Construction Criminal Sanctions on Violators of the Moratorium Palm Oil Company License with Plea Bargaining

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Abstract
Phenomena related to the clearing of oil palm plantations by companies as corporations or legal entities for the South Kalimantan Regional Government as a form of regional development to be more advanced but Corporate Social Responsibility (CSR - Corporate Social Responsibility) to the environment and surrounding communities is sometimes ignored or not implemented. Reflecting on the events of environmental degradation in South Kalimantan which led to events floods as well as forest and land fires (Karhutla), to restore health and environmental sustainability in the province of South Kalimantan on behalf Presidential Instruction No. 5 year 2019 on the termination of the granting of new permits and improving the governance of primary natural forests and peatlands should be extended again. This study was a normative legal research and formed descriptive qualitative, statute approach and conceptual approach which conducted in the region of South Kalimantan province. In order for the implementation of plea Bargaining in construction criminal sanctions on violators of the moratorium on permits for oil palm plantation companies as an alternative to solving criminal cases in the field of environment.

I. Introduction

Environmental crimes very often occur around our environment recently, this has been caused by the actions of irresponsible hands in Environmental

Management. One of the areas in Indonesia that often occur pollution and destruction environmental impact is very detrimental to society occurs in the province of South Kalimantan, especially in the oil palm plantation sector. Large-scale land clearing in the oil palm plantation sector often does not consider environmental sustainability which ultimately results in environmental degradation due to the absence of improvement after excessive oil palm land clearing and is not balanced with greening or reforestation. Yet, conversion of forest land to oil palm has long formed a key element of regional development strategies with economic interests tending to overwhelm environmental considerations (McCarthy et al., 2009, p. 157).

Oil palm plantations is based on facilities by state policies and decentralization that allow local governments to issue permits. till up to now, The ownership of the oil palm plantation sector is controlled by companies both private companies and State-Owned Enterprises (SOEs) with a percentage of 54.94% by Large Private Companies, 4.27% by state-owned enterprises, and 40.79% by people's plantations (Afita et al., 2022, p. 63). Even, the weak Indonesian legal system and the unavailability of specific laws to resolve human rights violations worsen the situation. As a result, workers at palm oil plantations have difficulty finding adequate access to remedies under Indonesian law. (ILRF et al., 2017; quotes in Goestoro, 2022, p. 259)

This phenomenon causes the clearing of oil palm for local governments as a form of regional development to be more advanced but Corporate Social Responsibility (CSR - Corporate Social Responsibility) to the environment and the surrounding community is sometimes ignored or not run because the use of Natural Resources in the region exploited, in this case the company should have legal and ethical responsibilities that must be met to maintain sustainability or sustainability of the company's goal is to make a profit for their own sake without harming the environment and surrounding communities.

A very detrimental impact on the people of South Kalimantan due to environmental degradation due to palm oil land clearing without regard to the results of the Environmental Impact Assessment (EIA) related areas of important impact of business or planned activities on the environment in the unity of the ecosystem expanse in the form of forest fires, landslides, and floods. According to the director of the Non Governmental Organization / NGO WALHI (Wahana lingkungan hidup) South Kalimantan who named Kisworo Dwi Cahyono stated that the environmental conditions in South Kalimantan experienced a space emergency and an ecological disaster emergency that caused environmental

degradation. Data from WALHI South Kalimantan states that of the 3.7 million hectares of land in South Kalimantan, almost 50% has been controlled by palm oil companies (Sandi, 2021).

Meanwhile,according to data from the National Disaster Management Agency (BNPB), the massive floods that hit the South Kalimantan region in 2021 caused many losses, one of the areas most affected by the Tanah Laut area, namely a number of 27,024 people affected and displaced and 8,249 houses submerged (Sandi, 2021). According to data from the Environment Agency as the cause of flooding in the downstream (peat swamp ecosystem) that occurred in South Kalimantan caused by peat swamp land burdened by large-scale oil palm monoculture plantations so that 60% of peat swamp ecosystems in South Kalimantan were damaged due to land conversion from protected forests to HTI (industrial plantation forest) (Cahyono, 2021).Therefore existence of forestry law Number 18 year 1999 and plantation law number 18 year 2004 introduced local wisdom as one of the principles of environmental protection and management and emphasized the importance of recognizing and considering local wisdom as a living societal value that aligns with the goal of environmental protection and sustainable management. This exemption includes three conditions that the maximum area to be burn is of two hectares per household, local varieties will be planted on the land,and firebreaks must be used during burning(Fajrini, 2021, p. 30)

Furthermore, referring to data from the Indonesian Forum for the environment (WALHI) Kalimantan South presented by the director of South Kalimantan WALHI which doubles as South Kalimantan peat monitoring network node coordinator Kisworo Dwi Cahyono stated that almost 50% of South Kalimantan province has been burdened with extractive permits for oil palm plantations which triggered large-scale land fires in peat areas in 2019. The most burned peat areas in 2 (two) districts , namely Tapin 32.5% and Hulu Sungai Selatan 43.2% of the total peat burned in South Kalimantan. There are 106 hotspots in the area of PT Plantindo Agro subur (PAS) in Tapin with a total of 1,972.2 hectares of burned land. While 39 hotspots in the concession of PT Subur Agro Makmur (SAM) in the upper reaches of the South River with a total land burned of 1,073 .3 hectares (Cahyono, 2021).

Reflected from the events of environmental degradation in South Kalimantan causing flooding events also Forest and land fires (karhutla), so to restore health and environmental sustainability in South Kalimantan province, then Presidential Instruction No. 5 year 2019 on termination of new permits and

improvement of primary natural forest and peatland governance with regard to the moratorium on oil palm land should be very urgent to be extended again, considering that the moratorium order on oil palm plantation permits can be a comprehensive evaluation of the company's practices that trigger ecological disasters.

Companies that are indicated to have violated the moratorium on permits for palm oil companies can be designated as perpetrators of environmental crimes as subjects of corporate law who have rights and can commit criminal acts as well as humans through the mediation of their administrators. The state in this case has a responsibility to respect, fulfillment, and protection of the right to a good and healthy environment as the mandate of the 1945 Constitution and Law No. 32 of 2009 on the protection and management of the environment through the realization of good environmental governance, so that if a company is indicated to violate the moratorium on permits for coconut palm oil company then juridically, it can be done the process of enforcement law according to terms legislation in force in Indonesia. Article 33 of the 1945 Constitution as the state constitution regulates that the state has full control of all the wealth contained in the Earth and is used as well as possible for the prosperity of the people. However, the fact is that the people in this case the company as a subject of corporate law to conduct forest clearing exploration activities into oil palm plantations that cause environmental degradation and ecological disasters by not paying attention to the concept of good environmental governance, therefore the state has the right to give criminal sanctions to the company for the best prosperity of the people. Despite the high costs to society from environmental degradation, individual incentives to participate in many environmentally deleterious activities often remain strong.Policymakers are challenged to realign incentive structures to promote environmental sustainability(Jones et al., 2015, p. 1).

Therefore, to overcome the crime of violating the moratorium on permits for oil palm plantation companies because they do not pay attention to the concept of good environmental governance, the government must play an active role either through criminal law policies as outlined in the legislation or with the application of criminal law legislation oriented to sustainable ecological development in development that occurs in the interaction of living beings (humans, animals, plants) with environmentally sound environment in the future to overcome soil degradation and erosion due to land conversion from protected forests into HTI (industrial plantation forests) in order to be utilized by current and future generations for the realization of restorative justice. Restoration of environmental

conditions should be the main priority of law enforcement officers in order to resolve the criminal offense of violation of the moratorium on permits for palm oil companies that cause ecological damage, therefore the concept of restorative justice must be put forward. The aim is that criminal prosecution solely does not focus on the deterrent effect on the perpetrator of the crime.

In essence, restorative justice can reduce the impact of stigmatization for perpetrators who commit criminal acts both in the form of crimes and violations, this is in line with traditional mechanisms that are still maintained to prioritize problem solving and at the same time find the root of conflict restorative justice also pays attention to the losses and needs of victims, encourages perpetrators to responsible for the loss. In addition, restorative justice can also be adapted to local legal traditions, principles and philosophies and national legal systems by placing the role of the community in an important place not only to overcome the problems that occur but also to prevent the re-occurrence of criminal acts in the future. (Wikan, 2021, p. 3) . Generally, access to justice is seen as a right to obtain remedies before judicial bodies or other authorities (Listiningrum, 2020).

The application of restorative justice in granting criminal sanctions to companies that violate the moratorium on permits for palm oil companies can be constructed by plea bargaining, which is a pattern of solving criminal cases carried out peacefully between criminal perpetrators and law enforcement officers as state representatives that can be carried out in each process stage of the Integrated Criminal Justice System Justice system for the realization of restorative justice that can restore the state of the environment of people who experience the impact of damage or degradation of the environment provides the greatest benefit to the community due to criminal acts of perpetrators as a subject of corporate law who violate the moratorium on permits for palm oil companies rather than concern in granting criminal sanctions into jail toward perpetrators who violate the moratorium on permits for palm oil companies. From the background of the problems, the formulation of Study can be made" how is the construction law regulating criminal sanctions for violators of the moratorium on permits for palm oil companies that cause environmental degradation by plea bargaining.

2. Research Method

The research method used to discuss the above problems was to use normative legal research that was descriptive qualitative. According to Mukti N D and Yulianto Achmad, normative legal research is legal research that puts the law as

a system of norms, the purpose of the norm system is about the principles, norms of legislation, verdict court, Covenant and doctrine (Fajar & Achmad, 2010, p. 34).

The study was conducted in the region of South Kalimantan province. The Study used both statute approach and concept approach. The statute approach is to examine and analyze all the rules of law relating to legal issues being faced (Marzuki, 2009, p. 35). the concept approach is to depart from the views and doctrines that develop in the science of law which is then put forward in ideas that give birth to the notion of legal understanding, legal concepts and legal principles in accordance with the problems faced (Marzuki, 2009, p. 35).
Data collection was carried out using sources from primary, secondary, and tertiary legal materials. Data collection from these materials is obtained through library studies and documentation studies. The entire material is then analyzed using grammatical interpretation as well as qualitative empirical juridical analysis techniques.

3. Results and Discussion

Indonesia has the largest tropical forest in the world, the area of which ranks third after Brazil and the Democratic Republic of the Congo, so that Indonesia has enormous potential for forest resources. For 32 years, the New Order government placed the forestry sector as the second mainstay of foreign exchange earnings after the oil and gas sector (Solekhan et al., 2022, p. 571). To deal with forest and land fires, the government has made preventive measures, namely the moratorium. The moratorium itself is a legal policy to postpone obligations for a specified time limit (Dictionary). Mortarium policy has existed since the era of President Susilo Bambang Yudhoyono's administration starting from Presidential Instruction No. 10/2011, was extended by Presidential Instruction No. 6/2013, then Jokowi continued the moratorium with Presidential Instruction No. 8/2015. However, during the period the moratorium did not appear to be effective. First, government still granted forestry and plantation permits through the revision of the moratorium area and the release of forest areas (Mongabay 2017). Second, there is still massive forest and land burning in the opening of oil palm plantations (Mongabay 2017). Reflecting on the moratorium policy, it seems that repressive law enforcement is not effective enough (Novendra et al., 2020, pp. 48–49).

Judicially, the instruction of the president of the Republic of Indonesia No. 5 of year 2019 about the termination of granting new licenses and improving the

governance of primary natural forests and peatlands is present in the framework of efforts to refine and improve the governance of primary natural forests and peatlands. Responsive measures are needed in order to save the existence of primary natural forests and peatlands and to continue efforts to reduce emissions from deforestation and forest degradation in Indonesia. However, the reality is on the ground with the moratorium on permits for palm oil companies regulated in Presidential Instruction No. 5 year 2019 on termination of new permits and improvement of primary natural forest and peatland governance cause a lot of friction interests for the purpose of capitalist industrialization that occurred during this time on the whispers of forest entrepreneurs or owners of palm oil companies that collusion along with elements of the forestry apparatus in the local area but the people who are often to blame are the local inhabitant or communities. Residents are accused of logging or forest encroachment and also accused of causing forest fires. In this case the blame is always farmers or farmers moved.

In fact, the forest will not be damaged only by the use of Sickles, machetes or swords which are weapons of indigenous peoples or local residents. Even if the indigenous people conduct a plantation move, it has followed the cycle of nature, they know exactly how to maintain the environment of forest sustainability. They can even determine the age of the tree, comply with the ban on cutting down trees of a certain age. Even if people clear land by burning, they know how to overcome forest fires from happening. All because they live there. they have been familiar and integrated with the forest and even feel an integral part of the forest (Rosadi, 2012, p. 119).

This is different from the owner of an oil palm company as an industrial plantation forest (HTI) entrepreneur who emphasizes that his monoculture business can generate as much foreign exchange as possible from the forestry business, while from the aspect of Environmental Health,
This Entrepreneur eliminates the function of forests as the lungs of the world by logging, or burning massively which causes damage to the ecosystem of the environment. Even though forests can store water during the rainy season and release it in the dry season. So we need various activities to support the preservation of the forest environment. Forest and land fires that occur almost every year in Indonesia have an impact on the economy and the environment (Rauf et al., 2020, p. 1031).

During this time the government through Law No. 41 of year 1999 on Forestry has determined the forest area according to its function, but in practice many

protected forest areas tend to always decrease in extent because they are converted into production forests. Encroachment on protected forests is carried out by strong capital owners , in this case the oil palm company owner as a strong capital owner who is often backed up by elements in having power in local government so that the actions taken by the oil palm company owner who burns or destroys forests on the pretext of having received permission to transfer land from the local government so that the owners of the oil palm company feels legitimacy of legal protection for the destruction of forests for the sake of land clearing of the palm oil industry from his efforts.

The attraction between the interests of industrial forest entrepreneurs, in this case entrepreneurs who own palm oil companies and Environmental Conservation of forest ecosystems that should give absolute responsibility to entrepreneurs who own palm oil companies to pay attention to good environmental governance to minimize degradation or damage to the environment for local Indigenous communities.

According to Schwartzbach, strict liability is a concept of criminal responsibility for perpetrator of criminal offense in which a public prosecutor or judge applies a decision without the need to prove that the defendant intended or did not commit a criminal act. The public prosecutor does not even need to prove whether the defendant committed the act because of negligence. However, strict liability is often used in the realm of civil law, especially in terms of accountability through providing compensation for losses. Article 88 of the Law No. 32 of 2009 on Environmental Protection and Management (Environmental Law) mention that every person whose actions, business, and/or activities using hazardous and toxic materials, producing and/or managing waste of hazardous and toxic materials, and/or posing a serious threat to the environment, is absolutely responsible for the losses incurred as long as the loss is caused by the person concerned (Hafrida et al., 2020, pp. 315–316)

The responsibility of legal subjects, both humans and legal entities represented by entrepreneurs or their administrators, in maintaining their living environment should rest on natural laws. Natural law always teaches a balance between the performance of obligations and the fulfillment of rights. The means to measure it is morality. Morality guides the subjects of law both human beings and legal entities represented by entrepreneurs or their administrators to maintain the balance of the laws that exist in the universe between the performance of obligations and the fulfillment of rights, when the balance has been reached, the result obtained is the birth of the common good (Bachrudin et al., 2019, p. 63).

On the contrary, if there is no balance in natural law, it will cause environmental damage, one of which is the impact on oil palm land clearing by violating the moratorium on permits for palm oil companies without paying attention to the concept of good environmental governance, many of which cause environmental ecosystem degradation in Indigenous communities, be it water,soil, air, and forest, so it is urgent to conduct the construction of criminal sanctions for violators of the moratorium on permits for palm oil companies that cause environmental degradation by plea bargaining, this is in line with the concept of environmentally sustainable development initiated by Emil Salim.

According to Emil Salim, the concept of environmentally sustainable development implies not an absolute limit but a limit determined by the level of society and social organizations regarding natural resources and the ability of the biosphere to absorb the effects of human activities. Considering that in natural resources there is a natural resource that cannot be renewed, then in the management of natural resources it is necessary to take into account the following : 1) in terms of the limited number and quality of Natural Resources; 2) the location of Natural Resources and their influence on community growth and Regional Development; 3) the use of natural resources that not wasteful, and 4) the negative impact of waste management is solved wisely including where to dispose of it and so on (Salim, 1986, p. 170).

From an economic point of view, the imposition of criminal sanctions should be able to replace the losses incurred. However, empirically the criminal sanctions applied to perpetrators of forest and environmental destruction have not been in line with these objectives. Based on research on environmental criminal case decisions, throughout 2017-2019 from 436 decisions, it was found that as many as 365 environmental criminal defendants were sentenced to imprisonment and only fifteen people were sentenced to fines without imprisonment (Syarifah et al., 2020, pp. 36–37).

In addition, the imposition of prison sanctions against perpetrators of forest and environmental destruction is very ineffective considering the capacity of the Banjarmasin Correctional Institution prisoners in Indonesia is very over capacity. From the data taken author as of October 2016, the number of prisoners in Indonesia is approaching 200 thousand people, Correctional Institution prisoners in Indonesia is the 10th most over capacity in the world. Detention centers and correctional institutions in Indonesia are overpopulated, some even up to 600 percent of the maximum capacity. ToPenitentiary institution or prison Class 2 A Banjarmasin South Kalimantan as the second most populous

prison of all correctional institutions or prisons in Indonesia which reached over capacity occupancy of 650 %. In this Penitentiary or prison inhabited by 2378 prisoners and convicts which is a combination of male and female prisoners and or inmates by 2378 prisoners and convicts which is a combination of male and female prisoners and or inmates, whereas the maximum occupancy capacity is only 366 people. Correctional Institution or prison Class 2 A Banjarmasin South Kalimantan has 16 blocks, the capacity of the cell prison in each block should only be 17 prisoners and / or inmates but forced to be filled 400-600 people and 16 blocks are only guarded by one prisoner guard or jailer. On average, 120 people enter the Correctional Institution per month, while those released per month are only 30 people, this causes the capacity of the prison to be insufficient because the ratio of people entering and the liberated are unbalanced. Excess occupants make the life of prisoners who are in jail less humane. They got around the overcrowded prison space by using wooden attics and installing fabric swings for the beds. This is done so that they can breathe a little freely when resting (CNN Indonesia, 2016), so that from the data obtained, it can be stated that an in-depth study is needed related to the effectiveness of the utilization of prison sanctions for perpetrators of criminal acts, especially against perpetrators of forest and environmental destruction.

Reflecting on Emil Salim's statement and the practice of criminal prosecution in the case of environmental crimes above, the construction of criminal sanctions on violators of the moratorium on permits for palm oil companies with plea bargaining based on sustainable ecological development must make significant changes to the development, management and development of the environment in which must pay attention to various community environment includes public environmental health. .

Considering that so far the application of criminal sanctions against perpetrators of violations of the moratorium on permits for palm oil companies has not made a deterrent effect on perpetrators, even like mushrooms in the rainy season, more and more led to ecological destruction activities from upstream to downstream. From data from the South Kalimantan Environment Agency in 2021, 60 % of peat in South Kalimantan was damaged due to land conversion without heeding the moratorium on permits for palm oil companies regulated in Presidential Instruction No. 5 of 2019 on termination of new permits and improvement of primary natural forest and peatland governance (instruction of the president of the Republic of INDONESIA number 5 of 2019,2019). Whereas the regulation of laws concerning the preservation of the environment with the implementation of good environmental management of industrial plantation activities very much

regulate with regard to the sanction of imprisonment,but the reality in the field does not work effectively.

This can be seen in one of the regulations in law No. 39 of year 2014 concerning estates that there are articles in the act that can be applied to the subjects of corporate law (legal entity) as a capital owner or entrepreneur or administrator of an oil palm plantation company who violates the moratorium on permits for oil palm plantation companies as punishable acts, namely:

a. Article 103 (1) → any official who issues a plantation business license on the right Land
   Ulayat Customary Law community as intended in Article 17 paragraph (1) shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of 5,000,000,000. 00 (five billion rupiah);
b. Article 105 (1) → any plantation company that undertakes crop cultivation business Plantations with a certain scale area and / or plantation processing business with a certain factory capacity that does not have a plantation business license as referred to in Article 47 paragraph (1) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp 10,000,000,000 .00 (ten billion rupiah).
c. Article 106 → ministers, governors and Regents / mayors authorized to issue permits
   plantation businesses that: a) issue permits that are not in accordance with the provisions;
   and/or b) issue permits that are not in accordance with the terms and conditions of the laws and regulations; as referred to in Article 50 shall be punished by imprisonment for a maximum of 5 (five) years or a maximum fine of Rp5, 000.000.000, 00 (five billion rupiah) .
d. Article 108 (1) → any plantation business actors who open and / or cultivate land by burning as meant in Article 56 paragraph (1) shall be punished by imprisonment of 10 (ten) years and a maximum fine of Rp l0 .000.0 00.000, 00 (ten billion rupiah) .
e. Article 109 → plantation business actors who do not apply: a) Analysis of environmental impact or environmental management efforts and environmental monitoring efforts; b) Environmental Risk Analysis; and c) environmental monitoring; as meant in Article 68 shall be punished by imprisonment for a maximum of 3 (three)years and a maximum fine of Rp3, 000, 000, 000.00 (three billion rupiah) .
f. Article 113 → (1) in the case of acts as meant in Article 103, article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 carried out by the corporation, in addition to the management shall be punished under Article 103, Article 104, Article 105, Article 106, Article 107, Article

> 108, and Article 109, the corporation shall be punished with a maximum fine in added 1/3 (one third) of fine penal of each criminal action of them (2) in the event that the acts referred to in Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 are carried out by an official as a person ordered or a person who, due to his position , has authority in the field of plantations, the official shall be punished with a criminal as the criminal threat in this law plus 1/3 (one third) (law of the Republic of INDONESIA number 39 of 2014 on plantations, 2014).

Environmental criminal law enforcement aims to improve or give sanction for the maker (violator of the law) so that he turns into a good legal subject (person or legal entity) and pay attention to the environment and the rights of others to live in a healthy and peaceful environment . On the other hand, law enforcement through administrative instruments aims to make acts or omissions that violate the law or not meet the requirements, stop or restore to its original state or before the violation (Hamzah, 1997, p. 116). Corporations themselves cannot be subject to the main penalties in the form of imprisonment. Corporations may only be subject to a principal criminal form of a fine (Simbolon et al., 2021, p. 4).

So it can be stated that the focus of administrative sanctions is on the criminal act, while criminal law sanctions focus on the person as the perpetrator or perpetrator of the crime, in addition, criminal law sanctions are not only aimed at the maker, but also aimed at those who have the potential to become violators. With regard to legal subjects (persons or legal entities) that are good and pay attention to the environment and the rights of others to live in a healthy and peaceful environment, it must meet the standards and quality of society means that the enforcement of criminal law against perpetrators of violations of the moratorium on permits for oil palm plantation companies there is Laws that commit criminal acts in the oil palm plantation environment are given heavy criminal sanctions for the legal entity, which in this context criminal liability is the responsibility of the management / manager of the legal entity as a directing mind depending on the domain of responsibility as the management / manager of the legal entity. Because of the heavy responsibility of managers / administrators of legal entities, the regulation of Law No. 39 of year 2014 concerning plantations regulates the criminal sanctions that can be imposed on the legal entity in the form of fines with weights plus 1/3 (one third) of the maximum provisions of the fines imposed as stated in Article 113 paragraph (1) of law no. 39 of year 2014.

As for the application of criminal law enforcement against perpetrators of violations of the moratorium on permits for oil palm plantation companies in

terms of meeting the standards and quality of surrounding Indigenous peoples, one of them is in Article 58 paragraph (1) in conjunction with Article 60 paragraph (1), namely :

a) Article 58 (1) a plantation company that has a plantation business license or permit Plantation businesses for cultivation must facilitate the construction of community gardens around at least 20% (twenty percent) of the total garden area cultivated by plantation companies.
b) Article 60 (1) plantation companies that violate the provisions as follows referred to in Article 58 shall be subject to administrative sanctions. (2) administrative sanctions as meant in Paragraph (1) shall be in the form of: a. fine; b. temporary suspension from plantation business activities; and / or c. revocation of plantation business license.

The enforcement of criminal law against perpetrators of criminal acts in the field of environment related to plantations is a highly organized crime, not easily revealed, often related to public officials who hold and use their political authority to protect perpetrators of these crimes and always have links with crimes and / or violations in other fields, for example in field of finance, both as a "concurrency/concursus" and as "sustainability", so that a law enforcement officer must have an awareness that the case being handling has the potential to be related to crime and / or violations in other fields (Muchtar, 2015, p. 196).

The potential linkage of perpetrators of criminal violations moratorium permit oil palm plantation company in South Kalimantan with crimes and / or violations in other fields causing this crime to be carried out in an organized manner with varied modes, the number of parties involved in this crime makes the government and law enforcement officers must work hard to prevent and eradicate it. Involvement in the criminal network violation of the moratorium on permits for oil palm plantation companies in South Kalimantan is very strongly structured ranging from grassroot/ subordinate classes (operators/manual workers/field workers) to the super top class which is more as the directing mind of the crime (financiers, planners, protectors). In general, those caught by law enforcement officers are only workers /field workers, rarely touching financiers (barons) and business security/ backing player (rogue individuals in the government, police/ Indonesian National Army and legislators). Therefore , the handling must involve all parties in an integrated (integrated extra ordinary instruments) with reference to the regulations of laws and regulations that develop environmental conservation and management of oil palm plantations environmentally sound. For this reason, it is necessary to have an equal common perception of all law enforcers in a unified integrated criminal justice system

starting from the stage of investigation, prosecution and examination in court, and examination in court, and the implementation of decisions.

The criminal justice system is not a deterministic system whose work can be determined with certainty, but it is a probabilistic system whose results are definitely unpredictable. Criminal justice system as a physical system because the criminal justice system itself in which there are bodies or set of bodies that are components system judiciary criminal (police-prosecutor-court and correctional institutions) are integrated in order to achieve the goal. As an abstract system, the components of the criminal justice system is a unity that is arranged in an integrated manner with each other there is interdependence (Muladi, 1995, p. 15). Systemic law enforcement efforts must pay attention to the elements of the legal system because it is the essence of law enforcement so that the internal and external processes of law enforcement and justice can be realized in a real way (Junaedi, 2020, p. 8).

The success or failure of the criminal offender to be punished lies in the moment the judge's decision is handed down at the stage of examining the case in court whether the perpetrator will be free or sentenced by the judge based on the evidence in court by adopting a negative proof system according to the law, meaning that the judge to blame a defendant based on valid evidence of guilt defendant. Confidence of sureness in a judge holding role important, although evidence piles up, exceeding the minimum set out in Article 183 of the Criminal Procedure Code , if the judge does not believe about the law mistakes of the defendant, the judge can not blame and punish the defendant (Subekti, 2015, p. 7).

This stage of examining a criminal case in court is carried out after the preliminary examination stage is completed. This examination is based on the accusator model and begins by submitting the case file to the public prosecutor. The examination in advance of the court hearing begins with a notice to come to the court hearing, which is carried out legally according to the law. In this case, Article 154 of the code of Criminal Procedure has provided for the limitation of the terms of validity of the law on summoning the accused.

Terms of validity of the law on summons to the defendant has a provision that the summons to the defendant is delivered at his place of residence or if his place of residence is unknown, delivered at the last place of residence, but if the defendant is not at the last place of residence, the summons is delivered through the head of the village the defendant's case is in custody a summons delivered to

him through the state detention House officials. Acceptance of the summons of the defendant himself or another person or through another person, carried out with a mark of acceptance if the place of residence or the last place of residence.

However, on the other hand almost most of the stigma that arises in the community, the settlement of cases through the judiciary is generally not responsive, this can be seen from the lack of response of the judiciary to defend and protect the interests of the community, so it often raises the stereotype that the law is blunt up sharply down, thus bringing grass. Whereas ideally, if the principle of justice is simple, fast, and low cost for all seekers of justice regardless of the status and position of justice seekers are realized Well, then the law can be implemented as expected as the function of law to protect human interests in realizing legal certainty, justice and benefits for the community , for that the real law must be enforced so that the law can be enforced, the settlement of cases can be done through alternative channels, because basically he settlement of cases can be done through litigation / judicial institutions and non-litigation / outside the court (Tauhiddah et al., 2020, p. 95).

Basically, the implementation of Plea Bargaining can be applied as a settlement as equated to the settlement of civil environmental disputes that can be resolved outside the court (non litigation) by involving local indigenous community leaders who are very familiar with the state of the affected area or experience direct environmental damage due to criminal violations of the moratorium on permits for oil palm so that it knows what losses are experienced in the region, as stated in Chapter XII of Article 84 of Law No. 32 of 2009 on Environmental Protection and management, explained that : (1) settlement of environmental disputes can be taken through the court (litigation))or out of court (Non Litigation); (2) The choice of settlement of environmental disputes is done voluntarily by the parties to the dispute; (3) lawsuit through the court can only be taken if the attempt to resolve the dispute outside the selected court is declared unsuccessful by one or the parties to the dispute.

According to Sharon Beder that the restoration or restoration of the environment must also involve community participation. Community involvement is essential so that they are supportive of restoration efforts. Community involvement is also needed so that restoration efforts do not threaten people's access to get natural resources in their environment.do not threaten people's access to natural resources in their environment. However, environmental restoration efforts must pay attention to intragenerational justice, namely the equitable distribution of resources and risks (Wibisana, 2017, p. 293)(Wibisana, 2017, p. 293).

Empowerment of community rights by involving local indigenous community leaders who are familiar with the state of the area affected or experiencing direct environmental damage due to criminal offenses perpetrators moratorium permit oil palm plantation companies in South Kalimantan in the settlement of environmental criminal cases based on Sustainable Ecological Development is in accordance with the mandate of the Constitution in Article 18 (2) the 1945 Constitution which states that the state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (Constitution of the Republic of INDONESIA Year 1945, 1945).

Although in Indonesian positive criminal law, criminal cases cannot be resolved outside the court through peaceful settlement as stated in Article 2 of Law No. 30 of years. 1999 on arbitration and Alternative Dispute Resolution and Supreme Court Regulation No. 1 of year 2008 Jo Supreme Court Regulation No. 1 of year 2016 concerning mediation procedures in courts stating that mediation only applies to civil cases as an alternative to settlement of cases outside the court while criminal matters do not apply, but in certain cases there are provisions that implicitly indicate that settlement of criminal cases outside the criminal justice process has a place in the realm of criminal law, among others : (a) the Criminal Code(KUHP) in Article 82 of the criminal code on Afkoop/compositie (payment of peaceful fines); (b) Law No. 7 Drt year 1955 / law on economic crimes in Article 29 OB (ordinance Bea Staatblad 1882 No. 240) on Schikking (peaceful fine); (c)Law No. 11 of year 2012 / law on juvenile justice system in Article 1 Number 7 in conjunction with Article 5 Paragraph (3) on diversion as a transfer of child case settlement from criminal justice process to process outside criminal justice and shall prioritize restorative justice approach; (d) Law no. 2 of 2002 /Police Law in Article 16 Paragraph (2) in conjunction with Article 18 paragraph (1) in a very necessary and urgent matter ,in the public interest of police officers in carrying out their duties and authorities can act according to their own judgment / discretion.

The implementation of diversion according to Article 7 of the SPPA law / child criminal justice system aims to minimize the potential for coercion and intimidation at all stages of the diversion process , the diversion agreement must obtain the consent of the victim and / or the victim's child's family, as well as the willingness of children and their families, except for crimes in the form of offenses, minor crimes, crimes without victims, or the value of the victim's loss is not more than the value of the provincial minimum wage (Sianturi, 2017, p. 187).

While the implementation of discretion is the authority of the police to make decisions or choose various actions in resolving problems of lawlessness or criminal cases it handles.

From the basics of law, there are provisions that implicitly indicate that the settlement of criminal cases outside the criminal justice process has a place in the realm of criminal law, the government can adopt the Plea Bargaining System from the United States by including the role of customary law community leaders as supervisors of the course of the case settlement process whether accord to values of local wisdom which take a place to uphold the preservation of natural where the community shelter.

According to Prof. Adi Sulistiyono, stated that: Plea Bargaining is a negotiation between the public prosecutor and or his defense regarding the type of crime to be charged and the threat to be prosecuted in advance of the trial. Negotiations are based on mutually beneficial ties. The public prosecutor felt relieved of his duties because the number of cases handled was very large, or the evidence collected and the witnesses did not support winning his case. If the accused party admits the alleged act in front of the prosecutor, then the next process is sentencing by the judge without going through the process of proof before the trial,while the accused party feels benefited because the alternative punishment to be imposed by the public prosecutor is lighter than if his guilt is proven in the trial (Sulistiyono & Rustamaji, 2009, p. 138). So this Plea Bargaining system uses ways in civil law for the settlement of criminal cases, in the plea bargaining system that negotiates is the public prosecutor (Prosecutor) with the perpetrator of the crime or his legal advisor and does not involve the victim and does not abolish or stop the criminal justice process.

The application of Plea Bargaining in cases of environmental crimes must be oriented to efforts to restore and preserve the environment. Restoration must be done with appropriate methods and attention to the relationship between humans, plants, animals and other biotic and abiotic components in the damaged environment. Recovery must also have clear indicators to measure the success of recovery that can be done through evaluation. while environmental conservation is a way to reverse environmental degradation, restore ecosystem function to its original condition, and restore biodiversity in an area.

In addition, the application of the plea Bargaining model is based on the concept of cost and Benefit Analysis and scarcity as a reference for making efficient policies. Environmental restoration through the implementation of the plea

Bargaining model should be the main focus. Environmental restoration can provide benefits for repairing of quality air, slow down of reduced biodiversity, and improve the quality of life of people living around the restored area. In addition, recovery is important to mitigate the adverse effects of climate change and restore the benefits (both economic, social, cultural, health and other benefits) of the environment that previously had been lost or reduced due to pollution and damage.

In the construction of the application of criminal sanctions on perpetrators of violations of the moratorium on permits for oil palm plantation companies in South Kalimantan who do not pay attention to the concept of good environmental governance based on Sustainable Ecological Development by applying the plea bargaining system pattern, prosecutors / public prosecutors as law enforcement officers can use several criteria as law principal which is fixed (*in ckacht van gewidje*) :

1. Various types of environmental crimes resulting from violations of the moratorium permits for oil palm plantation companies that cause long-term environmental damage;
2. The existence of concrete evidence at the scene of the case about the loss that can be identified and from the report of soil science laboratory test results (in physics, biology and chemistry) environmental auditors show massive long-term environmental damage to economic, social, and cultural life of the community;
3. The need for restitution (compensation) equal to the amount of loss material and immaterial effects that provide long-term losses to the lives and health of the surrounding Indigenous peoples from the soil science laboratory test results report (in physics, biology and chemistry). Environmental auditors show massive environmental damage to the long-term economic, social, and cultural life of the community which the value of the loss is equal to the audit report of the auditor environment (environmental experts who are competent in their fields who do not have any interest/ independent) and audit report from the auditor public accountant (state financial experts who are competent in their fields who do not have any interest/ independent)
4. The owner of the company as a corporation or legal entity is fully responsible (absolute liability) for violation of the moratorium on permits for its oil palm plantation companies that are unable to pay compensation / restitution must obtain social work sanctions for the whole life to carry out forest improvement / reclamation programs or restore land and vegetation in damaged forest areas in all forests in indonesia so that they

can be re used for the benefit of the surrounding Indigenous, for example as one of the raw water sources in the area, used as a place for fish farming, ecotourism such as the existence of Lake Bintang in Tanah Laut Regency which can be managed as one of the tourist attractions, livestock land, cattle feed, and others. Such lifelong social work is carried out with the supervision of the elements present in the criminal justice system (police-prosecutor-Justice-Penitentiary), Environmental Service bodies Forestry and plantation service as well as local indigenous community leaders as private Supervisors appointed directly by the state through the Environment Service.

5. While the perpetrator (Corporation) who are unable to pay compensation / restitution, permission the business is revoked, the company is closed and its leadership (its Board of Directors in charge of the company) is obliged to obtain a social work sanction for the whole life.

Plea Bargaining pattern in construction the application of criminal sanctions on perpetrators of violations of the moratorium on permits for oil palm plantation companies in South Kalimantan who do not pay attention to the concept of environmental governance based on Sustainable Ecological Development is carried out through several reference lines, namely:

1. Directly in the investigation examination after coordinating with the Public Prosecutor with the supervision of local indigenous community leaders as private Supervisors appointed directly by the state through the Environment Service before the report is delegated to the prosecutor's office;
2. After the investigator makes a report and delegated to the prosecution stage at the prosecutor's Office with the supervision of local indigenous community leaders as private Supervisors appointed directly by the state through the environment service, but before going to court as a diversion from the prosecutor's Office;
3. After receiving or finding the offender guilty statement either orally or writing done in the presence of police officers and or prosecutors who handle the case before the fall of the verdict by the judge;
4. After the verdict;
5. Perpetrators who take plea bargaining steps on the integrated criminal justice system, if in the middle of the litigant process it turns out to cancel the plea bargaining process, then the perpetrator again takes the path of the integrated criminal justice system as usual with the condition of complying with the decision in the level I Court which is fixed (in krach van gewidje) so that there is no appeal or Cassation.

4. Conclusion

Plea Bargaining is shortcut of penal law within regulation framework of environmental criminal law based on ecological oriented and green land restoration is more concern or more attention to the use of land after the moratorium permit oil palm plantation companies that can be utilized and provide maximum benefits to the community than the concern on the imposition of grievances / prison sentences against perpetrators of violations of the moratorium permit oil palm plantation companies, because basically the prison sanctions are not is a major settlement (Premium Remedium) but is only an ultimum remedium that the application of criminal sanctions as the last attempt after another legal action turned out to be unsuccessful in overcoming environmental problems in the field of environment that exist in the community.

The ultimum remedium effort is implemented in a plea Bargaining pattern based on Sustainable Ecological Development which is integrated in the integrated criminal justice system by involving supervision from local indigenous community leaders who are very familiar with the state of the affected area or directly experiencing environmental damage to provide a more educational deterrent effect to perpetrators materially and immaterial due to the behavior / actions of actors who cause environmental damage to long-term effects rather than just capital punishment / imprisonment.

In order for the implementation of plea Bargaining in construction criminal sanctions on violators of the moratorium on permits for oil palm plantation companies as an alternative to solving criminal cases in the field of environment can be included as a draft law to be passed as a separate law, given in law No. 39 year 2014 on the plantation has no arrangement.

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