

The Enforcement of Law Number 6 of 2023's on Job Creation in Achieving Sustainable Development in Plantation Businesses

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ABSTRACT

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This research aims to create sustainable development in the business field within the plantation sector and to be of particular and strategic concern in realizing the protection of human rights and the economic development of the country. According to the theory of justice proposed by L.A. Hart, fair law enforcement should not apply discriminatory measures against certain legal subjects. This research method uses 274 court rulings from 2015 to 2022 that adjudicated land ownership issues between the Community and Companies. The analysis results based on court ruling data show that 274 rulings on plantation land use cases imposed criminal sanctions on the Community, and there were no rulings imposing criminal sanctions on corporations. The inconsistency in the enforcement of criminal law against plantation business actors is based on the disharmony between Article 14 of Law Number 6 of 2023 concerning Job Creation and Article 107 of Law Number 39 of 2014 concerning criminal and administrative sanctions for violations related to plantation land. The conclusion of this research is the existence of inconsistencies that lead to discriminatory enforcement of sanctions against corporations compared to the community of plantation business actors who commit offenses under Article 107 of Law Number 39 of 2014 concerning Plantations.

1. Introduction

The natural wealth possessed by the Indonesian nation includes, among others, the agrarian sector (Citrawan, 2015). The activities of utilizing and using plantation land are related to Law Number 5 of 1960 concerning the Basic Agrarian Law. (LN No 104 of 1960, TLN No. 2043). The Government of the Republic of Indonesia, in realizing one of the national goals of advancing the general welfare, must develop the potential of Indonesia's natural resources. Article 33 (3) of the 1945 Constitution of the Republic of Indonesia states that one of Indonesia's natural resources is in the field of agriculture. The sector that is very important and has the potential to develop is the plantation agriculture sector because plantations play a crucial role. Law Number 39 of 2014 on Plantations was established based on principles as regulated in Article 2, which states that plantations are organized based on a) sovereignty b) independence c) usefulness d) sustainability e) integration f) togetherness g) openness h) efficiency with justice i) local wisdom, and j) preservation of environmental functions. It should not be forgotten that the orientation and purpose of agrarian law in this country is aimed at the greatest prosperity of the people, not the greatest prosperity of the people.

Based on the report from the Agrarian Reform Consortium (KPA), out of a total of 122 agrarian conflicts in the plantation sector in 2020 (Kusuma et al., 2022), as many as 101 conflicts involve palm oil plantations. The conflicts are dominated by palm oil-based plantations, with 101 cases out of a total of 122 agrarian conflict cases in the plantation sector. Agrarian conflicts in the plantation sector indicate land confiscation due to land use for large plantation enterprises by corporations. Based on data found from the Supreme Court Decision Directory, there were 274 plantation-related criminal cases from 2017 to

2022 under Article 107 of Law Number 39 of 2014 concerning Plantations. The fact is that many companies are using plantation land unlawfully as regulated by Article 107.

Based on the analysis of the verdict against the perpetrators of plantation criminal acts, it was found that there are no companies that can be prosecuted under Article 107 of Law Number 39 of 2014 concerning Plantations. There are several factors that indicate the difficulty of applying criminal elements to companies, including: 1) the criminal act element regulated in Article 107 against legal entities, 2) the incomplete criminal liability element, resulting in disharmony of legal responsibility with other regulations. Law number 6 of 2023 concerning Job Creation Article 14 regulates administrative sanctions against legal entities that commit legal violations in running plantation businesses. The existence of specific regulations for legal entities governing plantation businesses creates inconsistencies in law enforcement.

The inconsistency in law enforcement against plantation business operators has caused widespread impacts, including (Overdevest & Zeitlin, 2018) : 1. The loss of community rights over plantation land. 2. The high crime rate in plantation businesses. 3. Conflicts over plantation land control between the community and corporations. 4. The loss of public trust in the law. 5. The increasing poverty rate. 6. Casualties in terms of both lives and property. According to H.L.A. Hart, formal intralegal justice is a concept of justice closely related to the law. This concept has two elements: 1) Similar cases must be treated the same, and different cases must be treated differently. 2) Legal criteria that underlie determining the relevant measures of similarity and difference. If we refer to the theory proposed by H.L.A. Hart, then the absence of special treatment for the illegal use of plantation land as stipulated in Article 14 of the Job Creation Law, which imposes administrative sanctions on legal entity entrepreneurs using plantation land illegally (Pramudya et al., 2022).

There is a conflict of norms in Article 107 of Law Number 39 of 2014 concerning Plantations with Law Number 6 of 2023 concerning Job Creation, which creates problems for law enforcement officers in applying the law to criminal acts of unlawful use of plantation land committed by corporations or legal entities. The consequence of the norm conflict affects the absolute law enforcement authority as seen in the Constitutional Court Decision Number 20/PUU-XXI/2023 and the Constitutional Court Decision Number 33/PUU-XIV/2016 regarding the material test of the addition of the prosecutor's authority to file a Judicial Review (PK) as regulated in Article 30C letter h and the Explanation of Article 30C letter h of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which is related to the considerations of the Constitutional Court judges who emphasized that if there is a different interpretation of the norm in Article 263 paragraph (1) of the Criminal Procedure Code (KUHAP), it will actually lead to legal uncertainty and injustice, making the norm unconstitutional (Bernadika & Kavita, 2023). The purpose of this research is to provide a solution to the issues arising from Article 107 of Law Number 39 of 2014 concerning Plantations, so based on legal facts, it is necessary to reconstruct Law Number 39 of 2014 to provide legal certainty for plantation business actors and perpetrators of land use crimes in plantations as regulated in Article 107 of Law Number 39 of 2014 concerning Plantations.

According to Gustav Radbruch, justice is one of the fundamental values of law. He has several views on justice, namely: 1) Justice is a personal trait or quality. 2) Subjective justice is the stance, attitude, view, and belief directed towards objective justice. 3) The source of justice comes from positive law and the ideal of law. 4) The essence of justice is equality. 5) He divides justice into distributive justice and commutative justice. He also has views on the goals of law, namely: Justice, Utility, Legal Certainty. In implementing these three goals of law, he uses the principle of priority, where justice can be prioritized over the values of utility and legal certainty.

Radbruch also has a view on legal certainty, namely: Law is a positive thing that can regulate the interests of every person in society, the law must always be obeyed even though (Afdhali & Syahuri, 2023), The positive law is considered less fair, the principle of legal certainty is a principle that expects and requires the law to be made definitively in written form. Based on the above, legal justice in plantation business can be realized by: 1) Ensuring the welfare of plantation business actors, for example, by maintaining price stability. 2) Imposing strict and fair sanctions on criminals. 3) Ensuring that plantation business permits are issued in accordance with the provisions and requirements of legislation. 4) Ensuring that holders of Land Use Rights (HGU) actively cultivate the land they control and avoid extortion. 5) Facilitating the development of community gardens.

This research refers to one of the three legal objectives, namely certainty, utility, and justice. Legal certainty, which is abstracted through consistent law enforcement in plantation businesses, can be achieved by imposing strict administrative sanctions on violators. These sanctions can include the cessation of plantation business activities or the revocation of business permits. Effective law enforcement can be realized by considering several factors (Ariyanti, 2019), such as: Legal factors, Law enforcement factors, Facilities or infrastructure that support law enforcement, Society, and Societal culture. Strong law enforcement can have a deterrent effect on plantation business operators who violate the law. This is expected to reduce the number of illegal business operators. In addition, law enforcement can also maintain social order and serve as a form of social control.

2. Method

This research was conducted using a case study approach to serve as a guideline in problem-solving. The selected research case has similar issues that have become legally binding. This research also uses a legal approach method by examining the legislation related to the legal issue being studied. The aim is to extract information that can be learned from the case, and this approach seeks to see the consistency between one law and another, or between the Constitution and the laws regulating the case that is the object of the research (Saputra et al., 2023) This is a criminal act of illegal use of plantation land. Based on the analyzed data, there were 274 cases from 2015 to 2022. These 274 cases were analyzed by examining the judges' considerations in their decisions. The results of the analysis of the verdict show that in their considerations, the judges determined the criminal act of using plantation land based on legitimate ownership according to Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles. Based on the procedural land ownership provisions, the community can be prosecuted in accordance with Article 107 of Law Number 39 of 2014 concerning Plantations. Then, the results of the analysis of the decision were adjusted to the legal rules governing the criminal act of illegal use of plantation land and the legal rules governing sanctions for illegal use of plantation land. This research also uses interview results as supplementary data to address the existing issues. The interview results are linked to the judge's considerations to obtain outcomes that can provide a starting point for differences in the application of criminal sanctions for plantation crime perpetrators. Based on the overall data and analysis conducted, there is an inconsistency in the application of criminal sanctions for the same legal actions.

3. Discussion

3.1. Criminal Acts in the Illegal Use of Plantation Land According to Law Number 6 of 2023 on Job Creation

Criminal acts are actions prohibited by law and subject to criminal penalties. Criminal acts are also referred to as offenses. Criminal acts have several characteristics, namely: Against the law, prohibited by law, punishable by law, committed by a responsible person. The validity of land ownership can be realized by possessing land certificates, such as the Certificate of Ownership (SHM), Right to Cultivate (HGU), Right to Build (HGB), and Right to Manage (HPL), as regulated in Article 16 of the Basic Agrarian Law (UUPA) "Regulating land rights, such as ownership rights, right to cultivate, right to build, usage rights, rental rights, land clearing rights, and forest product collection rights." SHM is the strongest land ownership title in Indonesia and frees landowners from legal or dispute issues. In addition to having a land certificate, a person can also register as the holder of land rights if they have continuously occupied the physical land for 20 years. Land occupied by someone without a certificate can also obtain ownership rights if it meets the requirements of expiration or the passage of time. gardens.

Article 4 paragraph (1) of the UUPA explains, "Land is defined as the surface of the earth, so the right to land is the right to the surface of the earth." Article 1 number 2 of Government Regulation 20/2021 explains, "Abandoned land is defined as land that is intentionally not cultivated, not used, not utilized, and/or not maintained." Article 9 paragraph (1) of Government Regulation 20/2021 explains, "If the abandoned land constitutes the entire expanse, then the right to the land is revoked and declared as land directly controlled by the State." Based on the legal foundations outlined above, the rights of the community living on abandoned land for more than 20 years are implicitly interpreted as landowners.

The Right to Cultivate (HGU) is regulated under the Job Creation Law as part of the land acquisition cluster. HGU is the right to cultivate state-controlled land for a certain period. HGU can be granted to Indonesian citizens (WNI) and legal entities established and domiciled in Indonesia. The provisions of HGU are as follows: 1) HGU is granted for a limited period, namely a maximum of 25 or 35 years. 2) HGU can be extended for a maximum of another 25 years at the request of the right holder.

3) HGU land can be sold, mortgaged to a bank, or transferred in any form. 4) After the HGU period expires, the land reverts to the state and the HGU Certificate cannot be upgraded to a Right of Ownership Certificate. (SHM). The holder of the Right to Cultivate Business (HGU) for plantation enterprises has obligations, including: a) Carrying out plantation business in accordance with the designated purpose and established requirements. b) Not engaging in activities that harm the environment or violate the law.

Violations of the Right to Cultivate (HGU) in plantation businesses can include: a) Failing to fulfill obligations as HGU holders (Winata & Sinaga, 2019). HGU holders are required to pay revenue to the state, manage the land according to its allocation and requirements, and cultivate the land properly. If the obligations are not fulfilled, the objects on the HGU land will be seized by the state. b) Not disclosing HGU data. The Public Information Commission states that HGU data is not state secrets and must be disclosed. Failure to disclose HGU data can perpetuate corruption practices and foster conflict. c) Violations of indigenous peoples' rights. Violations of indigenous peoples' rights can occur due to the neglect of the existence and rights of indigenous peoples.

The ownership of plantation land is explicitly regulated through Article 16 of the UUPA, but implicitly, the ownership of plantation land is also formulated through the UUPA and Government Regulation Number 20 of 2021 concerning Land Registration. Law enforcement regarding plantation land issues is still based on procedural levels that overlook the rights of the community and the values that live within society. The judge's consideration in imposing criminal sanctions on plantation business actors who do not have land ownership evidence has contradicted the values of Pancasila, particularly the fifth principle, which emphasizes "social justice for all Indonesian people," abstracted through the 1945 Constitution Article 28A, which states "everyone has the right to live and to defend their life," and Article 28D paragraph 1, which states "citizens have the right to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law."

Several issues related to the Right to Cultivate (HGU) and the Job Creation Law (Job Creation Law) are: a. The expansion of the status of HPL land after the Job Creation Law can make HGU a secondary right and a source of assets for the Land Bank (Ghorriyah et al., 2021). b. The Job Creation Law can exacerbate agrarian conflicts (Bening & Rafiqi, 2023). c. The Job Creation Law can marginalize the community and is considered to criminalize those who oppose it (Yosia Viera Martua Sianturi & Alamsah Deliarnoor, 2024). Some aspects related to HGU and the Job Creation Law are: a. HGU is a right aimed at carrying out agricultural, fishery, and/or livestock businesses. b. The extension period for HGU is a maximum of 25 years, while the renewal period for HGU is a maximum of 35 years (Parwati & Sudjito, 2012). The change from criminal sanctions to administrative sanctions in Law Number 39 of 2014 concerning Plantations through Law Number 6 of 2023 concerning Job Creation has caused inconsistencies (Aqil et al., 2024) the enforcement of criminal law against plantation-related crimes. Several criminal acts that have been changed to administrative acts based on Law Number 6 of 2023 concerning Job Creation are: 1. The provision of a prison sentence of up to 5 years or a fine of up to Rp5 billion for officials who issue business permits related to plantations on customary land of indigenous legal communities has become an administrative sanction. 2. Issues related to Business Use Rights (HGU) permits are not criminal offenses, but rather administrative sanctions (Silviana & Yunita, 2022). This is regulated in Article 110A of Government Regulation in Lieu of Law Number 2 of 2022 Jo Law Number 6 of 2023 concerning Job Creation (UUCK).

3.2 Legal Accountability for Unauthorized Use of Plantation Land by Individuals or Legal Entities

The elements of criminal liability are subjective elements and objective elements: 1. Subjective elements: Elements that are inherent to the perpetrator or related to subjective elements include: a. Fault. b. Intent (*dolus*) or negligence (*culpa*). c. Purpose or *voornemen*. d. Various purposes or *oogmerk*. 2. Objective elements: Illegal acts regulated by law that carry criminal sanctions related to time, place, and circumstances. Article 107 of Law No. 39 of 2014 on Plantations explains. Any person who unlawfully: a. working on, controlling, using, occupying, and/or plantation land; b. working on, using, occupying, and/or controlling community land or customary community land rights for plantation business purposes; c. conducting the felling of plantation crops; or d. harvesting and/or collecting plantation products.

Based on the formulation of Article 107, it can be elaborated on each of its elements as follows: The element of every person is interpreted to include legal entities and every person, so this formulation imposes an obligation on every business actor to comply with criminal sanctions. The element of 'doing,' in point 1, is interpreted as performing, executing, carrying out, and doing something related to

plantation land. The element of 'using' is defined as being related to or made for use. The word 'using' also has meanings such as: 1) The active form of the word 'useful.' 2) To use (tools, equipment). 3) To take advantage of it. 4) To do something with it. The element of 'occupying' is defined as seizing and occupying or controlling, residing in, or living in. The element of 'menguasai' is interpreted as having power over something or holding authority over something, exerting power or influence over something, and being able to manage, control, restrain, or dominate a situation.

Based on the elements in point 1, it can be interpreted that every business actor (individuals and legal entities) who uses plantation land unlawfully can be prosecuted.

Based on the formulation in point 2, it can be interpreted: The element of community land or customary land rights of indigenous law communities intended for plantation activities is interpreted as land owned and managed by indigenous communities based on their customary laws and traditions. This land is also known as *ulayat* land, which is a collective right of the members of the indigenous law community used for plantation activities.

Based on the second element, it is interpreted that every business actor who uses indigenous community land or community land that has been controlled and managed according to law and tradition without proper authorization can be prosecuted.

The explanation of the legal elements in points 1 and 2 of Article 107 clearly states a criminal act for every person. The judge's consideration based on 274 cases that did not impose criminal sanctions on corporate business actors for the unlawful use of plantation land, grounded on HGU land ownership evidence, is very pragmatic. The legal basis for holding corporations criminally accountable should be based on the process of HGU land ownership, which is the validity of the land. Validity is understood in the context of documents; validity means that the document is considered legitimate. To demonstrate the validity of a document, a statement of truth and validity of the document is required. Additionally, there is also a process for testing the validity of the document. The term validity is a translation of the Dutch legal term, *rechtmatig*, which can be literally interpreted as "based on the law" (Hadi, 2018). The meaning of the validity of plantation land use should be proven through a validity test so that it can be demonstrated that the issuance of the HGU does not contradict the rights of the community before the imposition of criminal sanctions on individuals or the community (Obeng-Odoom, 2018).

Corporate criminal liability in the Netherlands related to corporate crimes is regulated in the Dutch Penal Code and Special Laws (ten Voorde, 2017), like the Economic Offences Act (EOA) (Keulen & Gritter, 2011). Corporations can be held criminally liable because they possess rights and obligations granted by law. The competence of a corporation is also equated with the competence of the individuals involved in it (Cahyono & Jonathan, 2023). Based on the analysis by Jeroen Martijn ten Voorde titled The Dutch Penal Code Under Review, corporate criminal liability for actions in conducting business is increasingly developing in European countries. The purpose of formulating strict penalties is to prevent corporate crimes that would have very wide-ranging impacts (Suhariyanto, 2017). The change from criminal sanctions to administrative sanctions in Law Number 6 of 2023 on Job Creation will pose a threat to plantation businesses with widespread impacts and endanger the development of sustainable plantation enterprises.

4. Conclusion

The enforcement of criminal law against the illegal use of plantation land creates legal uncertainty for perpetrators of plantation crimes. Corporations as legal subjects under Law Number 39 of 2014 concerning Plantations cannot be imposed with criminal sanctions for their actions of illegal land use. The factor underlying the inability to impose criminal liability on corporations is the weakness and ambiguity in the formulation of unlawful acts in Article 107 and the existence of specific provisions in the Job Creation Law that convert criminal acts into administrative acts. The inconsistency in the application of criminal sanctions has become an issue that creates conflict between the community and corporate business actors, which will impact the plantation business climate. Different treatment of the same actions will create legal uncertainty regarding the enforcement of laws on the illegal use of plantation land.

Criminal liability based on the elements of the act as regulated in Article 107 has placed corporations as legal subjects that can be held criminally liable. The unclear formulation of the criminal act in Article 107 is caused by the existence of special regulations that transform criminal acts into administrative acts, resulting in inconsistencies in the application of criminal sanctions under Article 107 of Law Number 39 of 2014 concerning Plantations. The disharmony of the regulating laws creates a dualism of perspectives on law enforcement, which considers that corporations contribute significantly to the state's revenue, thus requiring special treatment in law enforcement.

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