funding system also regulated under Section 5 of ESA, which grants the Secretaries of the Interior, Commerce and Agriculture authority to acquire land for the habitat preservation in accordance with conservation programs.

Added to that, the U.S has National Wildlife Refuge System (NWRS) which is a fundamental of designated habitat system. The NWRS is the largest system of lands in the world that allocate for habitat protection.⁴¹ The National Refuge System was created by the enactment of the National Refuge System Administration Act of 1996. The mission of this national system is to maintain “the national network of lands and waters” for the purpose of conservation, management, and restoration of the fish, wildlife, and plant resources and the habitat as well.⁴² The designation habitat system under National Refuge System is conducted through at least five ways:

[T]hrough executive withdrawal of land owned by the federal government and managed by the Department of Interior; through an exchange or purchase funded by the statutes such as the Migratory Bird Conservation Act, the Land and Water Conservation Fund, or the Endangered Species Act; through an independent act of Congress; through transfers from the other land managing agencies such as the Army Corps of Engineers; and through a donation from a non-federal landowner.⁴³

Briefly, even though the ESA only provide protection for listed species, the designation of critical habitat and National Refuge System are prevention extinction framework for wildlife.

3.3. Lesson Learned from the United States

The U.S. and Indonesian regulatory schemes are different in several significant ways. Unlike the U.S., where legislation is relatively clear and far-reaching, Indonesia still struggles with overlapping statutes and a lack of law to ensure the protection of wildlife and its habitat. Furthermore, Indonesian forestry legislation consists of government and ministerial regulations that are less strict than regulations in the U.S. The forest management goals of both countries differ as well. While Indonesia forest management’s main purpose is to maximize the utilization of forest land, the U.S. national forest system aims for a balance between multiple uses sustained yield and diversity of plant and animals. These goals have provided basic protection for wildlife species from the threat of activities that occur in forest land.

Added to that, the U.S. gives more layers of protection to wildlife in its forest management. For instance, in issuing special use permit or forest management plan,

⁴⁰ U.S. Forest Service. LWCF Purchases. Available online from: <http://www.fs.fed.us/land/staff/LWCF/index.shtml>. [Accessed July 13, 2017].

⁴¹ Cam Tredennick (2000). The National Wildlife System Improvement Act of 1997: Defining the National Wildlife Refuge System for the Twenty-First Century. 12 FORDHAM ENVTL. L.J, P 1798-5.

⁴² 16 U.S.C.A. § 668dd (2).

⁴³ Freyfogle, *supra* note 124, at 933 (citing Nathaniel P. Reed & Dennis Drabelle, The United States Fish and Wildlife Service (1984)).

the action agencies must comply with some statutes in which that statutes are interrelated; they must comply with NFMA, NEPA, the ESA. The action agencies must ensure the diversity of plant and animal mandated by NFMA, must prepare EIS (when the action has adverse impacts to human environment) which is regulated under NEPA, and must comply with ESA requirements and provide biological assessment under the ESA. As to Indonesia, basically, Indonesia also has sort of interrelated statutes in regulating forest use in which the activity must comply with the forestry statute and environmental statute. However, these statutes fail to emphasize the prevention of threat of wildlife and habitat caused by development in forest area since both statutes does not mandate the government to take hard look consideration of wildlife in its forest decision making and does not require the proponents to prepare biological assessment which focuses on biodiversity analysis separate from AMDAL document.

The fourth thing that the U.S. has taken one step further that Indonesia in ensuring the protection of wildlife is in term of forest management authority; in the U.S. the federal forest land is fully managed by federal government and individual companies do not have forest concession rights. However, companies can propose special use permit to use forest land for the recreational purposes, for example, development of ski resort. Conversely, Indonesia gives opportunity for company to have forest concession right in national forest land which is preserved by the forestry statute.

As to environmental analysis impact, both the U.S. and Indonesia have the same tool of analysis –the U.S. has EIS and Indonesia has AMDAL, and the scoping analysis is quite similar in which both the U.S. and Indonesia require cumulative impact analysis of the proposed activity. However, in the U.S. EIS is prepared by the agencies, while in Indonesia prepared by the applicant. Because the analysis prepared by the applicants, so the analysis allegedly will in favor of the business entities. Additionally, since EIS in the U.S. does not require biodiversity analysis comprehensively and only applies to “major federal action,” so that is why the U.S. has another tool to address this problem –biological assessment under ESA in which this statute prohibit any individual including agencies action to harm the endangered species and critical habitat.

As to wildlife protection, Indonesian government incorporates the duty to conserve animals to Law No. 5 of 1990 on Conservation of Biodiversity and Ecosystems. However, this legislation does not comprehensively provide protection for wildlife especially to prevent them from negative impacts of development; instead it just regulates the protection duty in designated areas. On the other hand, the U.S has more wildlife protection framework than Indonesia. The U.S has Endangered Species Act that provides direct protection of listed species. It also requires the Fish and Wildlife Service to establish listing process for endangered and threatened species, and to designate the habitat for those species as critical habitat. Furthermore, the U.S. has tools in preventing the extinction of wildlife through the designation of critical habitat and biological assessment which requires the action agency consultation; whereas Indonesia conservation statute does not have those two instruments. Nevertheless, the U.S. also has flaw in which it just provide protection only for listed species.

Besides the ESA, the U.S has land set aside program in which it has National Refuge System, National Land Acquisition Plan and Wilderness System. Under National Refuge System, the federal government has authority to acquire non-federal land and manage the land under Department of Interior for the purpose of preservation of wildlife habitat if the Secretary deems so. This acquisition is funded by the National

land Acquisition Plan in which the public monies can be used for the purpose of wildlife protection. Added to that, the wildlife can benefit from the wilderness system in the U.S.

On the contrary, Indonesia does not have any statute that regulates the allocation of national budget for the purpose of conservation system; this leads to lack of legal framework on the duty to protect wildlife. Probably, somewhat Indonesia has kind of wilderness system –the statute does not define as wilderness area; however, the Indonesian conservation statute still does not clearly distinguish each of designation areas for conservation and the government duties on those areas.

4. Conclusion

No one country has been success perfectly in dealing with wildlife habitat protection problems. However, the US has more comprehensive law and has taken such measurements in ensuring the preservation of wildlife habitat that Indonesia can learn from it. ESA only apply to listed species, and critical habitat; it does not address for those which are not listed. Therefore, they have less protection rather than the listed species. It will be difficult to challenge federal agency action which has significant impact to the animals that are not listed under ESA. Despite that limitation, the wildlife can take advantage from the land set aside program of the U.S. Added to that, the U.S. has taken effort to ensure that the forest will benefit the wildlife by obligate the agency to provide diversity plant and animal in forest management.

Indeed, Indonesia also has taken some measures to protect wildlife by providing criminal sanctions in the conservation statute for those who held activities harm the wildlife and the wildlife can benefit from the restriction activities under the forestry law. However, those statutes do not strongly prevent the wildlife from the threat of extinction result in development in forest land, especially from forest conversion. Thus, Indonesia needs to reform its forestry statute and to legislate new wildlife protection statute by learning from what the U.S. has been done.

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