

Legal Reconstruction of the Regulation of Plantation Crimes Based on Justice Values

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Abstract

This research aims to find and analyze the weaknesses of the criminal sanctions regulations against perpetrators of plantation crimes which are not yet based on the value of justice, and to reconstruct the criminal sanctions regulations against perpetrators of criminal acts based on the value of justice in a normative legal research which examines legal norms in regulations that examine the research object. The data used in this research is secondary data, namely primary legal material in the form of laws and regulations governing criminal sanctions. Secondary legal materials in the form of scientific literature and previous research discussing criminal sanctions and tertiary legal materials in the form of legal dictionaries. Based on research conducted, there are several norms of criminal sanctions against perpetrators of plantation crimes in Law Number 39 of 2014 concerning Plantations that are not based on the value of justice because the orientation of the UUP is on large internationalization investors or foreign investors so that plantation regulations are liberalizing, as is the case with Regulation of criminal sanctions and fines against perpetrators of plantation crimes is still weak, especially corporate sanctions. Weaknesses in the regulation of criminal sanctions against perpetrators of plantation crimes currently include weaknesses in legal substance, legal structure, and legal culture. From this weakness, there is also a legal vacuum and legal ambiguity, therefore, the reconstruction offered is carried out with the reconstruction of the norms of Article 103 to Article 113 of Law No. 39 of 2014 concerning Plantations.

Keywords: Legal Reconstruction, Plantation Crimes, Justice Value.

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INTRODUCTION

Crimes in the plantation sector have a broad impact on plantation management, the perpetrators need to be sentenced to large fines, so the greater the land coverage area, the greater the sanctions. The aim is, apart from improving people's welfare and increasing investment/foreign exchange, it is also to provide a deterrent effect against perpetrators of criminal acts. The imposition of fines according to the level of loss means that the perpetrator knows the extent of the impact of the criminal act he has committed so that the perpetrator can regret it and not repeat his actions again. The criminal costs are costs incurred by the State to finance the process of imposing sanctions on the perpetrator, including operational costs in the investigation, prosecution, and trial process (Toebagus, 2022). The costs of imposing sanctions are included as part of the sanction item because social losses caused by a criminal act include direct and indirect losses (Ginting, 2022).

The criminal fines paid are intended as law enforcement costs which include the costs of prevention, disclosure of arrests, trials, and the imposition of criminal sanctions. Apart from that, determining the cost of the fine must also take into account the amount of profit obtained by the perpetrator from the criminal act he committed (actual cost), investigation costs, and costs for mapping/preparing land as a result of the criminal act. The greater the profit a person is expected to obtain from a crime, the greater the fine imposed. The amount of sanctions must be increased to reduce the possibility of escaping sanctions (Widodo, 2018).

Other costs that also need to be included are social costs in accordance with the objectives of the Plantation Law to increase the income and welfare of the community. The criminal liability system in plantation crimes lies in the terms or words intentional or negligent which are not explicitly mentioned in the criminal articles of the Plantation Law. The articles clearly require that there is an element of intentional error which is

usually formulated actively. Articles formulated like this can be interpreted to mean that an element of error must be contained in them. This is because the criminal liability system in this law is still based on the principle of intentional wrongdoing, so to overcome this, it is necessary to reform the criminal law.

Criminal law reform in the context of plantation crimes essentially contains the meaning of an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society which underlie social policy, criminal policy, and law enforcement policies in Indonesia. In short, it can be said that criminal law reform essentially must be carried out with a policy-oriented approach and at the same time a value-oriented approach. Theoretical demands and developments in criminal law reform in various countries have a strong tendency to use penal mediation as an alternative solution to problems in the field of criminal law. It cannot be denied that the practice of law enforcement in Indonesia in criminal cases is resolved outside of court through the discretion of law enforcement officials, which then causes the demand for positive forms of case resolution outside of court to become stronger. (Widodo, 2019)

No criminal act can be sentenced to criminal punishment unless there are regulations that regulate it. In terms of enforcing punishment, especially for plantation crimes, different efforts are made, especially if the crime is committed by a company compared to when it is carried out by the plantation community. The purpose of imposing punishment is to prevent criminal acts from being committed again, one of the reasons for punishment is that punishment deters violations of criminal law. The relationship between punishment and deterrence is a topic that is always hotly debated, both from a philosophical approach and by presenting empirical data from research results. A philosophical approach seeks to provide an explanation of humans and the world they experience. Humans are seen as reasoning creatures and within certain limits are free to choose whether to violate criminal law or not. Only through punishment can humans be forced not to commit crimes/violate criminal law, which is known as the concept of free will (freedom of choice), rational, hedonistic (avoiding painful things) as the rationale for theories of deterrence, both general deterrence and specific deterrence. (Dermawan, 2023) as well as specific deterrence. The benefits of punishment for deterrence even though what may be proven is only specific deterrence.

The next goal is to resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace to society. Apart from that, the final goal is to foster a sense of remorse and relieve the convict of guilt. In the author's opinion, these last two goals, apart from being connected to the philosophy of restorative

justice, are also very in accordance with customary law where the goal is to restore balance and solve conflict in society which in turn will bring a sense of security and peace, namely by returning state losses in criminal cases against plantation crimes.

Legal reform in Indonesia has begun since the proclamation of independence on 17 August 1945, through the 1945 Constitution of the Republic of Indonesia. It cannot be separated from the foundation and at the same time the national goals to be achieved as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, especially the fourth paragraph. From the formulation of national goals contained in the fourth paragraph, two national goals can be seen, namely (1) to protect the entire Indonesian nation, and (2) to promote general welfare based on Pancasila. Therefore, we can conclude that there are two national goals, namely "*social defense*" and "*social welfare*" which show the existence of the principle of balance in national development goals, this problem is interesting to be studied further and organized into research with the following main problem:

1. What are the weaknesses of the Regulation of Plantation Crimes in Indonesia currently?
2. How is the Legal Reconstruction of The Regulation of Plantation Crimes Based on the Value of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Regulation of Plantation Crimes in Indonesia Currently

The forms of criminal sanctions in the Plantation law (UUP) are in the form of imprisonment and fines, the majority of which are formulated cumulatively (imprisonment and fines). In this form, there are legal implications if criminal sanctions are formulated cumulatively. Firstly, the judge has no choice but to impose two criminal sanctions on the perpetrator who is proven to have committed a criminal act in the environmental sector, even though according to the judge, the perpetrator would be more suited to being sentenced to prison or even a fine. Second, in the context of environmental law, the cumulative criminal formulation system clearly shows that the perpetrators who commit criminal acts are humans, not including corporations. A corporation can't be sentenced to prison because it has unique characteristics (Marito, 2023).

Based on the description above, it can be seen that although there are prohibited acts that lead to environmental protection, the orientation of criminal threats in the UUP does not yet lead to environmental conservation. There are two basic reasons, namely: First, the types of punishment that are threatened for acts that have criminal aggravations are only limited to two types, namely imprisonment and fines. Imposing prison sentences on perpetrators certainly has nothing to do with environmental conservation. For someone who is proven to have committed a plantation crime and is sentenced to prison, these sanctions are still unable to change these three things for the better. Likewise with fines. The imposition of criminal fines has nothing to do with environmental conservation efforts because the fines are paid by the perpetrator to the State. It is not clear so far that these fines are used directly to restore the damaged environment.

Second, the maximum criminal threat of a fine in the plantation law is 10 billion, while the criminal threat in the UUPPLH is 15 billion. In the UUPPLH, there is indeed a regulation regarding a maximum fine of 1 trillion, but that only applies to corporations that commit criminal acts as intended in the article. 94 paragraph (2). With a fine amount like that, if the payment of the fine by the perpetrator to the State is used

directly for environmental conservation purposes, this amount will still not be able to repair the damaged environment, especially if the damage is very severe.

Furthermore, the criminal sanction of fines in the UUP is still relatively low, when compared with the criminal sanctions of fines in the UUPPLH, the maximum penalty in the plantation law is 10 billion, while the criminal penalty in the UUPPLH is 15 billion. In the UUPPLH, there are indeed regulations regarding criminal fines. Maximum of 1 trillion, but that only applies to corporations that commit criminal acts as intended in Article 94 paragraph (2). Apart from that, the value of the rupiah is decreasing so that the threat of fines is lower, while corporations reap large profits from plantation crimes that are violated.

The amount of fines imposed on perpetrators of plantation crimes, namely corporations, as stated in the UUP, is not yet based on justice. Criminal sanctions against perpetrators of corporate crimes are very weak compared to the State's losses from the use of natural resources and environmental damage.

The increasing use of fines can also be seen in the emergence of a striking tendency to supplement or employ Criminal Law (fines) in other areas of law.

Plantation conflicts continue to rise but there is no conflict resolution. In 2013 alone there were 180 conflicts, of which it is not certain that the conflicts can be resolved. This is only monitoring data from civil society. If the statistics were corrected, perhaps the numbers would be wrong.

The criminalization of indigenous peoples due to the existence of Law Number 39 of 2014 concerning Plantations (Plantation Law) is considered to have violated the constitution. The emergence of criminal cases makes this law favor investors or plantation business actors.

As a concrete example, the criminalization of civil society as a result of the Plantation Law Number 18 of 2004 is no longer valid can be seen in Aceh Tamiang Regency based on data from the Medan Post Aceh Timur Legal Aid Institute. This conflict has occurred since the 1980s until now. It was stated that PT Parasawita obtained control of land objects which turned out to be disputed land in the early 1980s.

Because the criminalization articles were re-included, three civil society people submitted a judicial review to the Constitutional Court regarding the articles which were revived by the lawmakers.

The articles being sued include Article 11 paragraph (2), Article 12 paragraph (1), Article 55 letters a, c and d, and Article 107 letters a, c and d. According to him, these articles create inequality between plantation

companies and the community. For example, in Article 12 paragraph (1), it is stated that in the case of land needed for a plantation business, consultations must be held with the legal community holding customary rights to obtain an agreement regarding the handover of the land and compensation.

Furthermore, researchers are of the view that there should be protection of the rights of customary law communities as traditional rights that still exist within the framework of the unitary state of the Republic of Indonesia. However, in fact there is still a criminal threat with a fine in Article 107 letter d of Law Number 39 of 2014 concerning Plantations.

The substance component contains real results, in this case, Law No. 39 of 2014 concerning Plantations issued by the legal system. The substance component contains the real results published by the legal system. These concrete results can take the form of *in concreto* (individual legal rules) and *in abstracto* (general legal rules). It is called individual legal rules because these rules apply only to certain parties or individuals (Kolinjivadi, 2023). *In-abstracto* legal rules are general and abstract rules because the application of such rules is not aimed at specific individuals but these rules are aimed at anyone subjected to the formulation of these general rules. This rule can be read in the formulation of various existing laws such as Law Number 39 of 2014 concerning Plantations, namely the rules for sanctions or norms for criminal acts or criminal sanctions.

From the examples of these two rules, it can be concluded that *in-abstracto* law concerns legal rules whether in the form of laws (UU No. 39 of 2014) or other forms. Meanwhile, *in-concreto* law is a decision or ruling in concrete cases that has binding force because it is valid according to law.

2. Legal Reconstruction of the Regulation of Plantation Crimes Based on the Value of Justice

The concept of justice involves what is fair, equitable, and truly commensurate for each individual. All events have a greater purpose which develops on a spiritual basis to return to God. There is complete justice for all. No law, Constitution, Supreme Court, or man-made system of justice can provide such justice.

Even though there are more and more activists working in the field of environmentalism or environmental activists becoming more numerous, there are also more and more environmental cases and problems. According to activists, this is because the policies that have been made by policymakers do not seem to be working and are not fully in favor of the environment as a whole. This is because several regulations do not yet exist and the sanctions given do not deter environmental destroyers.

Indonesia is a country that frequently experiences forest fires, some of which are used to clear land for oil palm plantations, and in Indonesia there are also frequent conflicts and pollution due to oil palm plantations which are increasing very rapidly in Indonesia. Likewise, the losses caused by forest fires occur almost every year. Environmental damage is also caused not only by giant companies but also by household industries that are thrown away arbitrarily. Issues and concerns regarding the environment in Indonesia have been reported in the mass media since the 1960s (Lai, 2021).

The deforestation of forest areas that serve as buffer zones for cities, and the large number of forest areas that have been converted to plantation land, are considered by many parties to be the culprits behind natural disasters everywhere.

In the Environmental Ethics Perspective, the most important component of the relationship between humans and forests is human supervision. Religion aims to protect, protect, and care for religion, life, reason and thought, children and grandchildren, and the nature of caring for equality and freedom. Protecting, protecting, and caring for the environment is the main goal of the relationship in question. If the environmental situation continues to get worse then eventually life will no longer exist.

Forests, as part of the integrity of human life, must be viewed as ecosystem components that have value to be respected, appreciated, and not harmed. This integrity is the cause of the influence of human behavior on the surrounding forests. Furthermore, it also causes humans to have a responsibility to treat their forests well. Good and bad behavior will affect the forest, for example, good behavior causes the environment to remain sustainable, and bad behavior causes the environment to be damaged. An anthropocentric human perspective causes damage to nature because this perspective views humans as the center of the universe. As a result, humans view nature as an object that can be exploited to satisfy human desires.

Therefore, environmental problems arise due to exploitative attitudes towards nature and this cannot be separated from a very fundamental cosmological view, it is necessary to develop environmental ethics to foster a friendlier and more appreciative attitude towards nature.

Based on the problems mentioned above, it can be concluded that legal reconstruction is needed for the following reasons:

1. The Plantation Law only recognizes two types of sanctions, namely criminal sanctions and fines.
2. The Plantation Law does not recognize or does not mention a specific minimum criminal threat.

3. The Plantation Law only formulates a specific maximum criminal threat so that all criminal acts are threatened with a special maximum threat with varying criminal weights. Namely, for a maximum prison sentence of 3 years, 4 years, 5 years, 7 years, and 10 years, for a fine, the maximum prison sentence is: 3 billion, 4 billion, 7 billion, and 10 billion
4. Increasing criminal threats. In Law Number 18 of 2004 concerning Plantations, the aggravation of criminal threats is related to two forms, namely the aggravation of criminal threats because certain acts are carried out intentionally and the aggravation of criminal threats because certain acts are carried out intentionally resulting in death or serious injury.
5. The severity of criminal threats is not yet environmentally based because the forms of criminal sanctions in the Plantation Law in the form of imprisonment and fines are mostly formulated cumulatively (imprisonment and fines).
6. Low fines, where the fines in the Plantation Law are still relatively low, when compared to the fines in the UUPPLH.

So that the reconstruction of Law no. 39 of 2014 produced by the author is as follows:

1. The provisions in Article 103 of Law 39/2014 require specific minimum prison sentences with the following suggestions:
2. The minimum prison sentence is 1 year in prison and the maximum prison sentence is 5 years or a maximum fine of 5 billion.
3. The provisions in Article 104 of Law 39/2014 require specific minimum prison sentences with the following suggestions:
4. The minimum prison sentence is 1 year in prison and the maximum prison sentence is 5 years or a maximum fine of 5 billion.
5. The provisions of Article 105 of Law 39/2014 were removed by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law
6. The provisions of Article 106 of Law 39/2014 were removed by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law
7. In the provisions of Article 107 letters a and b of Law 39/2014, it is necessary to limit specific minimum prison sentences and increase the maximum limits of the provisions on prison sentences and fines with suggestions: the minimum prison sentence is 1 year and the maximum prison sentence is 15 years and the maximum fine is 50 billion
8. In the provisions of Article 108 of Law 39/2014 which regulates land clearing by burning, it is

necessary to limit specific minimum prison sentences and increase the maximum limit of prison sentences and fines with the suggestion: the minimum prison sentence is a minimum of 1 year and the maximum prison sentence becomes 15 years and the fine imposed is 50 billion.

9. The provisions of Article 109 of Law 39/2014 were removed by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law
10. The provisions of Article 110 of Law 39/2014 require a special minimum prison sentence limit and increase the maximum limit of prison sentences and fines with the suggestion: The minimum prison sentence is 1 year and the maximum prison sentence is 10 years with a fine of 10 billion
11. The provisions of Article 111 of Law 39/2014 require a special minimum prison sentence limit and increase the maximum limit of prison sentences and fines with the suggestion: The minimum prison sentence is 1 year and the maximum prison sentence is 10 years with a fine of 10 billion
12. The provisions of Article 112 of Law 39/2014 require specific minimum prison sentences and increase the maximum limits on prison sentences and fines with the suggestion: The minimum prison sentence is 1 year and the maximum prison sentence is 10 years with a fine of 10 billion.
13. The prison sentence stated in Article 113 does not apply to corporations, except for the criminal sanction of a fine. Also applies to PerMa No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

CONCLUSION

1. The Weaknesses of Plantation Crime Regulation is that The UUP only recognizes 2 types of sanctions, namely imprisonment and fines which are formulated cumulatively as in Article 103, Article 104, Article 108, Article 109, Article 110, Article 111, and Article 112, or alternatively as in Article 102, Article 103, Article 106, and Article 107. Specific minimum criminal threats are not recognized in the law. All criminal acts are threatened with a specific maximum threat whose criminal weight varies, meanwhile, the weight of the fine follows the weight of the prison sentence. The severity of the criminal threat is related to the position of the subject of the offense. If the criminal act is committed by a corporation, the corporation will be punished with a maximum fine plus 1/3 (one third) of the respective fine. The implication is that the corporate criminal liability system is also recognized in this law.

However, the Plantation Law does not regulate when or under what circumstances corporations can be held criminally responsible for violations of Articles 102 to 111. Existing legislative regulations are considered inadequate and unable to effectively handle the eradication of organized plantations as stated in and the Low fines compared to the current value of the rupiah. The criminal sanction of fines in the UUP is still relatively low when compared with the criminal sanctions of fines in the UUPPLH, the maximum penalty in the plantation law is 10 billion, while the criminal penalty in the UUPPLH is 15 billion in the UUPPLH.

2. Legal reconstruction of Law Number 39 of the year 2014 Article 103 to Article 113 is necessary by considering The Plantation Law only recognizes two types of sanctions, namely criminal sanctions, and fines, The Plantation Law does not recognize or mention a specific minimum criminal threat, The Plantation Law only formulates a specific maximum criminal threat so that all criminal acts are threatened with a special maximum threat with varying criminal weights. Namely, for a maximum prison sentence of 3 years, 4 years, 5 years, 7 years, and 10 years, for a fine, the maximum prison sentence is 3 billion, 4 billion, 7 billion, and 10 billion, Increasing criminal threats. In Law Number 18 of 2004 concerning Plantations, the aggravation of criminal threats is related to two forms, namely the aggravation of criminal threats because certain acts are carried out intentionally and the aggravation of criminal threats because certain acts are carried out intentionally resulting in death or serious injury, The severity of criminal threats is not yet environmentally based because the forms of criminal sanctions in the Plantation Law in the form of imprisonment and fines are mostly formulated cumulatively (imprisonment and fines) and, Low fines, where the fines in the Plantation Law are still relatively low when compared with the fines in the UUPPLH.

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