Criminal policy in plantation crime in Indonesia

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Abstract. Indonesia is an agricultural country with abundant natural resources. Indonesia has enormous potential for plantation development to realize people’s welfare. Especially in Langkat District as the third largest plantation area in North Sumatera. Seventy percent of Langkat District consists of oil palm plantations. Therefore, the management of plantations must have the principles of sovereignty, sustainability, efficiency. The operation of plantations is in line with the mandate and spirit of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that states that the land, water, and natural resources contained therein are controlled by the state and utilized maximally. To protect plantations from harvest thieves, the government issued Law Number 39 of 2014 concerning the Plantation Law. This research method is normative juridical. The results showed that with the enactment of Law Number 39 of 2014 concerning Plantation, there is no criminal sanction if it does not include the value of losses and the applicable law. To protect community oil palm plantations, the criminal justice system must establish criminal policies that support justice and benefit. In conclusion, as a system demands the Criminal Court to carry out criminal policies that prioritize legal objectives.

1. Introduction
Indonesia is an equatorial country with a tropical climate where some areas have high rainfall, and some areas are low. Therefore suitable for oil palm plantations. North Sumatera has an area of 3.7 million hectares, where about 50% of the area is oil palm plantations. Langkat Regency is one of the areas in North Sumatra with a plantation area of 45,528 ha [1]. Plantations have a role in national development including, increasing the prosperity and welfare of the people, providing employment, meeting domestic consumption needs and optimizing the management of natural resources sustainably [2]. The implementation of plantation development with a technical culture has economic benefits for sustainable natural resources. Sustainable plantation development will provide an advantage to increase prosperity and welfare to gain access to natural resources, capital, information, technology, and management [3].

The government has a very high attention on efforts to develop oil palm plantations in Indonesia because of its very important position in the structure of the country's economy. The important economic role of oil palm plantations include creating jobs, increasing the standard of living of people living in plantation areas, and contributing to the country's foreign exchange so that the government provides plantations, namely facilities to obtain land and cheap labor and protection politically given by the government to investors.

The real problem with plantations is the legacy of the 80s government program that has a pattern of purely private plantations, government projects, and self-help patterns. The business strategies developed by plantation companies are: to maintain a balance between growth and profitability;
implementing Operational Excellence; develop Intellectual Capital; developing downstream industries that provide added value; and forge strategic alliances that are mutually beneficial. This business strategy is then further developed in the form of business policies, which include: controlling the business through key performance indicators; impose Standard Operating Procedure that supports the company's new paradigm; managing businesses based on values gradually implementing transformation leadership and cultivating innovations that significantly increase productivity.

Elucidation of Law Number 39 of 2014 concerning Plantations in which Indonesia as an agricultural country has abundant natural resources, consisting of earth, water, and natural resources contained therein [4]. Environmental law contains provisions and norms to regulate human actions to protect the environment from damage and deterioration of its quality to ensure its sustainability so that it can be directly used by present and future generations [5].

Some plantations are still cultivating plantation land by burning forests without a permit. Besides, there are also collectors of plantation business results from theft. There are also chemical additives to increase plant fertility that can endanger human safety and damage environmental functions. Following the description, it is necessary to apply criminal sanctions if the actions by certain parties have fulfilled the elements of a criminal act and include violations of Law Number 39 of 2014 concerning Plantation. The investigation is a part of the stages of criminal justice to resolve criminal cases in the plantation sector. Through an investigation, the investigators can carry out a series of actions to gather evidence that can shed light on a criminal event that has occurred.

2. Methods

Based on the formulation of the problem in compiling this study, the type of research is normative or doctrinal legal research. The results of the assessment are then systematically summarized as the essence of the results of the study document study. The purpose of documentation techniques is to look for conceptions, theories, opinions. Processing, analysis, and construction of data on normative legal research are carried out by analyzing legal rules [6-9].

3. Results and discussion

3.1. Application of law number 39 of 2014 concerning plantation

Individuals, corporations, and officials who are ordered or people who because of their position have authority in the plantation sector can commit crimes in the plantation sector. Thus, it is a legal subject in the examination of criminal cases at the investigation level. One of the principles in a rule of law is wetmatigheid van bestuur or governance based on statutory regulations. Therefore, every legal action must be based on the applicable legislation [10].

Based on the facts and jurisprudence that exist in plantation issues, several things need attention, namely in article 107 of Law No. 39 of 2014 concerning plantations such as:

a. doing, using, occupying, and/or controlling plantation land;

b. do, use, edit, and/or dominate the customary land or customary land rights of the customary community with a view to plantation business;

c. undertake plant research in plantation areas; or

d. harvest and/or collect plantation products, shall be punished with a maximum imprisonment of 4 (four) years or a maximum fine of 4,000,000,000 (four billion rupiah) IDR.

The provisions of article 107 of the Plantation Law above in letters c and d are classified as minor offenses, given the Supreme Court Regulation Number 2 of 2012. Article 2 paragraph (1) states that acts of theft, fraud, embezzlement, and holding of the value of their goods are not more than 2,500,000,- (two million five hundred thousand rupiahs) IDR.

Article 107 letter c of the Plantation Law states matters relating to tree cutting, it is unclear, and nominal value of the losses imposed by criminal sanctions is stated, whether the harvest is in the form of branches, leaves, or certain types of trees that can explain the calculation of the loss indicators.
Based on article 407 of the Criminal Code, the damage is also regulated in the PERMA for minor crimes. But what is unfortunate is in the formation of Law No. 39 of 2014 regarding the amendment of Law No. 18 of 2004 concerning plantations, does not pay attention to PERMA. Minor criminal acts on the regulation of criminal sanctions [11].

Likewise, article 107 letter d concerning the harvesting and harvesting of plantation products illegally will be subject to imprisonment. However, there was no mention of the number of losses that the article was subject. The term collecting and harvesting illegally according to articles 362, 363, and especially 364 of the Criminal Code means theft.

Article 362 of the Criminal Code states that whoever takes an item, wholly or partly belonging to another person, to illegally possess it, is subject to a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs. Likewise, with article 364 of the Criminal Code which has been confirmed in a Supreme Court Regulation. Minor offenses if the nominal loss is not more than 2,500,000 (two million and five hundred thousand rupiahs) IDR, then they are punished with minor theft with a maximum imprisonment of three months, and can be interpreted there is no need to hold back.

3.2. Implementation of law number 39 of 2014 concerning plantation for small palm farm

The weaknesses in the Plantation Law can be used as weapons or tools by certain elements who want to criminalize people who commit the crime of petty theft or vandalism. Criminalizing does not mean that it does not agree with the crime given to every person who commits criminal acts, but rather to achieve a true justice. Crystallization in the second plantation, that is; Article 107 letter a and b of Law No. 39 of 2014 concerning Plantations.

The articles regulating illegal land use and provisions regarding criminal sanctions are a replica of Article 21 and Article 47 of the Plantation Law (Law No. 18 of 2004), which the Constitutional Court canceled in Decision Number 55 / PUU-VIII/ 2010. So we can judge that legislators, especially regarding plantations, did not properly analyze their formulation. There are still several other provisions in the plantation law that can be categorized as tools for criminalization. If you look at several jurisprudence, there are many categories of criminal acts that do not match the conviction.

For example, if a person commits a criminal act of theft of garden products but the value of the plantation product is five hundred thousand rupiahs, then referring to the provisions in the Criminal Code and Supreme Court Regulation No.2 of 2012 concerning the adjustment limits for minor crimes, then the act is categorized as a minor criminal offense. However, if the Plantation Law is used, the perpetrator of a criminal offense will be subject to the threat of 4 years in prison.

Examining the criminalization that can arise in plantations creates many problems. In Langkat District, some of the oil palm plantations are private and community-owned, which are less than 25 hectares in size, so that on average they do not have a Business Right (HGU). So that if there is a criminal act of theft or detention in their area, it is not subject to the Plantation Law. If it is transferred to the Criminal Code, it will be difficult to raise it to a police investigation. This is because it will collide with Supreme Court Regulation No. 2 of 2012 concerning adjustments to the limits on minor crimes and the number of fines in the Criminal Code.

Therefore, many plantation cases in Indonesia, especially in North Sumatra, are not tried in court because they do not have HGU. Another weakness in law enforcement in plantation crime, namely article 107 letter d concerning harvesting and/or collecting plantation products, is punished with a maximum imprisonment of 4 (four) years or a maximum fine of 4,000,000,000 (four billion rupiah) IDR. The elements of the article are only punishable with 4 years in prison so that referring to article 21 of the Criminal Procedure Code, the defendant cannot be detained. Because of this, many incidents have made it difficult for police investigators to present suspects and evidence to the public prosecutor and court so that the average case is in NO (Niet OntvankelijkeVerklærd) by the District Court.

Conflict of plantation land in 2018 in North Sumatra, especially in the area of the regency recorded ± 200 cases based on Table 1. There were 50 more cases in 2018 which were not followed up because the case was a minor crime and did not have a Cultivation Right so that Law No. 39 of 2014 on plantations could not be applied.
Table 1. Plantation criminal acts of the Langkat district prosecutor's office in 2018

| No | Sub Distric         | Number of Cases (2018) | Information |
|----|---------------------|------------------------|-------------|
| 1. | Batang serangan     | 14 cases               | P-21        |
| 2. | Bahorok             | 13 cases               | P-21        |
| 3. | Hinai               | 20 cases               | P-21        |
| 4. | Besitang            | 23 cases               | P-21        |
| 5. | Secanggang          | 23 cases               | P-21        |
| 6. | Padang Tualang      | 26 cases               | P-21        |
| 7. | Selesai             | 20 cases               | P-21        |
| 8. | Babalan             | 26 cases               | P-21        |
| 9. | Sawit seberang      | 10 cases               | P-21        |
| 10 | Sei wampum          | 25 cases               | P-21        |

According to Hoefnagels, crime prevention policies can be carried out by combining efforts to implement criminal law, prevention without using criminal law, and efforts to influence people's views on crime and punishment through the media [12]. Crime prevention policies can be simplified in two ways. Penal policies are commonly referred to as non-penal policies, which consist of prevention without punishment and influencing views of society on crime and punishment. Basically, the penal policy focuses more on repressive actions after the occurrence of a criminal act, while the non-penal policy focuses more on preventive actions before the occurrence of a criminal act [13].

The penal policy looks at how the overall policy is carried out through legislation and official institutions, which aim to uphold the central norms of society. So that in the Criminal Justice System, several districts have started to take approaches by prioritizing legal objectives, namely: Justice, certainty, and benefit. Oil palm plantations in Langkat Regency have implemented criminal policies agreed upon by elements of the police, prosecutors, and judiciary/district courts within the Criminal Justice System. The suspects for the theft of the palm oil were charged with article 107 letter d regarding theft and linked to article 111 regarding detention. With this policy, it can reduce the criminal act of theft of oil palm fruit in Indonesia and especially in legal areas that have many oil palm plantations [14-17].

4. Conclusions

Law enforcement officials prioritize legal certainty so that the oil palm farmer community cannot be guaranteed justice and benefit in the crime of plantation in Indonesia. The Police, the Attorney General's Office, and the Judiciary in the Criminal Justice System (CJS) have agreed on a criminal policy to ensnare the suspects of theft of oil palm with the plantation law. By granting plantation business permits to small oil palm farmers by the Regional Head, it can support the welfare and prosperity of the people and is a consideration for revising Law No.39 of 2014. Law Number 39 of 2014 concerning Plantation regulates the forms of plantation crime that need to be investigated, as regulated in Articles 103 to 113.

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