

Reason of criminal remover on the criminal action in forestry after decision of the constitutional court number 95 / PUU-XII / 2014

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Abstract. The purpose of this study was to determine the power of enforceability of forestry crime after the decision of the Constitutional Court Number 95 / PUU-XII / 2014; and the reasons for criminal offenses in the forestry sector so that it fulfills the legality principle after the decision of the Constitutional Court Number 95 / PUU-XII / 2014. This study used normative juridical research with primary legal materials (laws and decisions of the constitutional court) and secondary legal materials (literature on forestry law and criminal law). Analysis of legal material was carried out using qualitative analysis, describing vague legal norms, then legal interpretation. The results showed that the enforceability of forestry crimes after the decision of the Constitutional Court Number 95 / PUU-XII / 2014 was final and binding, with the reason that the criminal cancellation only applies to individuals, did not apply to corporations. The reason for eradicating criminal acts of forestry to fulfill the principle of legality was that the reason for removing crimes in the phrase: "excluded from people who live for generations in the forest" must be interpreted as someone who has for generations taken advantage of regional forests that depend on their livelihoods. For examples clothing, food and shelter from the forest. Whereas "not intended for commercial purposes" was an area forest utilization activity that did not cause forest damage and negative impacts on natural ecosystems.

1. Introduction

The nature of justice as a philosophical abstraction¹ of the purpose of the law is more valuable in the legal context as *das sein*. For the law in the *das sollen* level, one forgets even ignoring the side of justice. Even though the *das sein* with *das sollen* is like one body, the prototype of the legislation is interrelated with each other, because how it is possible in law enforcement to fulfill the need for justice, if in the beginning it does not aspire to all justice. Enforcement of special criminal law, forestry law based on Law Number 44 of 1999 concerning Forestry is a sample and an operational basis [1].

To consider the justice side as the essence and purpose of law with dimensions of justice [2]. Enforcement of criminal law in the forestry sector carries the mandate to preserve forests with environmental dimensions that are beneficial to all human beings. Damage to the forest will be disrupted by the balance of nature and the balance of the ecosystem which will ultimately cause harm



to humans [3]. Natural disasters in the form of landslides, erosion, floods, and climate change global warming are further effects of the disturbed environment, because of the destruction of forests in greater frequency [4].

Criminal law in its absolute characteristics then scares and gives a deterrent effect placed in forestry regulations. The big aspirations of criminal provisions as outlined in the Forestry Law, every person or legal entity does not freely use forest resources, without the permission given by the state through the institution that has been mandated to grant the permit. In short, with the presence of criminal provisions for legal subjects in the sense that every person or every legal entity will not damage the forest which has an impact on the disruption of human survival.

However, the institutionalization of criminal provisions in the Forestry Law has not fulfilled legal objectives in aspects of justice. On the one hand, forestry criminal law is said to have fulfilled the requirements of justice, because it aims to preserve the environment and for the survival of humanity, but on the other hand leaves protection efforts for individuals who depend their lives and needs on private forests, customary forests and regional forests. By merely connecting lives and taking advantage of their daily needs, they are placed as legal subjects of perpetrators who commit acts of forest destruction.

In an effort to make ends meet and benefit from the forest in the form of cutting down trees or harvesting or harvesting forest products in the forest or grazing livestock, it is clearly an unavoidable activity for them. Is it true that they did damage to the forest so that it affected the balance of nature? Special and convincing facts cannot be deduced conclusively. There are families who have lived in forest areas, from generation to generation benefiting from the forests, homes, and forests where they have remained protected. Even in the customary community, they value the forest where they benefit, rather than a number of corporations that have now been given business use rights and production permits to carry out exploitation and exploration of mining and plantations in regional forests.

In certain customary law communities, even the forest has been used as their spiritual stopover, the forest is never cleared out, there are forests for fields, there are forests to be protected, there are forests where medicines are taken. The forest is even used as a place to take benefits like a mother who gives her milk so that the forest must be preserved. In the Kajang community, a rural area in Bulukumba Regency, the command is in the form of rules and prohibitions, never cutting down a tree if it is not willing to replace it with ten new generation trees.

Of course on a scale that cannot be counted, there is also a group of people who take benefit from the forest who not paying attention to sustainability. They did logging on a large scale to be traded. They carried out illegal mining in the forest area, so the forest became damaged. They carried out forest fires for plantation business. Such activities are worthy of being charged with imprisonment and fines because they have disrupted the resources and sustainability of forests for the sake of sustainable survival for the next generation.

The discourse that has been briefly elaborated above, at least becomes a brief description as a legal reason in maxim " *point de ibtern point atim - point d'interet point d'action* - to end the error of the law because making mistakes is humane, but it is not good to keep on going wrong (*errare humanum est, turpe in errore perseverare*), then ten parties consisting of the Indigenous Law Community of Nagari Guguk Malalo, West Sumatra, together with three individuals: Edi Kuswanto bin Kamarullah from Sumbawa (West Nusa Tenggara), Rosidi bin Parmo from Kendal (Central Java) and Mursid bin Sarkaya from Lebak (Banten), along with six legal entities including the Wahana Lingkungan Hidup (Walhi) Foundation, the Archipelago Indigenous Peoples Alliance (AMAN), the Consortium for Agrarian Reform (KPA), Sawit Watch Association, Indonesia Corruption Watch (ICW), and Silvagama Foundation. The ten applicants gave legal counsel to Andi Muttaqien SH along with 31 other people who were members of the Anti Mafia Forest Advocacy Team submitted a request for testing nineteen provisions in Law No. 18 of 2013 concerning Eradication and Prevention of Forest Destruction (UU P3H) and 4 (four) provisions in the Forestry Law at the Constitutional Court (MK).

As a result, all provisions regarding the testing of nineteen articles in the UU P3H cannot be accepted. Three articles in the Forestry Law were declared rejected, and one article which was partially rejected,

part of it was also granted. The article granted was article 50 paragraph (3) letter e and letter i of the Forestry Law.

Article 50 paragraph 3 letter e and letter i of the Forestry Law are not canceled as a whole but are stated as conditional unconstitutional. The concrete sound of the a quo article after the decision of MK No. 95 / PUU-XII / 2014 reads as follows:

Article 50 paragraph (3) Forestry Law "Everyone is prohibited from: (e) Cutting down trees or harvesting or collecting forest products in the forest without having rights or permits from authorized officials, except for people who live for generations in the forest and not intended for commercial purposes; (i) Pasturing livestock in forest areas that are not specifically designated for this purpose by authorized officials, except for communities that live for generations in the forest and are not intended for commercial purposes."

To complete the above article, in connection with the criminal sanctions, the following articles or provisions are also cited which further regulate it:

Article 78 paragraph 5 of the Forestry Law: "Anyone who intentionally violates the provisions as referred to in Article 50 paragraph (3) letter e or letter f is threatened with a maximum of 10 (ten) years imprisonment and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). "Article 78 paragraph 8 of the Forestry Law:" Anyone who deliberately violates the provisions referred to in Article 50 paragraph (3) letter i, is threatened with imprisonment for a maximum of 3 (three) months and a maximum fine of Rp. 10,000. 000,000.00 (ten billion rupiah).

Criminal provisions in the forestry sector as cited above, even though they have gone through the testing process at the Constitutional Court, still contain obscurity in the reason for exclusion or reasons for their criminal offenses. This can be observed in the phrase "people who live from generation to generation" and "aimed at commercial interests." What is meant by people living from generation to generation, only to indigenous people who control customary forests, or include individuals who are gathered in the family group of generations of two descendants based on the a quo article after the Constitutional Court's decision? Is what is intended for commercial purposes based on the a quo article, including the sale and purchase or small-scale business of taking advantage of forest resources?.

These two questions or legal issues are important to explain because they are related to the principle of legality which requires the formulation to be clear as the criminal law postulate which reads: "nullum crimen nulla poena sine lege scripta." This legal postulate aims to provide protection to the people against state power arbitrary [5].

If there is no concrete explanation of the a quo article, it is feared that it can ensnare innocent people in their actions, mutatis-mutandis aspects of justice that they aspire to, are not achieved. Further explanation in the discussion of the discussion will be focused on the description and legal analysis of the power of enforcement of forestry crime after the decision of the Constitutional Court Number 95 / PUU-XII / 2014; and the reasons for criminal offenses in the forestry sector so that they fulfill the legality principle after the decision of the Constitutional Court Number 95 / PUU-XII / 2014.

2. Research Method

2.1 Research Type

This research is normative juridical research, which uses a conceptual approach [6] that aims to examine the laws in the criminal law of humiliation, also with theoretical studies from the existing literature then related to the problems that are the subject of discussion in this study. This research analyzed the legal issue, namely the obscurity of legal norms of criminal acts in the field of forestry in relation to the principle of legality which provides reasons for criminal offenses after the decision of the Constitutional Court Number 59 / PUU-XII / 2014.

2.2 Legal Material

Legal materials used are primary legal material and secondary legal material. Primary legal material, namely Law Number 44 of 1999 concerning Forestry, Law No. 18 of 2013 concerning Eradication and Prevention of Forest Destruction (UU P3H), Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court: and Constitutional Court Decision No: 59 / PUU-XII / 2014. While secondary legal material, namely literature from books and journals related to forestry law, also with criminal law books, especially the material criminal law book

2.3 Legal Material Collection Method

In this study used techniques to obtain legal material using library research (Library Research) namely, researchers conduct searches of legislation, several literature books, legal journals and writings that were directly related to the problems examined in this study. In addition, to obtain legal material specifically relating to the Decision of the Constitutional Court Number 59 / PUU-XII / 2014 concerning the testing of the Forestry Law, it was conducted by accessing directly to the website of the Constitutional Court.

2.4 Legal Material Analysis

Analysis of legal material was then carried out by qualitative analysis by describing vague norms related to criminal acts in the forestry sector that had undergone changes based on MK Decision Number 59 / PUU-XII / 2014, then the grammatical and teleological interpretation of the law was conducted. The results of the interpretation were then reviewed one by one, then a legal conceptualization was carried out in formulating the provisions of forestry crime that fulfill the principle of legality.

3. Analysis and discussion

3.1 The Power of Enforcement of the Reasons for the Eradication of Forestry Criminal Acts After the Decision of the Constitutional Court Number 95 / PUU-XII / 2014

Final and binding

One characteristic of the principle of legality of material criminal law that is generally well-known in a legal postulate "Nullum crimen noella poena sine lege praevia" which means there are no criminal acts without any rules governing beforehand.

If the postulate above is related to the Constitutional Court Decision No. 95 / PUU-XII / 2014, then it can be made maximized that "there is no excuse for a criminal offense without the rules governing it beforehand." special criminal erasers, namely criminal offense applicable to certain criminal acts.

In its custom, the reason for special criminal abolition should be the one that forms or makes it a legislator in its function as a positive legislator. However, with the development of the new constitution, with the many decisions of the Constitutional Court that granted the petition for judicial review in the form of conditional or unconstitutional decisions, [7] it has shown a shift in the function of the Constitutional Court, from the previous negative legislator to a positive legislator. [8] Of the many judicial review decisions, such as the Constitutional Court Decision No. 95 / PUU-XII / 2014 as one example of a decision with conditional unconstitutional conditions.

The Constitutional Court Decision Number 95 / PUU-XII / 2014 stated that Article 50 paragraph 3 letter e and letter i of the Forestry Law do not conflict with the Constitution as long as it means "... excluded from people who live for generations in the forest and are not intended for commercial purposes ... "

The phrase "except for people who live hereditary in the forest and not intended for commercial purposes" only applies specifically to material forestry crimes which are not deeds: "Cutting down

trees or harvesting or harvesting forest products in the forest without having the right or permission from authorized official; Pasture livestock in forest areas that are not specifically designated for this purpose by authorized officials. "

The average decision of the Constitutional Court which in his statement was declared as conditional or unconstitutional constitutional, to remain standing in opinion, not as a legislator (positive legislator) or not carrying out legal construction, but only doing legal interpretation, then what he did was as small as possible, namely teleological interpretations. An interpretation based on the objectives of the legal provisions.

The function of the principle of legality in material criminal law, namely to protect everyone who will be restricted or revoked by his basic rights. This is the typical character of the Constitutional Court in every law testing, in the context of providing legal protection (rights), never making legal interpretations in the form of conditional unconstitutional or constitutional decisions that lead to limitation or revocation of rights (criminalization). Everything leads or leads to the protection of individual rights or rights as citizens.

Again, the testing of Article 50 paragraph 3 letter e and letter i of the Forestry Law in the Constitutional Court, becomes legal material to provide legal protection for individuals who benefit from forest areas, because they benefit and do not cause loss of rights to other parties, thus giving rise to criminal exemptions for those who have been living for generations in forest areas. Including additional exceptions, not for commercial purposes is merely to avoid the emergence of losses for other parties. They are taking benefits from forest areas, if for commercial purposes, can cause forest destruction which causes losses to many people.

In that context the enactment of the Constitutional Court Decision Number 59 / PUU-XII / 2014 which is final and binding, in addition to being able to be accepted in legal ratios with certainty, can also be received in the value of justice. The final and binding decision of the Constitutional Court is regulated in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Act Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court:

"The decision of the Constitutional Court is final, namely the decision of the Constitutional Court to immediately obtain the power of law since it was pronounced and no legal remedy can be taken. The final nature of the Constitutional Court ruling in this Law also includes final and binding legal force. "

The law has changed because of the results of testing at the Constitutional Court, because of its generally accepted nature, the final and binding decision is also generally accepted. The binding power of a generally accepted verdict is known as the erga omnes principle. [9] Erga omnes comes from Latin, which means it applies to everyone (toward everyone). Erga omnes principle or legal action is valid for every individual, person or country without a difference (Legal omission law or legal act applies as against every individual, person or state without distinction). An erga omnes rights or obligations can be implemented and enforced against any person or institution if there is a violation of these rights or does not fulfill an obligation

That means the Constitutional Court decision No. 59 / PUU-XII / 2014 is final and binding, also generally applicable to anyone. More specifically, changes to Article 50 paragraph 3 letter e and letter i of the Forestry Law are based on MK Decision Number 59 / PUU-XII / 2014 which reads: "Everyone is prohibited: (e) Cutting down trees or harvesting or collecting forest products in the forest without have rights or permits from authorized officials, except for people who live for generations in the forest and are not intended for commercial purposes; (i) Pasturing livestock in forest areas that are not specifically designated for this purpose by authorized officials, except for people who live for generations in the forest and are not intended for commercial purposes. "It is binding to be institutionalized in a state institution, binding to apply to anyone who will be charged with the crime, and binding on all law enforcement officials (police, prosecutors, and judges) in applying these articles.

Subject of Forestry Criminal Actors

If the sounding of the article 50 paragraph 3 letter e and letter i of the Forestry Law can only be ensnared for the perpetrator as everyone, it is not intended to ensnare the corporation or legal entity. By paying further attention to Article 78 paragraph 14 of the Forestry Law, there is not a single legal provision intended to ensnare corporations in the case of committing criminal acts as stated in Article 50 paragraph 3 letter e and letter i of the Forestry Law.

However, from the form of criminal acts described in Article 50 paragraph 3 letter e of the Forestry Law, if later compared to Article 12 letters a, b, and c, UU P3H: "Everyone is prohibited from: a. Logging trees in forest areas that are not in accordance with forest utilization permits; b. Log trees in forest areas without having licenses issued by authorized officials; c. Illegal logging in forest areas. "In addition to being followed by accountability for individuals (each person) also followed by accountability for the corporation (Vide: Article 82 paragraph 3 of the UU P3H).

The basic question is, the corporation based on MK Decision Number 59 / PUU-XII / 2014, the reason for the remission of the speech also valid? The answer is not enforceable. The basis of the argument, namely: First, it is impossible for a corporation to be granted ownership rights because it relies on offspring, moreover it is not possible for a company to be said to live in a forest area for a long time. Second, there is no corporation in utilizing forest areas, none of which is not commercially based. Third, specifically for the prohibition as stipulated in the P3H Law, there is an exception from forests with rights status and customary forest status, so that it is not necessary to require criminal offenses "... excluded from people who live for generations in the forest ..."

Therefore, the power of the enactment of the Constitutional Court Decision Number 59 / PUU-XII / 2014 for those who can be freed from criminal acts based on Article 50 paragraph 3 letter e and letter I of the Forestry Law in relation to the reasons for criminal deletion only applies to the subject of the individual or everyone does not apply to a corporation [10] that is truly soulless.

*3.2 Reasons for the Eradication of Criminal Crimes in the Field of Forestry that Fulfill the Principle of Legality after the decision of the Constitutional Court Number 95 / PUU-XII / 2014**Reasons for Justifications Regarding Their Acts*

Although at the beginning of the sub-discussion above it has been stated that the form of the reason for the removal of criminal acts from Article 50 paragraph 3 letter e and letter i of the Forestry Law is within the grounds of a special criminal offense, but if it is returned in the form of generally accepted criminal offense reasons, namely justification reasons and forgiving reasons, then the a quo article is in the part of the criminal removal reason in the form of justification. Earlier Article 50 paragraph 3 letter e and letter i of the Forestry Law were again quoted here:

"(e) Cutting down trees or harvesting or harvesting forest products in the forest without having the right or permission from the competent authority, except for people who live for generations in the forest and are not intended for commercial purposes; (i) Pasturing livestock in forest areas that are not specifically designated for this purpose by authorized officials, except for communities that live for generations in the forest and are not intended for commercial purposes. "

It is said that the reason for the criminal offense is the justification of Article 50 paragraph 3 letter e and letter i of the Forestry Law because it fulfills the requirements of the lawless nature of its abolished actions. Even though someone cuts trees, harvests, or picks up forest products in the forest, these acts are eradicated against the law, because of his deliberate intentions as intentions not for the commercial interests.

These deeds are justified, in other sense caused by a situation that is outside the perpetrator's self. He is in a state of unitary community status, a factor that comes from outside the perpetrator. Even though in the a quo article, the reasons for the criminal removal are listed as an intent of the perpetrator, namely "not intended for commercial purposes," but for normative descriptive reasons, the

intention can only be identified based on actions, then it is interpreted as a factor that comes from outside perpetrator.

Moreover, if the purpose of forest utilization is concretized in a further meaning, the purpose of not for commercial purposes, as an action that does not cause forest destruction has an impact, it is clear and clearly the reason for the criminal removal is characterized as justification, namely the reason that justifies the use of forest as long as the utilization requirements are met.

The fundamental difference between Article 50 paragraph 3 letter e and Article 50 paragraph 3 letter i of the Forestry Law in the context of actions that utilize forest areas can be justified, namely on the status of the forest.

If Article 50 paragraph 3 letter e of the Forestry Law places all types of forest status, both rights forest, customary forests, protected forests, regional forests, all are permitted as long as they are in a status as a community living in the forest for generations. While in Article 50 paragraph 3 letter i of the Forestry Law, this is not the case, only forests with the status of an area can be used for livestock grazing activities from someone who is in a hereditary community, and whose use is not for commercial purposes.

These records indicate that indeed in Article 50 paragraph 3 letter e of the Forestry Law, from the beginning it has provided a criminal offense, especially those who have the right to use it, such as the status of forest rights and the status of customary forests. For the status of regional forests, protected forests, it can be ascertained. Thus the utilization is only justified if it has obtained permission from an authorized official.

Presumably, Article 50 paragraph 3 letter i of the Forestry Law, not so reasons that can justify his actions, because they have been included from the beginning, are only for regional forests. Can be used for livestock grazing activities, if it has been determined in such a purpose. It can be justified grazing livestock in regional forests after the authorized official has specifically appointed him.

That was only the first reason for removing the criminal, before the Constitutional Court Decision Number 59 / PUU-XII / 2014, because after the Constitutional Court's decision gave imperative meaning, even though the forest area was used for livestock grazing activities, there was no such appointment from the authorized official, still can be used for livestock grazing activities. With the same argument again, those who use it come from families who have lived in the forest for generations, and their use is not for commercial purposes.

Without having rights or permits from authorized officials

Article 50 paragraph 3 letter e of the Forestry Law affirms: "Cutting down trees or harvesting or collecting forest products in the forest without having rights or permits from authorized officials, except for people who live for generations in the forest and are not intended for commercial purposes. "Based on the a quo article, there is one reason for removing the criminal without reading it in its entirety, as the amendment is based on the Constitutional Court Decision Number 59 / PUU-XII / 2014. The reason for the criminal offense in the form of cutting down trees, harvesting or collecting forest products is contained in the phrase "without having the right or permission from the competent authority," if then the phrase is made in a positive sentence, it will be read ".

Having rights based on the a quo article is aimed at someone who owns the right forest and is also directed to someone who has customary forest in an indigenous community unit. Someone who is in the possession of forest rights and ownership of customary forests, certainly does not need permission from authorized officials in cutting down trees, harvesting, or collecting forest products.

Someone who controls the land in the status of property rights, sometimes planting a large amount of trees until finally, he has his own forest garden. At one time if the control of the forest that was in the status of the right forest, it turned out to be considered to have a function and guarantee for the development of the ecosystem and the survival of the surrounding. In the sense that the forest must be preserved, it should not be as easy as the owner to spend his forest. So the takeover of forest rights to a person cannot be directly but must be through the procedure of establishing forest areas, with the prerequisite that someone who owns the right forest must be provided with a replacement value equal

to the land and forest he owns. This is in line with the Court Decision No. 45 / PUU-IX / 2011 which essentially states that forest areas that have only just been appointed do not have legality as forest areas until all stages of confirmation of forest areas have been completed. The a quo ruling obliges the government to immediately confirm the forest area by taking into account the RTRW and community opinions in and around the forest area.

For the control of a customary forest by an alliance of indigenous peoples, the change becomes regional forest based on the Decision of the Constitutional Court No. 35 / PUU-X / 2012, in fact gave birth to the imperative norm for the government to restore and recognize the existence of customary forests which had been continuously designated or determined by the government as forest areas. Regarding the obligation for someone who will make use of the forest must obtain permission from the competent authority that is aimed at the regional forest that has been determined by the government. With the existence of these permits, the nature of being against the law from the act of cutting down trees, harvesting forests, collecting forest products, will be eradicated as a criminal act.

For Article 50 paragraph 3 letter i of the Forestry Law which affirms, "Pasturing livestock in forest areas that are not specifically designated for this purpose by authorized officials." This article only regulates the ability of livestock grazing activities in regional forests. That is, between Article 50 paragraph 3 letter e with Article 50 paragraph 3 letter i of the Forestry Law, it regulates the prohibition of forest use, only on the status of regional forests. If in paragraph 3 letter e, requires permission to use in the form of cutting, harvesting, and collecting forest products, then in paragraph 3 letter i, at least through legal products a decree from the competent authority regarding the appointment of a forest area can be used for grazing livestock.

Therefore, based on the description above, it is clear that in some cases a person is named a suspect based on Article 50 paragraph 3 letter e of the Law of Power. It is more due to the lack of understanding of law enforcers to interpret the provisions in concreto. There are cases that have been questioned in court, even found guilty even though someone who cut down the tree, it turns out is a tree that he planted himself on land that is attached to his own rights. As is the case with the arrest of several people from the community who control customary forests, because they are considered damaging the forest because they cut down one of the trees, they also have to deal with law enforcement. In fact, in these two cases, they were actually the parties who were attached to the right to benefit from the forest, because they were attached to the status of customary and customary forests.

People Who Live by Heredity in the Forest

The addition of the phrase "people who live from generation to generation in the forest" to Article 50 paragraph 3 letter e and letter i of the Forestry Law lexically still causes legal obscurity. There are two things that need to be questioned in the provision: First, what do people mean by living from generation to generation? Second, what is meant in the forest?.

The term community which has been handed down in terms of being a criminal provision, can be ascertained that the intent is not clear. The term is still too abstract and too general. In the opinion of the author, the term should be interpreted in three aspects: First, someone who has long mastered a land has no rights status based on proof of ownership certificate. In the control of his land, he has cultivated the forest for a long time, so he is also given the right to do forest utilization, the status of the forest in this context is not the forest that has been designated as regional forest; Second, someone who has no control over an area forest at all, but because he has used the forest sustainably, from generation to generation, a maximum of two derivatives, so he has the right to benefit from regional forests; Third, indigenous people who have long mastered customary forests can also use the customary forests.

The third aspect does not need to be interpreted again in the article of change after the Constitutional Court Decision Number 59 / PUU-XII / 2014. This is due to the provisions before the change, the ownership of customary forests for the community has been recognized, to him given the right to use customary forests.

Someone who builds a house in a forest is that meant as a community living in a forest? This is not the case, the real meaning so that it fulfills the certainty and justice requirements for those who are given the right to use the forest, without crime. The way of meaning that meets the principle of legality in the context of *lex stricta*, then the provision must be applied to the people living in the forest associated with their needs for clothing (clothing needs), food (food needs), and boards (housing needs) from the forest.

Thus, what is meant by a community living in a forest does not have to be a community whose house is located in the forest, but a community that depends on their needs for clothing, food and shelter from the forest. In other words, only people who have strong life relations with the forest exceed economic relations, which are excluded from criminal provisions [11].

Not intended for commercial purposes

The provisions of this criminal eradication actually aim to protect someone who wants to take advantage of regional forests. Not for people who have forest control in the status of rights forests and customary forests.

In some cases, for example, there are people who collect tree branches to be used as firewood material. The firewood is then sold. In that situation, by only grammatically interpreting the criminal eradication provisions that have been added through the Constitutional Court Decision Number 59 / PUU-XII / 2014, one can be entangled with Article 50 paragraph 3 letter e of the Forestry Law. Therefore, the reason for the criminal waiver must be interpreted in the teleological interpretation of the Forestry Law established:

“That the forest, as one of the determinants of the life support system and source of people's prosperity, tends to decrease in its condition, therefore its existence must be maintained optimally, maintained its carrying capacity sustainably, and managed with noble character, fair, wise, wise, open, professional, and be accountable;

In a short legal language, the act of utilizing regional forests for these commercial purposes must at least be interpreted as actions that do not cause forest damage and the impact of natural ecosystems that have an impact. This is in line with Article 37 of the Forestry Law which states: (1) The use of customary forests is carried out by the customary law community concerned, in accordance with their functions. (2) The use of customary forests that function as protection and conservation can be carried out as long as they do not interfere with their functions.

4. Conclusion

The power to enforce forestry crime after the decision of the Constitutional Court Number 95 / PUU-XII / 2014 is final and binding. This means that changes to Article 50 paragraph 3 letter e and letter i of the Forestry Law are defined as the sound of forestry laws that must be institutionalized in state institutions. The reason for the eradication of the use of the forest area, excluded from the people who live for generations in the forest and not intended for commercial purposes must be adhered to by all law enforcers in terms of obtaining a case from everyone who uses the area's forest. The power of enforceability of the criminal offense applies only to individuals, not to a legal entity or corporation.

Whereas the reason for the criminal offense in the forestry sector in order to fulfill the legality principle after the decision of the Constitutional Court Number 95 / PUU-XII / 2014, must be interpreted concretely in terms of justice and legal certainty. The reason for criminal eradication in the phrase: "excluded from people who live from generation to generation in the forest" is someone who has for generations two generations benefited from regional forests that depend on their needs for clothing, food and shelter from the forest. Whereas "not intended for commercial purposes" is an area forest utilization activity that does not cause forest damage and impacts on natural ecosystems that have an impact.

The development of forest protection must be proportional to the protection of individual rights and the rights of indigenous peoples, so that the state ownership of a forest area must take into account the right to use the right forest, together with the collective right of customary forest ownership by

indigenous peoples. These rights are justification for their ability to use the forest. As for regional forests, the community is still given the right to use under conditions of inheritance for two generations, as long as it does not interfere with forest sustainability. The revision of the Forestry Law is important to provide equal protection to all participants involved in forest use while maintaining the principle of sustainable use of forests for the development of Indonesia as a whole.

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