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RESEARCH ARTICLE

RECONSTRUCTION OF CRIMINAL SANCTIONS ON ILLEGAL PLANTATION HARVEST ACCORDING TO LAW NO. 39 OF 2014 BASED ON JUSTICE VALUE

Doni Setha¹, Gunarto² and Sri Endah Wahyuningsih²

1. Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang.
2. Faculty of Law Sultan Agung Islamic University Semarang, Indonesia.

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Abstract

Indonesia is a prosperous country, but in reality, not all people enjoy the welfare, such as from plantation products, for example, there are still many who have not been able to enjoy it until it leads to the theft of plantation products. This makes the writer interested to study it related to the weaknesses of the regulations governing plantation theft in Indonesia today and how its reconstruction. The study was done using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach. Research shows that criminal sanctions in Law Number 39 of 2014 concerning Plantations, especially in Article 107 paragraph (3) are not yet based on justice due to the absence of minimum sanctions applied in the article so that it does not cause a deterrent effect on the perpetrators of crimes so that the reconstruction of Article 107 paragraph (3) Law Number 39 of 2014 plantations by formulating the existence of minimum sanctions against perpetrators of crimes in order to realize legal certainty and justice. Even though the concept of justice, especially in the current criminal sanctions raises a variety of interpretations and there are no benchmarks to ensure the existence of justice.

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Introduction:-

Indonesia is a country that is based on law. So every action that contradicts Pancasila the spirit of Indonesian law as contained in the 1945 Constitution is illegal. The law must always be emphasized in order to achieve the ideals and goals of the State of Indonesia, which is stated in the opening of the fourth paragraph, namely to form an Indonesian Government that protects all of the Indonesian people and all of Indonesia's blood and to promote public welfare, develop the life of the nation and take part in carrying out world order based on independence, lasting peace and social justice. In order to realize one of the objectives of the Government of the State of Indonesia, namely to advance public welfare, the government needs to develop the potential of natural resources in Indonesia. This is in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

one of Indonesia's valuable natural resources is its agrarian sector. A very important and potential sector to be developed in the agrarian sector is its plantations as it plays an important role in consumption. This is as regulated in Article 3 of Law Number 39 of 2014 concerning Plantations, which states that "the plantation are created with the purpose of :

Corresponding Author:- Doni Setha

Address:- Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang.

1. To Increase The Community Income;
2. To Increase The State Revenue;
3. To Increase Foreign Exchange Revenues;
4. To Provide Employment;
5. To Increase Productivity, Added Value And Competitiveness;
6. To Meet The Consumption Needs And Raw Materials Of Domestic Industries;
7. To Optimize Sustainable Management Of Natural Resources.

But in reality, not all people enjoy the welfare of the plantation products. This is one of the factors triggering the increasing theft rates on plantations. In Indonesia, which is a legal state, changes in the world economy have a direct impact on the economic conditions of the people of Indonesia, currently the purchasing power of the people for daily necessities is getting weaker because the price of living necessities is soaring high while the income of the Indonesian people is not balanced with the expenditure of living necessities so that there will be pressure to fulfill economic needs and this triggers social deviations. Social deviations is a phenomenon that occur in the midst of people's lives that are more directed towards criminal actions.

Nowadays, theft is found in all aspects of the scope, especially especially in the scope of plantations. This is because plantations are businesses that have a lot of valuable assets, coupled with plantation commodities such as oil palm which is growing rapidly nowadays while the people around the plantations do not share the welfare impact of plantations standing in the midst of the community. This is a factor attracting the community to be able to own plantation assets through criminal means.

Crime theft is an act that is classified as a general crime because it is regulated in Book II of the Criminal Law Code and procedural law to deal with criminal acts of theft regulated in the Criminal Procedure Code. Crime of theft is regulated in Article 362 of the Criminal Code which reads "Whoever takes an item that is completely or partly belongs to another person with the intention of owning the item against the right, is punished for theft with a prison sentence of five years in maximum or as much as possible a fine Rp. 900, "In short, the teachings against the nature of formal law say that if an action has fulfilled the elements contained in the element of a crime, the act is a criminal offense. If there are justifiable reasons, they must be explicitly stated in the law. Whereas the teachings against material nature say that besides fulfilling the formal requirements, namely fulfilling all the elements contained in the formulation of offense, the act must be truly felt by the community as an act that is appropriate or despicable. Therefore, this teaching also recognizes the reasons for justification outside the law. In other words, the justification can lie in an unwritten law.

The act of overcoming crime is one of the objectives of an integrated criminal justice system. An integrated criminal justice system is a system in a society to tackle crime problems. Community efforts in tackling crime aim to keep crime within the limits of community tolerance.

This system will be considered successful if there is integration between the four components of law enforcement, in this case, the Police, Courts, Prosecutors and Judiciary. Preventing people to become victims of crime is not the responsibility of the police alone, as well as the three other components of law enforcement.

Based on the background stated above, the problems that will be examined and discussed in this study are as follows:

1. Why is the Criminal Sanction Against Perpetrators of Plantation Theft in Law No. 39 of 2014 is not yet in Accordance with the Value of Justice?
2. How is the Reconstruction of Plantation Theft According to Law No. 39 of 2014 That are Based on Justice Values?

Method of Research:-

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against Socially Meaningful Action through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of Socio-Legal , which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion:-

Reasons why Criminal Sanctions Against Perpetrators of Illegal Harvest in Act No. 39 of 2014 is still not in accordance with the Value of Justice

Perpetrators of theft of plantation assets may be subjected to criminal legal sanctions as stipulated in the Criminal Code or Law Number 39 of 2014 concerning Plantations. The form of criminal sanctions both in the Criminal Code and Law Number 39 of 2014 concerning Plantations are in the form of prison sanctions and fines.

Sanctions regulated in the Criminal Code are as stipulated in Article 362 (theft, generally speaking) in the form of imprisonment or fines, namely:

"Anyone who takes an item, wholly or partly owned by another person, with the intention to possess it illegally, is threatened with theft with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah."

Whereas the sanctions regulated in Law Number 39 Year 2014 concerning Plantations are as stipulated in Article 107 in the form of imprisonment or fines to any person who illegally :

1. do, use, occupy and / or control Plantation Land;
2. work on, use, occupy, and / or control community land or customary community land rights for the purpose of plantation business;
3. cut down plants in the Plantation area; or
4. harvest and / or collect plantation products;

As referred to in Article 55, shall be liable to a maximum imprisonment of 4 (four) years or a maximum fine of Rp.4,000,000,000.00 (four billion rupiah).

When compared to the weight of imprisonment sanctions between Article 362 of the Criminal Code and Article 107 of Law Number 39 of 2014 concerning Plantations, the criminal penalties as stipulated in the Criminal Code are heavier when compared to Law Number 39 of 2014 concerning Plantations, but the magnitude of Law fines Number 39 of 2014 concerning plantations is much bigger because the Criminal Code which is still in force today is a Dutch colonial product hundreds of years ago.

In every case related to illegally collecting plantation products, the judge applied 107 letters (d) of Law Number 39 of 2014 concerning plantations. But whether it has the value of justice. If we judge justice then we question the judge and his duties as law enforcers as well as the parliament.

Judge's verdict is a statement which the judge as an official of the state authorized to pronounce in court and aims to end or settle a case or dispute between the parties.

Article 2 paragraph (1) of the Indonesian Basic Judicial Law regulates that the exercise of judicial power is delegated to the judiciary bodies and is determined by law, with the main task of receiving, examining and adjudicating and completing every case submitted to it.

Judges' decisions cannot be overturned or annulled by anyone, except of course in accordance with the channel prepared by the law. Every judge's decision is considered correct and remains valid and has legal force as long as the decision is not overturned by a higher court. Whatever is decided by the judge is seen as applicable law and can be enforced at least against those who litigate.

In the decision making process to end a case, there is the possibility that the judge is faced with a doubtful situation between proven or not, as well as conflict between legal certainty or justice, between legal certainty or benefit (*Doegmatgheid*).

Because in giving a decision the judge has several processes of catering, qualification, and constituency which constitutes an integrated whole and the judge's decision. By fulfilling the conditions and each of these stages will give birth to a fair decision.

As Arto illustrates that the judge's decision is ideal if it meets two conditions, namely theoretical and practical conditions. Meet the theoretical requirements if they are in accordance with theories that have been tested for truth, while meeting practical requirements if they are in accordance with practical needs in the field, which can achieve the desired goals and can be practiced.

However, by looking deeper into the sanctions contained in Article 107 which states that "sentenced to a maximum imprisonment of 4 (four) years or a maximum fine of Rp.4,000,000,000.00 (four billion rupiah)" then it can be concluded that only the maximum threat is applied, but it does not regulate the minimum threat.

In the formulation policy of the Act, it should be in accordance with the principle of *Nulla Poena Sine Lege Stricta*, then the formulation of the number of crimes against number law in Indonesia can only use the fix model and categorization model. With various interpretations of legal language coupled with a variety of patterns of specific minimum criminal penalties in several laws outside the Criminal Code and the not equal ratio of special maximum penalties with special minimum penalties (on the same offense), it will cause problems, especially in the part of decision making by judge.

Accordingly, judges are given immeasurable freedom to determine / impose specific minimum penalties on the special law. It is at this point that there is a need for a common perception and implementation of specific minimum crimes in certain laws outside the Criminal Code. The hope, of course, is that the decisions taken by a judge can truly fulfill the sense of justice, expediency, and certainty of the law itself.

In Act No. 39 of 2014 concerning plantations, it should refer to the fix model which not only regulates the maximum threat but also stipulates the minimum criminal amount. As a special form of law outside the Criminal Code that applies the categorization of the model's system, then there should be a minimum threat in Article 107. Because if the threat is only in the maximum form, then there is no legal certainty at all, but submit everything to the judge.

Furthermore, it can be concluded that the Criminal Sanctions Against the Plantation Thieves in Law No. 39 of 2014 is not yet Based on Justice Value because the sanctions stipulated in Article 107 do not contain a minimum threat, so there is no perceived justice value to those decided by the judge so that it does not provide a deterrent effect towards the perpetrators. Judges may make light decisions for perpetrators, therefore the sanctions listed in Article 107 should be reconstructed with minimal threats for the sake of justice and legal certainty for everyone.

Reconstruction of Criminal Sanctions on Illegal Harvest of Plantation Products According to Law No. 39 of 2014 Based on Justice Values

Law Number 39 Year 2019 regarding plantations becomes an assumption that the criminalization article threatens farmers and people who live around the plantation location. The article was revived in Article 55 letter a, letter c, and letter d juncto Article 107 letter a, letter c, and letter d of Law Number 39 of 2014 concerning Plantations. In fact, the Article which regulates illegal land use and the provisions regarding criminal sanctions are replicas of Article 21 and Article 47 of the old Plantation Law (Law No. 18 of 2004), which has been canceled by the Constitutional Court in Decision Number 55 / PUU- VIII / 2010.

The re-inclusion of the article adds to the list of problems that have arisen as a result of the passing of Law No. 39 of 2014 concerning Plantations (Plantation Law). The Indonesian Parliament stated that the Plantation Law was formed to avoid potential land conflicts between farmers and plantation companies. However, in substance what is stated by the DPR is different from the facts that appear on the field. For example, the appointment of a farmer from Aceh Tamiang, M. Nur, as a suspect by the Aceh Regional Police when disputing with the palm oil plantation company PT. Rapala with Article 55 letter a jo. Article 107 letter a of the Plantation Law. Other provisions deemed problematic are Article 12 Paragraph (1) of the Plantation Law which reads:

"In the case that the land needed for plantation business is the Customary Community Land Rights, the Plantation Business Actors must hold a consultation with the Customary Law Community holders of the Customary Rights rights to obtain approval regarding the surrender of land and compensation. "

This article is considered to have given the position inequality between the Indigenous Peoples and the Plantation Business Actors (the Company). Provisions for "holding a meeting to obtain land approval and compensation" do not provide a choice for the community other than giving up their land.

Especially with the use of the term "compensation" which increasingly shows the weak position of the community when faced with the company. "Rewards" in the Dictionary means wages or gifts as service recipients, the amount is also determined by the giver. This is of course contrary to the guarantee of legal certainty and respect for the Customary Law Community as stipulated in Article 28D Paragraph (1) and Article 18B Paragraph (2) of the 1945 Constitution. Responding to the issue, according to Hermansyah, Law Anthropologist at Tanjungpura University in Pontianak, in a focused discussion in Cikini said that the state's recognition of constitutional rights had been recognized. Only indeed, he added, the character of the legislator has not changed. According to him, always when they make laws on natural resources, such as plantations, forestry, etc., always the stereotypical way of thinking of entrepreneurs is thicker than the presence of local communities.

According to Hermansyah, in relation to criminal law, the essence is that if we refer to the growth of modern criminal law, it is a form of law that its nature is to provide protection from various arbitrary powers to the public. Criminal Law is synonymous with protection law. However, he added, currently the essence of criminal law had changed.

Meanwhile, according to Afrizal, a sociologist at Andalas University, Padang, the core of the conflict in Indonesia is related to land rights agreements. The international world ensures that none of the products produced in a country enter the international market whose production violates land rights. This was stated in the FAO (Food Agriculture Organization) document.

If in land acquisition (for plantations) a dispute arises between the land owner and the plantation entrepreneur, this dispute is in the realm of civil, not criminal (criminalization).

This was further confirmed by the opinion of the Adat Law Community Expert from Andalas University, Kurnia Warman. According to him, the articles in Law No. 39 of 2015 which contains criminal threats related to the control of plantation lands that originate from customary rights or customary rights of customary law communities can be categorized as criminalization of civil relations. Legal recognition of the customary law community is clear, both in the constitution, the Agrarian Law (Law No. 5/1960) and in various other laws.

The petition for testing of the Plantation Law No. 122 / PUU-XIII / 2015 is the last hope for farmers and indigenous peoples to protect themselves and their families from the arbitrariness of the authorities and companies. They hope that the Constitutional Court that functions as a "guardian of constitutional rights" is able to protect the rights of peasants and indigenous peoples as the constitutional rights and legal rights of every citizen. They hope that the Constitutional Court Panel of Judges will grant the request that the process is ongoing.

Related to customary rights may have to be defended because it is mandated by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and as long as in reality it still exists. But it is different from the criminal case which has been clearly stated in Law No. 39 of 2014 concerning Plantations.

Where in the plantation law the sanctions applied to the actors who collect the plantation products are considered to be too light and far different from those contained in the Criminal Code. If we look at the substance of Article 107 letter (d) :

"Every person who illegally harvests and / or collects plantation products as referred to in Article 55, shall be liable to a maximum imprisonment of 4 (four) years or a maximum fine of Rp.4. 000,000,000.00 (four billion rupiah) ".

then the sanctions against perpetrators may not have a minimum sanction, so if at the court and judge level decide to provide the lowest sanctions then there is no measure whatsoever, so that it is to the judge's conviction.

So based on the above thought, it is ideal to have reconstruction of Law number Law No. 39 of 2014 concerning Plantations on the application of sanctions by placing the values as follows:

No	Subject	Description
1	Basic Reconstruction	Based on the wisdom of the Republic of Indonesia in the form of the 5th Precepts of Pancasila by creating justice for all people
2	The Reconstruction Paradigm	reconstruction of regulations on criminal sanctions harvesting and / or illegally harvesting plantation products according to Law Number 39 of 2014 based on the value of justice in the national legal system.
3	Purpose of Reconstruction	The achievement of the legal objective is the existence of a balance between the punishment / sanctions with the actions committed by the perpetrators of crime
4	Value Reconstruction	This is done by providing legal force and legal certainty to the plantation owner in collecting and harvesting the results.
5	Reconstruction Subject	The government, A Penal Application of the amount of sanctions The court as an institution authorized to examine and adjudicate cases

The formation of Law No. 39 of 2019 concerning plantations basically aims to improve the welfare and prosperity of the people, increase the country's foreign exchange resources, provide employment and business opportunities, increase production, productivity, quality, added value, competitiveness, and market share, increase and meeting the consumption needs and raw materials of the domestic industry, providing protection to Plantation Business Actors and the community, managing and developing Plantation resources optimally, responsibly, and sustainably, and increasing the utilization of Plantation services. The implementation of the plantation is based on the principles of sovereignty, independence, usefulness, sustainability of cohesiveness, togetherness, openness, fairness-efficiency, local wisdom, and preservation of environmental functions.

In the framework of providing legal protection to plantation business actors and the community, the law contains several sanctions, one of which is regulated in Article 107 even though it does not contain a minimum sanction. But on the other hand in the formation of the law that one of the efforts to tackle crime is to use criminal law and sanctions in the form of criminal sanction.

Basically, the crime is intended as a suffering or misery for the perpetrators of criminal acts for their mistakes. The existence of such suffering in the form of criminal law has resulted in criminal law gaining a separate place among other laws, which in the opinion of scholars, criminal law is seen as the last resort that must be used to improve human behavior. So it is natural that everyone wants that the criminal law in the preparation (forming of the law) and its application must be accompanied by strict restrictions, in a rational and proportional sense.

If we look deeper into the penalties developed by the formation of the law at this time it is a combination of the goal theory itself, namely general prevention (generale preventie), especially psychological theory of coercion (psychologische dwang) and special prevention (speciale preventie) which has the aim to the villain does not repeat his actions. The perpetrators of criminal acts in the future will refrain from doing that again because the perpetrators feel that the crime is suffering so that the criminal function is to educate and improve.

Criminal experts, one of them Herbert L. Packer, gave his views on retributive, utilitarian, and behavioral theories, then gave justification for the crime, namely the Integrated Theory of Criminal Punishment which included:

1. retribution;
2. utilitarian prevention;
3. special deterrence (intimidation);

4. behavioral prevention (incapacitation);
5. behavioral prevention (rehabilitation).

The view of retribution, according to Packer, is based on the idea that crimes can be justified to be punished, because humans are responsible for their actions. He must receive the reward he deserves. This view can be divided into two main parts, namely the theory of retaliation (revenge theory) and the theory of suffering and atonement (expiation / atonement theory). Criminal is considered as retaliation for the evil deeds that have been carried out on the basis of the full responsibility of the individual culprit, for example through the institution of *lex talionis* with equal retribution. Crimes are considered penance carried out by making the perpetrators of crime suffer certain suffering so that he feels free from guilt and guilt.

Lawmakers in Indonesia are only need to choose, whether they still choose a retributive view or retributive view which presupposes the criminal as a negative reward for any deviant behavior committed by the community or a utilitarian view that looks more at the criminal in terms of benefits or usefulness. The utilitarian view looks at the situation or circumstances that wish to be produced by the imposition of a criminal offense and the conviction of the criminal must be seen in terms of the objectives, benefits, or its usefulness for improvement and prevention. So, on the one hand the punishment is intended to improve the attitude or behavior of the convicted person so that one day they will not repeat the same act. On the other hand, punishment is intended to prevent others from the possibility of committing similar acts.

If we return to Article 107 letter (d) of Law Number 39 Year 2019 concerning Plantations which states that "any person illegally harvesting and / or collecting Plantations as referred to in Article 55, shall be liable to a maximum imprisonment of 4 (four) years or a maximum fine of Rp.4,000,000,000. (four billion rupiah), then the sanctions certainly do not have a deterrent effect on the perpetrators.

It is different with Malaysia which has similarity in the application of sanctions with the absence of a minimum crime regulated in section 379 Qanun Keseksaan, but there are additional sanctions in the form of caning or cutting off hands against perpetrators of theft. Then on the other hand economically, the income per capita of every citizen in Malaysia is higher than in Indonesia. When viewed from the welfare of the community, clearly Malaysia is more prosperous because Malaysia's income is greater with a smaller population compared to the Indonesian state. This is also seen because Malaysia has been able to raise the value of the currency against the effects of inflation and deflation, but Indonesia which is actively building has not been able to achieve the intrinsic value of money like Malaysia, so it is very natural that the Malaysian population is in a prosperous state, because with a fairly high ringgit value, Malaysian people can generally consume Indonesian commodities at low prices because of the intrinsic value.

At present the application of Criminal Law in Indonesia is not much different from that in the Netherlands. Criminal law in Indonesia is a legacy from the Netherlands and has not changed. The Dutch state has renounced its criminal law and has undergone several changes.

Changes contained in the Criminal Code of the Dutch state have been more advanced with the Indonesian state which until now the Indonesian Penal Code still adopts the Dutch East Indies Penal Code or known as *Wetboek van Strafrecht (WvS) voor Nederlandsch-Indie*. There are differences that occur at this time in the Dutch Penal Code where one of the In addition, in Article 9 (2) of the Dutch Penal Code, it is determined that where a penalty of imprisonment or a penalty of detention, other than detention constitutional penalty, is imposed, the judge may in addition impose a fine (if imprisonment or confinement, not substitute confinement, is imposed, the judge can add more by imposing a criminal fine). Such provisions do not exist in the Indonesian Penal Code, but in the Indonesian Penal Code Bill it is regulated in Article 58 and Article 59 concerning alternative criminal substitutes for a single imprisonment or a single fine.

With the existence of Article 9 (2), the offense that is threatened with imprisonment or solitary confinement, or that does not list penalties as an alternative, the judge can still impose criminal penalties. The maximum fines that can be imposed on offenses that do not include criminal fines are regulated in Article 23: 5, namely the maximum of the 1st category fine for offense offenses and the maximum of the 3rd category fines for crime. Article 9 (2) contains criminal penalties for judges, but the formulation is integrated in criminal regulations. The minimum criminal sanctions are basically unknown in the Penal Code and are only found outside the Penal Code or Special Law.

Related to criminal offenses contained in Article 170 paragraph (3) of Law Number 39 of 2014 concerning plantations also does not adopt the existence of minimum sanctions, so that they cannot become a basis for judges in giving a just decision.

The essence contained in article 170 paragraph (3) is a minor crime, because in various cases the application of this article is only imposed on perpetrators of crimes who take and collect plantation products such as oil palm. The assumption is related to the economy that assesses the price of oil palm which is considered cheap. However, this does not become a parameter, because the plantation sector is not only oil palm but also other types of plant.

The dropping of the threat of punishment against the offender based on this article is considered not to reflect justice. In that article it is stated that the maximum imprisonment is 4 (four) years or a maximum fine of Rp.4,000,000,000. (four billion rupiah). Prison penalties do not contain the existence of minimum criminal sanctions so that it becomes the judge's authority to impose the law as the judge's opinion itself.

The internal conditions of Indonesian society that are developing rapidly along with developments in society and the demands for legal certainty and justice are so strong, causing the formulation of criminal sanctions can no longer be used as a legal basis for overcoming the current crime problem. The construction of a law against criminal sanctions that regulates the balance between protection of perpetrators and victims of criminal acts, between elements of behavior and mental attitude, between legal certainty and justice, between written law and the law that lives in society, between national values and universal values, and between human rights and human rights obligations, must be realized as soon as possible.

Therefore, there should be a legal reconstruction of Article 107 paragraph (3) of Law Number 39 of 2014 on plantations by formulating minimum sanctions against perpetrators of crimes for the sake of establishing legal certainty and justice. Even though the concept of justice, especially in the current criminal sanctions raises a variety of interpretations and there are no benchmarks to ensure the existence of justice. so the authors assess the existence of an alternative concept in a reconstruction of criminal sanctions of harvesting and / or illegally collecting plantation products as in article 107 paragraph (3) of Law Number 39 Year 2014 concerning plantations that have a fair value.

The theory found by the author is "No Punishment Without Justice" which is a concept / theory that emphasizes a punishment must be based on a justice. This concept is also intended that every decision made by a judge must be fair by evaluating the rights of perpetrators and victims of crime. So the judge does not only assess the perpetrators of crimes, because at this time the rights to victims are not protected in Indonesia's positive criminal system. Besides that, if a punishment does not bring about justice then that cannot be said as a punishment for a crime. Of course it is only considered as a ceremonial to law enforcement without legal certainty and justice.

Conclusion:-

Criminal sanctions in Law Number 39 of 2014 concerning Plantations, especially in Article 107 paragraph (3) are not based on justice because there are no minimum sanctions applied in the article so that it does not cause a deterrent effect on the perpetrators of crimes. The absence of a fair value in the article is only beneficial to the actor and detrimental to the plantation business actor. Collecting plantation products not done by the owner itself creates damage to the ecosystem in life. Plantation owners who have planted and are waiting for the results but cannot enjoy the results themselves. Therefore the minimum criminal sanction is very determining the existence of justice for the plantation business actors and deterrence for the perpetrators of crime.

Indonesia has various problems and almost all sectors where one of them is the plantation sector. Plantations play an important role and have a great potential in national economic development in order to realize prosperity and welfare of the people in a just manner. The state also guarantees the welfare of plantation businesses by maintaining price stability. However, the government escapes other matters by safeguarding the rights of the plantation business actors, which at present there are many criminal acts taking the plantation products by the perpetrators and the plantation business actors do not enjoy the plantation products. this happens because there are no criminal sanctions that cause a deterrent effect on the perpetrators of crime. So it is appropriate at this time both the executive, legislative and judiciary to side with the interests of the plantation business actors by giving strict sanctions against perpetrators of crime. Penalties for perpetrators of crime must have a value of justice and deterrence so that the business actors feel protected by a firm and definite rule. So that the reconstruction of Article 107 paragraph (3) of

Law Number 39 of 2014 plantations by formulating the existence of minimum sanctions against perpetrators of crimes in order to realize legal certainty and justice. Even though the concept of justice, especially in the current criminal sanctions raises a variety of interpretations and there are no benchmarks to ensure the existence of justice

References:-

1. Mukti Arto,(2001),Mencari Keadilan (Kritik Dan Solusi Terhadap Praktik. Peradilan Perdata di Indonesia),Yogyakarta :Pustaka Pelajar Offset,,p.98-99
2. Faisal,(2010), Menerobos Positivisme Hukum, Rangkang Education, Yogyakarta.
3. Herbert L. Packer,(1968), The Limits of The Criminal Sanction, California, Stanford University Press, p.37
4. Johnny Ibrahim,(2005), Teori dan Metodologi Penelitian Hukum Normatif, Bayumedia, Surabaya.
5. L. Moleong,(2002), Metode Penelitian Kualitatif, PT RemajaRosdakarya, Bandung.
6. M. Sholehuddin,(2004), Sistem Sanksi dalam Hukum Pidana: Ide Dasar Doble Track System & Implementasinya, Rajawali Pers, Jakarta, p.59.
7. Sudikno Mertokusumo, Mengenal Hukum: Suatu Pengantar, Ed. Ke-3, Yogyakarta: Liberti, tahun 1988, p.167.
8. Teguh Prasetyo, Kadawarti Budiharjo, Purwadi,(2013), Hukum Dan Undang-Undang Perkebunan, Bandung, Penebit Nusamedia, p.57.
9. Yudistira Rusydi , (2011), Criminal Law Enforcement Against Forest Wood Theft in Musi Banyu Asin District , Pandecta Vol 6, No.1 Year 2011.
10. <https://www.tuk.or.id/2015/12/02/problema-uu-perkebunan-bagi-para-petani-dan-masyarakat-adat/> accessed on 20 July 2019.