

## The Plant Variety Protection Commission's Role in Fostering Breeders' Creativity

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### ABSTRACT

Plant Variety Protection is an intellectual property with a sui generis regulatory nature. The state grants this right to a variety that meets the requirements, namely new, unique, uniform, stable, and named to increase biological resources that can produce new plant varieties for the sake of increasing the agricultural sector in Indonesia. For this, it is necessary to optimize the Center for Plant Variety Protection and Agricultural Licensing as the manager of plant variety protection to increase the number of applications for plant variety protection rights. Part of the management office that provides input in the management of plant variety protection is the Plant Variety Protection Commission. This commission until now does not have detailed authority regulations in the Plant Variety Protection Law. Through normative legal research methods with analytical descriptive research specifications and qualitative legal data analysis techniques, it is known that plant breeders have the right to obtain plant variety protection rights in a faster and more efficient manner. For this, it is necessary to change the regulations in Law 29 of 2000 concerning the composition and authority of the Plant Variety Protection Commission in Indonesia regarding the results of the examination of the requirements for plant varieties that are granted rights by involving all stakeholders. The consultation procedure in the form of recommendations for changing claims is used to increase efficiency in obtaining plant variety protection rights for plant breeders in Indonesia.

**Keywords:** authority; commission; new; plants; varieties.

### INTRODUCTION

Indonesia is a country that has diverse and abundant biological resources compared to other countries and that makes Indonesia a Mega Biodiversity Country. In addition, Indonesia is also known as an agricultural country because the agricultural sector is the largest job for Indonesian people, especially those in rural areas. This can happen because the majority of the Indonesian population, especially those who still live in rural areas, still depend on the agricultural and plantation sectors for their livelihoods. The agricultural sector in Indonesia is one of the sectors that can be developed as a means to be actively involved in international trade, considering that agricultural products are export commodities that are in great demand in various foreign countries.<sup>1</sup>

The developing agricultural sector directly affects economic development, especially the global economy.<sup>2</sup> Indonesia has the potential to develop agricultural science and technology because Indonesia is one of the countries rich in biological resources. The development of science and technology in the agricultural sector, especially in the food sector, has developed in such a way that there is a problem that not only leads to food products that have the potential to generate and increase community and state income but also to food producers themselves. In addition,

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<sup>1</sup> Eisy Lucia Gracella, Budi Santoso, Edy Sismarwoto, "Perlindungan Hukum Terhadap Hak Pemulia dan Hak Petani Menurut Undang-Undang Nomor 29 Tahun 2000 tentang Perlindungan.

<sup>2</sup> Khoiril Hidayah, *Hukum Kekayaan Intelektual*, Setara Press, Malang: 2017, p. 111.

development in the agricultural sector is also prioritized to strengthen the economic sector in national development.

Plant varieties can be created and produced from a plant seed that is processed in a way that is commonly called plant breeding. Plant breeding activities are made through the development of a variety that is the basic method to produce and maintain the authenticity of the seeds of the plant variety.<sup>3</sup> New plant breeding carried out by plant breeders is not easy to do because it takes a relatively long time for the plant to be ready to be marketed or traded.

Plant Variety Protection (PVP) is part of intellectual property arising from the results of human rational thought that produces a work. PVP rights are special protection granted by the state and implemented by the Plant Variety Protection Office for plant varieties produced by plant breeders through plant breeding activities.<sup>4</sup> Plant varieties will be given protection for plant varieties with plant types or species that are (new, unique, uniform, stable (NUUS)), and are given a name.<sup>5</sup> The party that creates the type or species of plants is called a plant breeder.

The legal source of PVP can refer to the international legal rules contained in The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Based on Article 27 paragraph (3) letter b TRIPs emphasize that WTO member countries are obliged to protect plant varieties with one of three methods, namely through patents, sui generis systems, or a combination of patents and sui generis systems.<sup>6</sup>

Indonesia as a WTO member country and has ratified TRIPs has chosen to create sui generis regulations on plant varieties which are outlined in Law Number 29 of 2000 on Plant Variety Protection (PVP Law). In addition to explaining the provision of protection to plant breeders and new types of plants, the PVP Law also explains the management of plant variety protection. In Indonesia, the management of Plant Variety Protection is different from patent management. Patent management is under the auspices of the Ministry of Law of the Republic of Indonesia, while PVP management is under the auspices of the Ministry of Agriculture of the Republic of Indonesia.<sup>7</sup> Management of plant variety protection is at the PVP office in organizing administration, documentation, inspection, and information services. The Minister by Article 65 Paragraph (2) of the PVP Law forms a commission with the function of providing considerations on PVP management according to the needs and developments of PVP consisting of professionals.<sup>8</sup> The members of the commission come from professionals and are not permanent. Indonesia has also regulated this commission at the legislative level through the Decree of the Minister of Agriculture of the Republic

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<sup>3</sup> Pasal 1 Angka 4 Undang-Undang No.29 Tahun 2000 Tentang Perlindungan Varietas Tanaman.

<sup>4</sup> Sudjana, *Hak Petani dan Perlindungan Varietas Tanaman (Perspektif Negara Kesejahteraan)*, Keni Media, Bandung: 2022, p. 34.

<sup>5</sup> Pasal 2 Ayat 1 Undang-Undang No.29 Tahun 2000 Tentang Perlindungan Varietas Tanaman.

<sup>6</sup> Article 27 paragraph (3) letter b The Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPs).

<sup>7</sup> Brian Kusuma, "Perlindungan Varietas Tanaman Sebagai Bagian dari Hak Kekayaan Intelektual Menurut Undang-Undang Nomor 29 Tahun 2000," *Lex Privatum Journal*, Vol. 6, No. 16, August 2018.

<sup>8</sup> Pasal 65 Ayat 2 Undang-Undang No.29 Tahun 2000 Tentang Perlindungan Varietas Tanaman.

of Indonesia Number 30/KPTS/OT.050/M/01/2019 concerning the Plant Variety Protection Commission. However, this regulation is still incomplete and detailed and the membership of the PVP Commission in the Ministerial Regulation is mostly academics.

This is different from the regulation in Thailand which is stated in Article 5 of the Plant Variety Protection Act BE 2542 (1999). Thailand itself is an ASEAN member country with quite successful agricultural development. The Plant Variety Protection Act BE 2542 (1999) has detailed regulations regarding the PVP commission which includes various elements of PVP stakeholders such as academics, farmers, and government. Based on the formulation of this provision, it can be seen that the regulation related to the Plant Variety Protection Commission in Thailand is regulated cross-sectorally involving various stakeholders.

This is inseparable from the fact that Thailand's PVT Law on the one hand provides attractive IPR protection for plant varieties whose main purpose is to promote plant breeding activities, but on the other hand it also recognizes the important role of farmers and local communities. Thailand's PVT Law regulates plant variety protection into two types, namely protection for new plant varieties and protection for regional and domestic plant varieties. This protection is intended to safeguard farmers' rights by stipulating that protection for local and domestic plant varieties is treated specifically.<sup>9</sup>

In Indonesia, the regulation of the PVT commission which plays a role in providing input on PVT management from all stakeholders in agriculture is not yet complete and clear because it is only regulated in one paragraph of one article in the PVT Law, namely Article 65 Paragraph 2 of Law No. 29 of 2000 with its position which is not permanent so that its role is less than optimal in providing input on PVT management and is one of the causes of the discovery of plant varieties from Indonesia being so few compared to plant varieties from abroad which dominate seeds in Indonesia. Therefore, research on the urgency of regulating the PVT commission in the regulation in the PVT Law which is *sui generis* in nature is important.

## **METHOD**

The method used is normative juridical with descriptive research specifications of analysis of primary legal materials in the form of laws and regulations governing the protection of plant varieties. Secondary materials in the form of books and journals that write about plant breeding, PVP offices, and PVP commissions. Tertiary legal materials in the form of legal materials from electronic sources about the number and development of PVP. Data were collected through literature studies. The collected data were analyzed using qualitative juridical methods in the form of a review of data processing results that are not in the form of numbers that emphasize legal analysis more on the deductive and inductive conclusion process using formal and argumentative thinking methods.

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<sup>9</sup> BPHN, *Kajian Hukum Perlindungan Varietas Tanaman Lokal Dalam Hukum Nasional dan Internasional*, <https://bphn.go.id/data/documents/pkj-2011-15.pdf>.

## DISCUSSION

PVP is a relatively new provision when compared to copyrights, trademarks, and patents. Its regulation in Indonesia uses a sui generis system. The sui generis regulatory system is a type of legal science in itself with a scientific system because the object of research or attention is different. The provisions of the Sui Generis system and patent provisions have similarities where protection of plant varieties to provide protection to plant breeders refers to Article 27 paragraph (3) letter b of TRIPs. This provision is specifically found in the fifth part of TRIPs which regulates superior varieties in the field of agriculture and has high economic value without ignoring the use of new varieties for the welfare of the entire community.<sup>10</sup>

The creation of separate regulations because each plant variety has its characteristics that lie in stable characters so that it cannot be included in other intellectual property systems. The sui generis system has an important role because it can present its own new rules in the form of new intellectual property rights such as plant breeder rights, then it can find out the needs of each country, and become a foundation for uniting intellectual property and sustainable development.<sup>11</sup>

Based on the TRIPs rules, it is determined that all member countries are required to protect plant varieties either through a patent system, an effective sui generis system such as granting rights to breeders, or a combination of patent and sui generis protection systems.<sup>12</sup> The rules for protecting plant varieties, especially in plant breeding, are contained in Article 27 paragraph (3) letter b of TRIPs, where the clause in the article is discussed specifically in the fifth part of TRIPs by regulating that superior agricultural varieties and high economic value without ignoring the use of new plant species for the benefit of the wider community.<sup>13</sup>

PVP rights are very important for plant breeders in protecting the results of the breeder's thoughts or inventions because if they do not have these rights, breeders will take quite a big risk for themselves and the plants produced such as recognition of similar plants from other parties and will use it for irresponsible parties. Based on the risk theory of Robert M. Sherwood, explains that intellectual property must be given legal protection so that the intellectual property owned by individuals for their creations can be guaranteed because the results of individual creations are the result of freedom in producing a work that contains risks such as the existence of other parties who have improved or found a way first.<sup>14</sup>

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<sup>10</sup> Prasetyo Hadi Purwoko dan Moch Najib Imanullah, "Perlindungan Varietas Tanaman Sebagai Bentuk Perlindungan Hak Ekonomi Pemulia Tanaman Terhadap Ketahanan Pangan Nasional," *Jurnal Yustisia*, Vol. 2, No. 3, September-December 2013, p. 87.

<sup>11</sup> Rohan Dang and Chandni Goel, "Sui Generis Plant Variety Protection: The Indian Perspective", *American Journal of Economics and Business Administration*, Vol. 1, No. 4, 2009, p. 306.

<sup>12</sup> Dwi Afni Maileni, "Aspek Hukum Perlindungan Varietas Tanaman Ditinjau dari Undang-undang Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman," *Jurnal Dimensi*, Vol. 03, No. 2, 2014, p. 8.

<sup>13</sup> Sugiono Moeljopawiro, "Penelitian dan Pengembangan Varietas Tanaman Berbasis Hak Kekayaan Intelektual", *Jurnal HKI*, Vol. 1, January 2011.

<sup>14</sup> Agil Febriansyah Santoso and Budi Santoso, "Implementasi Hukum Kekayaan Intelektual Dalam Peningkatan Kesejahteraan Masyarakat Dalam Perspektif Supremasi Hukum," *Jurnal Notarius*, Vol. 15, No. 2, 2022, p. 828.

Protection of rights granted to breeders in addition to obtaining economic rights and welfare individually will also affect the economic progress of society at large.<sup>15</sup> This appeal continued from 1920 to 1930 which culminated in the establishment of an association in Amsterdam on November 17, 1938, namely The International Association of Plant Breeders for the Protection of Plant Varieties or the Association of plant breeders for the Protection of plant varieties. In June 1956, The International Association of Plant Breeders for the Protection of Plant Varieties held a congress with a discussion of an international system for the protection of plant varieties.<sup>16</sup>

Registration of PVP rights must be to the Center for Plant Variety Protection and Agricultural Licensing under the auspices of the Ministry of Agriculture. Meanwhile, other intellectual property such as patents, brands, and others, are registered with the Directorate General of Intellectual Property under the Ministry of Law.<sup>17</sup> PVP is a form of intellectual property by provides legal protection to plant breeders who produce new varieties by taking certain actions regarding the breeding of new varieties that are protected by requiring a plant breeder's permit. Each PVP rights application can only be submitted for one variety.<sup>18</sup> Plant breeders who produce new varieties receive legal protection based on the concept of plant variety protection that is developed, because the rules on patents do not provide protection for new plant varieties produced through plant breeding but from the breeding process.<sup>19</sup> Based on these international provisions, if a country's intellectual property does not provide protection for plant varieties in patent laws and regulations, then the country is required to create special (separate) laws and regulations that are effective in providing legal protection for new plant varieties. This is because the law on patents in Indonesia only provides protection for the process of making or producing plants using biotechnology techniques. Meanwhile, plant variety protection provides protection for products produced from natural techniques or biotechnology in the form of seedlings or seeds in the form of new plant varieties.<sup>20</sup>

PVP and intellectual property are two closely related things. The form of intellectual property related to plant varieties is PVP which is given to plant breeders by producing new varieties or breeding. Legal protection of plant varieties is a provision in intellectual property that is relatively new in the history of immaterial property rights by granting rights to individuals or plant breeders by the state.<sup>21</sup>

PVP rights are exclusive rights that must be obtained by plant breeders. With PVP rights, breeders can develop and research new plant varieties that are created and can enjoy the economic

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<sup>15</sup> Kadek S. Dewi and I Wayan Wiryawan, "Peraturan Pengawasan Bidang Dalam Rangka Penguatan Hak Perlindungan Varietas Tanaman," *Udayana Master of Law Journal*, Vol. 9, No. 4, 2020, p. 798.

<sup>16</sup> Thippeswamy S., "Plant Variety Protection: An Historical Perspective", *International Journal of Development Research (IJDR)*, Vol. 07, November 2017, p. 3.

<sup>17</sup> Arini Y. Pratiwi, (et.al), "Harmonisasi Undang-Undang tentang Ketentuan Lisensi Wajib Perlindungan Varietas Tanaman di Indonesia," *Journal Poros Hukum*, Universitas Padjadjaran, Vol. 2, No. 2, May 2021, p. 289.

<sup>18</sup> Sudaryat, *Kekayaan Intelektual, Teori, Pengaturan dan Praktiknya di Indonesia*, Nuansa Cendekia, Bandung: 2024, p.198

<sup>19</sup> Fahrul Fauzi, "Perlindungan Hukum Bagi Pemulia Tanaman dalam Kerangka Hukum Perlindungan Varietas Tanaman di Indonesia," *Wijaya Putra Law Review*, Vol. 2, No. 2, October 2023, p. 99.

<sup>20</sup> Yuliana Diah Warsiki Susi Irianti, "Perlindungan dan Pemanfaatan Varietas Tanaman Melalui Perjanjian Pembagian Manfaat," *Jurnal Rechtidee*, Vol. 12, No. 1, June 2017, p. 7.

<sup>21</sup> Riezka Eka Mayasari and Nur Hidayani Alimuddin, "Analisis Hukum Perkembangan Perlindungan Varietas Tanaman di Indonesia," *Sovereign: Scientific Journal of Law*, Vol. 2, No. 4, 2020.

benefits of their creation. In addition, breeders will also receive legal protection for these new varieties. Breeders who carry out plant breeding and who succeed in producing plant varieties will obtain legal protection based on the provisions contained in the PVP Law. In addition to legal protection, plant breeders will also obtain the right to protect plant varieties and receive benefits from the resulting plant breeding.

Plant variety protection is considered important because Indonesia has diverse biological resources. Furthermore, in the PVP Law, the dictum considers that "The Republic of Indonesia is an agricultural country, so advanced, efficient, and resilient agriculture has an important role in achieving national development goals". Based on the contents of the dictum, it is explained that Indonesia is an agricultural country rich in biological resources, so the role of the agricultural sector is important for achieving national development goals. Plant breeders who have obtained PVP rights receive economic benefits that can be said to be an award for the plant breeding that has been carried out and this right is exclusive. The exclusive rights held by breeders are expected to be able to create creativity in the field of plant breeding to encourage the discovery of new superior varieties.

Article 9 Paragraph 3 of Law Number 12 of 1992 concerning the Plant Cultivation System states, "Activities for searching and collecting germplasm as referred to in paragraph (2) may be carried out by individuals or legal entities based on a permit."<sup>22</sup> Based on the contents of the article, in searching and collecting germplasm, a permit must be obtained from the government, which is mandatory for individuals or legal entities, and the category of individuals is plant breeders who carry out breeding. Furthermore, for individual plant breeders or legal entities, there is a requirement to be given protection as in the dictum considering in the PVP Law that "In order to further increase the interest and role of individuals or legal entities in carrying out plant breeding activities in order to produce new superior varieties, plant breeders or holders of Plant Variety Protection rights need to be given certain rights and adequate legal protection for these rights". Based on the contents of the dictum, in order for plant breeding activities to increase interest in producing new varieties, legal protection for plant varieties must be given in the form of rights to individual plant breeders, legal entities, educational institutions or farmer organizations.

Regarding legal protection of plant varieties obtained by breeders in the form of rights, in its regulation there is a fundamental difference between the Plant Cultivation System (PCS) Law and the PVP Law, namely in the protection of economic rights owned by breeders. The PCS Law does not have protection for intellectual property owned by plant breeders in creating new plant varieties so that breeders can enjoy the exclusive rights they have.

Meanwhile, the PVP Law was created to support the protection of intellectual property rights owned by plant breeders in creating new plant varieties so that breeders can enjoy the exclusive rights they have. The PVP Law provides special rights to breeders with the aim of emphasizing that

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<sup>22</sup> Pasal 9 ayat (3) Undang-Undang Nomor 12 Tahun 1992 tentang Sistem Budidaya Tanaman.

breeders or PVP rights holders have the right to prohibit or grant permission for commercial use of the breeder's rights to gain profit. PVP rights that have been obtained by breeders because they have registered, then these rights are given in the form of certificates and are given by the state through the Center for Plant Variety Protection and Agricultural Licensing to the Plant Variety Protection Office. The right to protect plant varieties granted by the state is quite valuable for plant breeders because breeders have carried out breeding methods by creating new plant varieties. Creating new plant varieties requires a fairly long period of time so that the results of the new varieties can be beneficial to the community.<sup>23</sup> In addition, plant breeders who have held PVP rights have an obligation to:

- a. Exercising its PVP rights in Indonesia;
- b. Pay the PVP annual fee;
- c. Providing and showing examples of seed varieties that have obtained PVP rights in Indonesia.

By producing new plant varieties and obtaining protection rights for plant varieties, breeders who carry out breeding will also receive rights in the form of compensation that can be used for economic benefits similar to those obtained from the new plant variety. This economic utilization can be used to create and exploit the results of the creation of plant varieties, and also so that it can be carried out for commercial actions such as trading. However, to carry out commercial actions on the results of these varieties, breeders cannot determine their prices freely because their wealth can be replaced with the same thing, so this must also be considered by breeders in determining prices for commercialization so that the price can be in accordance with the economic benefits that will be obtained. Then plant breeders with the right to protect plant varieties will also be protected from other parties who do not have the right or do not get permission from breeders to create new varieties without the approval of breeders who have PVP rights.

When applying for PVP rights, breeders register and will receive the PVP rights granted by the state through the Plant Variety Protection Office under the PVPAL, part of the Ministry of Agriculture.<sup>24</sup> Based on the PVT Law, the registration system to obtain rights to plant variety protection is based on who registers it first or *first to file*, then they will get legal protection. From this rights registration system, it can be said that plant breeders need self-awareness to register their new plant varieties to get certainty and legal protection because the varieties produced are important for breeders. Legal protection of plant varieties is critical because it aims to ensure that breeders can find and create new varieties of superior quality seeds without having to worry about the results of the breeder's discoveries being used without permission from the breeder by other irresponsible parties. Breeders who have obtained rights by laws and regulations, in addition to legal protection, will also receive exclusive rights.

The exclusive rights obtained by plant breeders, in addition to legal protection and other rights in the form of moral and economic rights, are also intended so that breeders can exploit the results

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<sup>23</sup> Arini Y. Pratiwi, et.al, *Op. Cit.*, p. 288.

<sup>24</sup> Muhamad Amirulloh and Helitha Novianty Mochtar, *Buku Ajar Hukum Kekayaan Intelektual*, Unpad Press, Bandung: 2016, p. 210.

of their new variety creations, to encourage breeders or seed industry institutions to invest in breeding activities and to contribute to agricultural development. In addition to being utilized economically, these exclusive rights can be transferred or transferred to other parties. This can happen if breeders and other parties have entered into a licensing agreement in accordance with laws and regulations. However, the protection rights for plant varieties owned by these breeders cannot be transferred or transferred to other parties because only the economic benefits can be transferred to other parties, so that other parties can utilize and enjoy their economic rights in producing new varieties. So it can be said that breeders who have PVP rights only allow other parties to create the same variety for commercialization and the PVP rights owned by the original plant breeder do not transfer.

Furthermore, the license agreement will be carried out if both parties have implemented it based on an agreement in accordance with the laws and regulations and later this agreement will be recorded at the PVP Office and included in the general list of PVPs whose costs have been determined by the Minister. This is included and recorded at the PVP Office as a special means of announcement so that it can be easily seen by the public.

By obtaining exclusive rights to utilize the economy in the form of royalties by plant breeders. Royalty is an economically valuable compensation given to holders of plant variety protection rights in the context of licensing.<sup>25</sup> In addition to exclusive rights, breeders will also receive priority rights. Priority rights are explained in Article 1 number 12 of the PVP Law that "Priority rights are rights granted to individuals or legal entities who apply for Plant Variety Protection rights in Indonesia after applying for Plant Variety Protection rights for the same plant variety in another country". Based on the contents of the article, priority rights can be used to plant the same plant varieties as those that already exist or have been carried out in Indonesia to be planted in other countries if the breeder has submitted an application for registration of plant variety protection rights. Priority rights are part of the PVP rights application, only this right is intended so that breeders can use it to carry out plant breeding outside Indonesia.

In obtaining plant variety protection rights, there is a role for the Center for Plant Variety Protection and Agricultural Licensing, and in managing the development of plant variety protection is by implementing bilateral and regional cooperation and routine activities. <sup>26</sup>PVP right application services began in 2004 until now and applications have continued to increase cumulatively until now. In 2023, the issuance of PVP right certificates reached 93 certificates and can be said to be the most issuance in history. <sup>27</sup>In total until 2024, those who have submitted PVP right applications and who have received plant variety protection right certificates are 722.<sup>28</sup> To apply for plant variety protection

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<sup>25</sup> Pasal 1 angka 15 Undang-Undang Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman

<sup>26</sup> Riezka Eka Mayasari and Nur Hidayani Alimuddin, *Op. Cit.*, p. 7.

<sup>27</sup> Pusat Perlindungan Varietas Tanaman dan Perizinan Pertanian, Varietas yang Dilindungi Hak PVT di Indonesia Terus Meningkat, <https://pertanian.go.id/home/?show=news&act=view&id=5984>, accessed on June 20, 2024.

<sup>28</sup> Wawancara dengan Ibu Veri di bagian umum Balai Perlindungan Varietas Tanaman dan Perizinan Pertanian.

rights, a fee of around IDR150,000 - IDR250,000 is charged. After registering and obtaining their rights, plant breeders are required to pay an annual fee for the registered varieties.

Many PVP rights applications are submitted by legal entities, companies or educational institutions compared to individual plant breeders. This can happen because of the annual costs. However, legal entities or companies, even though they have made many seeds for new plant varieties, are still few in number who carry out plant breeding due to the lack of human resources or a special section for development and research (R&D).<sup>29</sup> So that human resources for research and development are expected to exist for each legal entity or company in order to improve new superior varieties so that they can compete with the seeds they have. Then to carry out plant breeding also requires a fairly long period of time. In Indonesia, it takes 3 to 4 years to carry out breeding activities. This can happen because planting seeds is not easy, and that is not the time period to research new variety seeds that are planted (breeding). So there are still many individual breeders, legal entities, companies or institutions that register PVP rights applications because breeding activities require a lot of time for planting and research. Based on the 3-4 year time period, it is not certain that the variety of seeds being planted will be free from various obstacles such as plant pests, extreme weather conditions, environmental factors and so on.

The Center for Plant Variety Protection and Agricultural Licensing related to the application for plant variety protection rights always sets a target every year. The target set for registration each year can reach 50 to 79 PVP rights registrations. However, within a certain period of time, the target of the Center for Plant Variety Protection and Agricultural Licensing had decreased to 33 for PVP rights application registrations. The small target set for PVP rights registration is because the P the Center for Plant Variety Protection and Agricultural Licensing of the Ministry of Agriculture of the Republic of Indonesia applies a "pick-up ball" system for breeders to register rights for new plant varieties produced because every legal entity, company or individual breeder in carrying out breeding cannot produce new varieties quickly while producing these new varieties requires a fairly long period of time. In addition, there are also many plant breeders, especially individual breeders who have not registered because of the annual fees that must be paid annually. So this greatly affects the acquisition of plant variety protection rights in Indonesia. Although the PVP Law has regulated rights with the hope of being able to exploit and produce superior and quality new varieties, there are still many plant breeders who have not registered their rights to plant variety protection for individual breeders or companies.

For plant breeders who will register and use plant variety protection services in Indonesia, new regulations have been issued in force at the Ministry of Agriculture, namely Government Regulation (PP) Number 28 of 2023 concerning Types and Tariffs of Non-Tax State Revenue and Regulation of the Minister of Agriculture of the Republic of Indonesia Number 36 of 2023 concerning the Amount, Requirements, and Procedures for Imposing Non-Tax Revenue Tariffs that for all PVP service subscribers, both individuals, institutions, companies, and universities, free of charge or zero rupiah

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<sup>29</sup> Riezka Eka Mayasari dan Nur Hidayani Alimuddin, *Op. Cit*, p. 11.

tariffs have been applied. This is related to the annual fee that usually has to be paid by breeders. So that the annual fee for PVP that must be paid becomes free of charge.

PVP has a positive impact on increasing research and development significantly and breeders can also obtain funds from the results of research and development of new varieties that have been created. The new decision from the government regarding the cost of plant variety protection is expected for breeders, both individuals, institutions, companies, and universities, to be able to register PVP rights applications in order to increase PVP applications in Indonesia. The increasing quantity of PVP rights applications is also intended to be a forum for promotion in the results of research and development of plant breeding towards food security. In terms of quality, later the Ministry of Agriculture and the Center for Plant Variety Protection and Agricultural Licensing will have many reports of research results from plant breeders on the many new plant varieties produced from plant breeding.

To obtain PVP rights, plant breeders must register with the Center for Plant Variety Protection and Agricultural Licensing and then go through a NUUS requirement test during the PVP rights application meeting. The NUUS requirement test requires a decision from the PVP examiner which is considered by the Plant Variety Protection Commission (PVP Commission). The definition of the PVP Commission based on the Decree of the Minister of Agriculture Number 30 of 2019 is a non-structural institution that is responsible to the Minister of Agriculture through the Head of the Center for Plant Variety Protection and Agricultural Licensing. The PVP Commission has a membership consisting of professionals or academics and is non-permanent with the task and function of providing considerations to the Head of Center for Plant Variety Protection and Agricultural Licensing regarding PVP management in accordance with laws and regulations. The duties and functions of the PVP Commission must also pay attention to and consider developments in science, technology, social, economic and cultural conditions of the community.

When applying for PVT rights, the applicant must register by providing documents and conducting a substantive examination, namely the NUUS test. This NUUS requirement test is carried out when a new plant variety is examined by a PVP examiner who is applying for PVP rights. This substantive examination is the most important thing to obtain PVP rights for breeders for the results of new plant varieties that they have created. The NUUS test requirement is a fairly important aspect during the registration meeting for the application for plant variety protection rights which will be shown in the form of images and/or photos of the results of the plant variety which will later be needed to be described. The description of the variety is made in writing for new varieties which contain important properties of the plant variety such as origin, morphological characteristics, and others. So that applicants must show the results of new plant varieties that are in accordance with what has been produced and shown during the meeting.

The NUUS test is checked for its novelty whether it has been traded or not, whether there is uniqueness in the new variety applied for with those already registered and owned by other parties.

Then the results of the new variety applied for are uniform and stable. Because if there is a slight difference in the NUUS results with those described at the time of application registration, then the variety must be replanted with various notes given to the plant breeder. This NUUS test examination is carried out by plant breeders and accompanied by a plant variety protection examiner. This test is carried out so that the description can be explained at the time of the rights application meeting, where the results of this variety will be shown the results of the photos to the meeting participants to provide evidence of the results of the images and descriptions of the new variety. The examiner will carry out the BUSS test and can also provide recommendations on the application for plant variety protection.

PVP inspectors are officials appointed by the Minister according to their expertise and have the task of conducting substantive examinations and providing recommendations on PVP rights applications.<sup>30</sup> PVP inspectors also carry out monitoring and evaluations assigned by the Head of Plant Variety Protection and Agricultural Licensing. Monitoring carried out by PVP inspectors focuses on technical examinations such as how to plant new varieties carried out by plant breeders before the variety is finished and tested, with results that are in accordance with the NUUS test criteria.

Commission receives the final results of the planting of the new variety until the NUUS test. The examiner and the PVP commission will work together in providing considerations on the NUUS test whether the new variety has met the criteria or not. If not, the examiner provides consideration to the PVP commission and the commission will decide on the final results. If it is by the NUUS test criteria, the commission will provide the Head of Plant Variety Protection and Agricultural Licensing that the breeder will receive a certificate and the right to protect plant varieties. However, if there is a discrepancy with the NUUS test criteria, the PVP commission will decide to replant the new variety by providing several notes adjusted from the test results.

Based on this, the PVP Commission does not have authority over the NUUS test results and only makes considerations. While plant breeders who find new varieties that have been created do not meet the NUUS criteria, breeders must replant. Planting new varieties requires a fairly long period and if replanting is carried out, it must take a fairly long time again until the NUUS test and the NUUS criteria.

The PVP Commission must have the authority to provide recommendations on the results of the NUUS test. Providing these recommendations is like looking at the color of the leaves of new varieties planted and when presented by plant breeders at the time of the PVP rights application. Because color changes can have different results from the original and the photos shown at the meeting. Recommendations that can be given such as changes in color or color saturation on the leaves. Color saturation can be given in recommendations because the results of the varieties planted and shown at the time of the application meeting will show differences because they can be from the results of new varieties created and the results of a photo image.

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<sup>30</sup> Pasal 1 angka 5 Peraturan Menteri Pertanian RI Nomor 25 Tahun 2021 tentang Pelaksanaan Permohonan Hak Perlindungan Varietas Tanaman.

At the time of the meeting to determine the results of the BUSS test, the PVP commission only decided to provide recommendations in the form of replanting with new varieties by providing notes if the variety does not meet the NUUS test requirements of the PVP supervisor. However, this can take a long time for breeders to obtain PVP rights because planting new varieties can take a long time, making it less effective and efficient to obtain and obtain plant variety protection rights. The provision of recommendations for changes to PVP claims made by the PVP commission will later result in a shorter and more efficient time in obtaining PVP rights, because creating new varieties requires a fairly long period, either in months or years. This recommendation for changing claims can be used to shorten the time to obtain rights without the need for replanting until the new variety meets the elements or criteria for the NUUS test.

The final result of the NUUS test is very important for the PVP Commission because the result of the NUUS test will be stated in the PVP minutes and will be the result that can determine whether the breeder will get PVP rights or not. Although the PVP commission does not participate in deciding the final result like the Head of Plant Variety Protection and Agricultural Licensing. The PVP Commission in terms of supervising and considering the results of the NUUS test, can firmly give consideration to reject the Head of Plant Variety Protection and Agricultural Licensing if there is a new variety created at the time of the registration application that does not comply with the NUUS test requirements for carrying out breeding or replanting the new variety.

Based on the condition of the PVP Commission which does not have full authority over the results of the NUSS test, there needs to be legal certainty in the regulations, especially in the PVP Law. Legal certainty is a form of effort so that every individual human being gets justice. The importance of legal certainty so that there is no discrimination in order to realize the principles of equality before the law and ensure that every individual carries out actions of a behavior in accordance with applicable law.

In relation to this, the provisions in the PVP Law regarding the authority of the PVP commission in providing considerations in the form of changes to claims in the NUUS test results do not provide legal certainty, because based on its regulations, the PVP commission is only able to provide considerations on the NUUS test results and cannot provide suggestions in the form of changes to claims on the NUUS test results given at the time of the PVP rights application meeting. The authority of the PVP commission to make changes to PVP claims is very influential with the contents of the structure of the PVP commission membership which contains the majority of parties from academic circles, because knowledge from academics can influence research and development of new plant varieties.

There needs to be a legal regulation regarding the expansion of the authority of the PVP Commission by the Government. This legal regulation regarding the PVP Commission can later be used as a reference by the PVP Commission so that it can carry out its role properly, especially during and after the PVP Rights Registration Application Commission meeting because there will be NUUS

test results. Regarding the NUUS test results, it is hoped that there will be a recommendation for NUUS test results by the PVP commission for plant varieties whose applications are rejected.

However, for the legal regulation of legislation in Indonesia, it must first look at the National Legislation Program, whether Law Number 29 of 2000 concerning Plant Variety Protection will be changed or not by the government. If the Plant Variety Protection Law is not included in the Prolegnas, then there will be no changes in the Law, especially regarding the authority of the PVP Commission. So what can be changed or made first by the Government is through the Government Regulation concerning the Plant Variety Protection Commission.

During the PVP rights application meeting, if there are plants that do not meet the criteria or requirements of the NUUS test, a rejection will be made to obtain PVP rights by recommending replanting with notes provided by the PVP Commission. Furthermore, regarding the rejection of applications for new plant varieties to obtain plant variety protection rights in the form of breeding or replanting of new plant varieties, consultation with the PVP commission is needed regarding changes to claims in order to increase efficiency, especially in terms of time. Because if breeding or replanting with notes still requires a fairly long period of time ranging from months to years.

The provisions regarding replanting new plant varieties that do not comply with the BUSS test results are believed to be inefficient, especially in terms of obtaining PVP rights, because replanting requires costs and a fairly long period of time. By making regulations regarding the PVT commission in providing changes to claims after the NUUS test at the application meeting, the process will be more efficient because there is no need to replant after issuing NUUS test results that do not comply with the requirements and there will be consultation in changing claims after the NUUS test results.

In addition to providing recommendations for changes to PVP claims, it can also provide cost adjustments to NUUS testing charged to plant breeders. This is because, for each plant variety that is bred, there needs to be an expenditure to conduct NUUS testing on the new plant. For plants that are less than 6 months old, the cost is IDR 1,750,000, while for plants that are more than 6 months old, the cost is IDR2,250,000.<sup>31</sup> In this NUUS testing, there also needs to be an adjustment to the costs incurred by plant breeders because when breeding plants, it is not enough to do it only once, so that plant breeders can obtain plant variety protection rights quickly, cheaply and efficiently in terms of cost and time.

## **CLOSING**

Plant varieties that receive PVP protection after registration at the Plant Variety Protection and Agricultural Licensing Office are varieties that pass the NUUS test. Breeders get exclusive rights to use the variety or allow other parties to use the variety by paying royalties. For varieties that do not pass the test, replanting is recommended. Plant breeders should not replant new registered plant varieties if there is a discrepancy in the NUUS test requirements and can request a recommendation from the PVP Commission in the form of a claim change. This must also be an effort from the government to

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<sup>31</sup> <https://sippn.menpan.go.id/peanggaran-publik/8165438/sekretariat-jenderal-kementerian-pertanian/perindungan-varietas-tanaman>.

change the PVP Commission's regulations in the PVP Law by establishing legal certainty to clarify the PVP Commission's authority over the results of the NUUS test considerations.

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