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# STRENGTHENING THE LEGAL FRAMEWORK FOR THE USE OF UNDERCOVER BUY METHODS IN THE ENFORCEMENT OF WILDLIFE CRIME LAWS



## ADDRESSED TO:

- THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA
- THE INDONESIAN NATIONAL POLICE
- THE MINISTRY OF FORESTRY OF THE REPUBLIC OF INDONESIA
- THE SUPREME COURT OF THE REPUBLIC OF INDONESIA
- THE ATTORNEY GENERAL'S OFFICE OF THE REPUBLIC OF INDONESIA

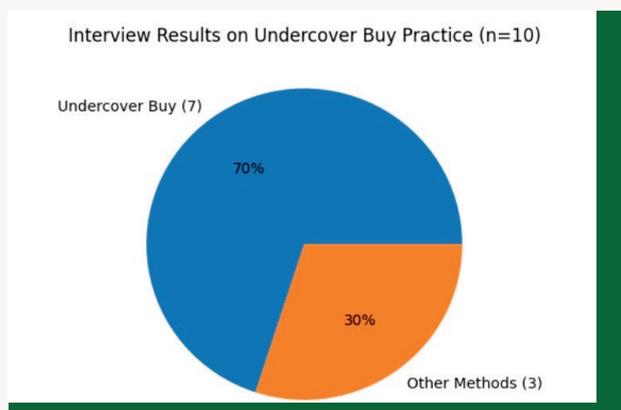


## EXECUTIVE SUMMARY

Crimes involving protected wildlife constitute organized criminal activities that threaten the sustainability of biodiversity and the ecological balance of Indonesia. The legal protection framework has been strengthened through the amendment of Undang-Undang Nomor 5 Tahun 1990 by Undang-Undang Nomor 32 Tahun 2024. However, the effectiveness of this framework depends significantly on the certainty, integrity, and quality of law enforcement mechanisms capable of penetrating closed and organized criminal networks.

The criminal provisions concerning the trade of protected wildlife are positioned as an integral component of wildlife crime under Undang-Undang Nomor 5 Tahun 1990. Article 40 paragraph (2) stipulates criminal sanctions for any person who intentionally commits acts prohibited under Article 21 paragraph (2), including capturing, injuring, killing, storing, possessing, maintaining, transporting, and trading protected wildlife, whether alive or dead. This formulation demonstrates that the offense encompasses the entire chain of illegal trade, extending beyond poachers to include intermediaries, transporters, and traders. Nevertheless, in practice, proving the elements of “trading” and “transporting” often presents evidentiary challenges, as transactions are conducted covertly and in an organized manner. In this context, the undercover buy method is employed as an investigative technique to obtain transactional evidence and to uncover the structure of illegal trading networks. Despite its practical utility, its application requires clear legal boundaries and effective oversight to prevent procedural deviations and to safeguard due process.

This policy brief is grounded in research findings conducted by students of the Faculty of Law, Universitas Syiah Kuala, in collaboration with the Aceh Forest, Nature and Environment Foundation (HAkA Foundation) in Aceh. Interviews with convicted offenders in wildlife trafficking cases indicate that the majority were apprehended through covert transaction schemes. These findings suggest that undercover operations play a significant role in conservation law enforcement practices.



**Diagram 1.1** Percentage of Interview Results with 10 Convicted Offenders in Wildlife Crime Cases Conducted in 2025 in the Aceh Region (Court Decisions from 2022–2024)

## **POLICY BRIEF**

Based on field data obtained through interviews with 10 convicted offenders, 7 individuals indicated that they had been involved in an undercover buy scheme during the handling of their cases. Quantitatively, this means that 70% of respondents in this study suggested the presence of such practices, while the remaining 30% did not experience similar circumstances. These findings demonstrate that the use of the undercover buy method constitutes a significant proportion of the respondents' cases, thereby warranting further analysis from a procedural perspective, particularly concerning limits of authority and potential implications for the protection of suspects' rights within the criminal justice process.

In a regulatory context that remains general in nature and lacks detailed operational limitations, this situation may create a grey area for law enforcement authorities, especially regarding the boundary between legitimate investigative techniques and actions that may amount to provocation.

A proportionate and non provocative undercover operation cannot be classified as entrapment, as its purpose is to uncover criminal conduct that has already been premeditated by the perpetrator, rather than to create a new offence through inducement or the formation of intent that did not previously exist. This principle is reflected in a case in Aceh Timur, where the method was employed to dismantle an already existing criminal network and market structure without generating artificial demand, targeting individuals who, from the outset, had possessed the criminal intent to commit the offence.

## **POLICY BRIEF**

The absence of explicit regulation concerning the prohibition of entrapment or anti-provocation safeguards also opens the possibility that undercover operations may not only uncover premeditated criminal conduct but may also risk generating or motivating criminal acts by individuals who initially lacked a clear intent to commit such offenses. Such circumstances raise serious concerns in relation to the protection of suspects' rights and the principle of due process of law.

Normatively, undercover buy operations have been recognized under Undang-Undang Nomor 20 Tahun 2025 tentang KUHAP. However, the regulation remains broadly formulated and does not yet provide a clear operational definition, conditions of use, authorization mechanisms, anti-provocation safeguards, or a structured system of oversight and accountability. This regulatory gap may lead to divergent interpretations, evidentiary uncertainty, and challenges in maintaining a balance between effective law enforcement and the protection of constitutional rights.

Accordingly, there is an urgent need to strengthen the regulatory framework in a more explicit, measurable, and accountable manner to ensure that the application of such investigative techniques aligns with the principles of legality, proportionality, and due process of law, while simultaneously reinforcing the legitimacy of wildlife crime enforcement.



# PURPOSE AND OBJECTIVES

This policy brief is prepared with the intent of providing policy recommendations to key stakeholders within the criminal justice system and the conservation sector. The objectives are as follows:

1. To identify normative weaknesses in the regulation of undercover buy operations.
2. To examine the legal implications arising from normative ambiguity in relation to evidentiary processes.
3. To provide concrete policy recommendations to the The Supreme Court of the Republic of Indonesia, the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police, the Ministry of Forestry of the Republic of Indonesia, and the House of Representatives of the Republic of Indonesia.
4. To support the strengthened implementation of Undang-Undang Nomor 32 Tahun 2024 in the context of combating illegal wildlife trade.

## STRATEGIC ISSUES

### **1** Absence of Operational Standards in the New Criminal Procedure Code

The new Criminal Procedure Code, enacted under Undang-Undang Nomor 20 Tahun 2025 tentang KUHAP, recognizes investigative techniques such as undercover operations and undercover buy. However, it does not yet provide detailed regulation concerning the permissible scope of investigator interaction, the requirement of prior reasonable suspicion, the procedural stages and duration of operations, nor the mechanisms of supervision and accountability. In contrast, the narcotics regime under Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika contains more explicit provisions governing special investigative techniques. Within the context of wildlife trafficking, enforcement continues to rely largely on general procedural norms. As a result, field practices lack uniform national operational standards.

### **2** Constitutional and Due Process Risks

The absence of clear parameters raises potential concerns relating to the principle of legality, the right to a fair trial, and the possibility of pre-trial challenges or constitutional review. Within the framework of Undang-Undang Nomor 20 Tahun 2025 tentang KUHP, any restriction of rights must be grounded in clear, accessible, and foreseeable legal provisions. Without explicit limitations, the line between undercover buy and entrapment becomes blurred, creating risks that evidence may be deemed inadmissible and that the legitimacy of investigative processes may be undermined.



### 3 Fragmentation of National Practice

In the absence of nationally standardized operating procedures, investigative practices may vary across regions, interpretations among law enforcement authorities may diverge, and evidentiary standards may become inconsistent. Such fragmentation risks generating legal uncertainty in the enforcement of wildlife crime cases and weakening the coherence of national conservation law enforcement.

## *Comparative International Lessons*

Other jurisdictions consistently position legality as a primary precondition for the use of covert investigative techniques.

### **Netherlands**

Under the *Wetboek van Strafvordering*, special investigative powers require prosecutorial authorization and, for intrusive measures, prior approval from the investigating judge (*rechter-commissaris*). In practice, as affirmed by the *Hoge Raad* in its decision of 19 February 2013, infiltration operations are deemed lawful provided that they are grounded in sufficient preliminary suspicion, operate within a clearly defined scope of authorization, and do not involve active provocation. This model demonstrates that *ex ante* judicial control functions as a structural safeguard, limiting investigative discretion and preventing entrapment.

### **United States**

Wildlife crime enforcement under the *Lacey Act* and the *Endangered Species Act* is subject to the entrapment doctrine. In *Sorrells v. United States* and *Jacobson v. United States*, the Supreme Court of the United States held that law enforcement officers may not implant a new criminal intent in the mind of the defendant. The legal test centers on the defendant's predisposition prior to governmental intervention.

## United Kingdom

Through the Regulation of Investigatory Powers Act 2000 and the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, covert operations are permissible only where they satisfy the principles of necessity and proportionality, are subject to formal authorization, and are overseen by independent supervisory mechanisms.

## Australia

The Crimes Act 1914 regulates controlled operations through formal authorization procedures and provides limited immunity strictly within the scope of approved conduct.

### Common International Pattern

Across jurisdictions, several structural elements consistently emerge:

- Explicit statutory basis, whereby special investigative techniques are clearly regulated by legislation rather than inferred from general provisions;
- Formal, tiered authorization mechanisms;
- Layered oversight structures;
- Clear anti-provocation parameters; and
- Conditional legal protection for authorized officers.

At present, Indonesia does not yet possess a comparably comprehensive and structurally integrated framework.

### Consequences of the Absence of Reformulation

If the regulatory framework remains general and insufficiently articulated:

1. Evidence obtained through undercover buy operations may be vulnerable to judicial exclusion;
2. The likelihood of challenges through pretrial judicial review may increase;
3. There is potential for constitutional review or judicial review of the relevant provisions;
4. National inconsistency in law enforcement practices may persist; and
5. Public trust in environmental law enforcement may be delegitimized.

Within the broader context of Indonesia's national conservation commitments, such conditions may significantly hinder the effective implementation of Law Number 32 of 2024, thereby undermining both enforcement objectives and the credibility of the regulatory regime.

# Recommended Regulatory Model

It is recommended that any reformulation within the Indonesian Criminal Procedure Code (KUHAP) or its implementing regulations incorporate the following elements:

### Explicit Definition

An undercover buy shall be defined as an investigative act whereby an investigator assumes the role of a purchaser for the purpose of uncovering a criminal offense for which sufficient preliminary indication already exists.

### Conditions for Use

The use of undercover buy operations shall be subject to the following requirements:

- The existence of sufficient preliminary evidence;
- The absence of less intrusive investigative alternatives; and
- Limitation to serious and organized criminal offenses.

### Authorization Mechanism

- Issuance of a written warrant or formal investigative order;
- Approval from a competent supervisory or structural official; and
- A documented risk assessment prior to execution.

### Express Prohibitions

- Prohibition against creating a new criminal intent that did not previously exist;
- Prohibition against active provocation; and
- Prohibition against expanding the scope of the offense beyond the original investigative scenario.

### Documentation and Oversight

- Submission of a post-operation report;
- Periodic internal audit and review; and
- Evaluation of procedural compliance.

### Conditional Legal Protection

Law enforcement officers shall be entitled to legal protection insofar as they act within the scope of authorized powers and do not exceed the limits established by law and formal authorization.

## The Supreme Court of the Republic of Indonesia

- To issue judicial guidelines or a Circular Letter setting out parameters for assessing the legality of covert purchases (undercover buys) as admissible evidence.
- To promote consistency in judicial decisions in conservation cases involving special investigative techniques.
- To integrate issues relating to covert investigative methods into specialized environmental judicial education and training programs.

## The Attorney General's Office of the Republic of Indonesia

- To formulate internal prosecutorial guidelines establishing evidentiary standards for cases involving the undercover buy method.
- To conduct rigorous verification of procedural legality prior to the submission of cases to the courts.
- To strengthen prosecutorial capacity in constructing evidentiary arguments in organized environmental crime cases.

## The Indonesian National Police

- To establish national Standard Operating Procedures governing the implementation of undercover purchases in conservation cases, particularly in wildlife trafficking matters.
- To regulate mechanisms for written authorization and hierarchical reporting.
- To clarify the scope and limits of investigative authority in order to prevent practices that may be construed as entrapment.
- To ensure legal protection for officers acting in strict compliance with established procedures.

## The Ministry of Forestry of the Republic of Indonesia

- To initiate regulatory harmonization of technical conservation law enforcement frameworks.
- To incorporate provisions governing special investigative techniques within implementing regulations under conservation legislation.
- To strengthen inter-agency coordination in addressing organized wildlife trafficking networks.



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## The House of Representatives of the Republic of Indonesia

- To exercise oversight functions concerning the implementation of investigative techniques in conservation law enforcement.
- To encourage normative reformulation within revisions of the Criminal Procedure Code or through the enactment of implementing regulations.
- To ensure that regulatory strengthening remains aligned with the principles of legal certainty and the protection of fundamental rights.

## Closing

The undercover buy method constitutes a strategic instrument in dismantling organized and clandestine wildlife trafficking networks. Nevertheless, such effectiveness must be balanced with legal certainty and constitutional safeguards. An explicit reformulation of the legal framework is not intended to restrict law enforcement authorities, but rather to:

**Strengthen the legitimacy of investigative measures**

**Ensure national consistency in enforcement practices**

**Provide legal protection for officers acting in accordance with the law**

**Safeguard the integrity of the criminal justice system**

With a clear and comprehensive regulatory framework, Indonesia can enhance the effectiveness of wildlife crime enforcement while simultaneously upholding the principles of procedural fairness and the rule of law.



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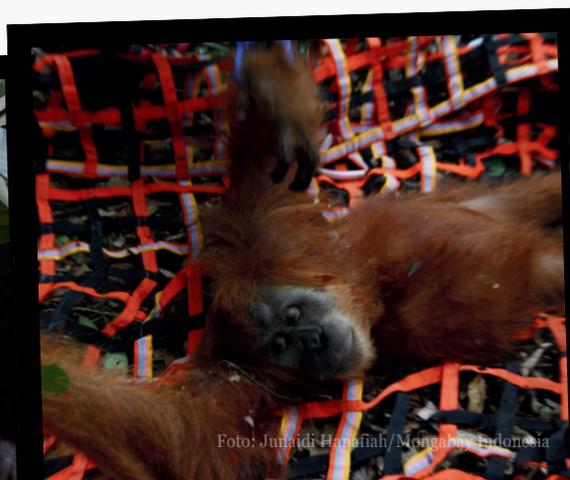


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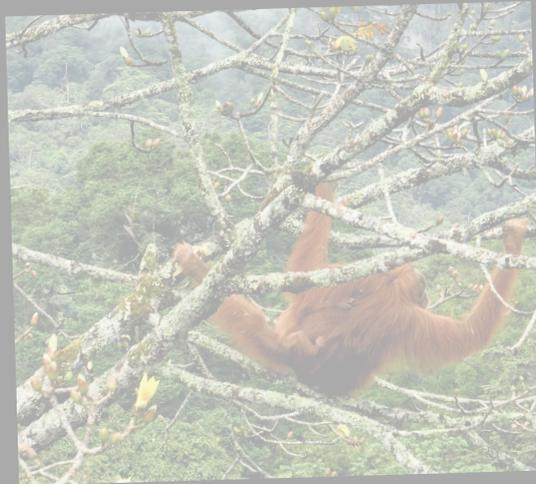


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