



THE EFFECTIVENESS OF THE CENTER FOR PLANT VARIETY PROTECTION AND AGRICULTURAL LICENSING IN PROVIDING LEGAL PROTECTION OF PLANT VARIETIES

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ABSTRACT

The development of the agricultural sector is one of the urgencies of the country's development, the large variety of potential natural resources from germplasm produces various types of agricultural products that have been improved in quality. With researchers and modern technology helping plant breeders in producing new superior varieties of plants. Indonesia's participation with the International Convention for the Protection of New Varieties of Plants (UPOV Convention) makes the reason for the need for Indonesia to protect the creation of new varieties of plants by law so that the formation of an institution engaged in the Protection of Plant Varieties which then must be seen its effectiveness. The purpose of this study is to determine and analyze the role of related institutions in providing legal protection for plant varieties. The method in this research is carried out with empirical juridical research methods, namely carried out with a statutory approach as well as conducting interviews at related institutions. The results obtained through this research that there are still obstacles in the protection of plant varieties, namely that there are still many people or farmers who have not been educated so that there are practices of violations committed and although there are many violations, not many cases have been reported because it is considered that there is no definite form of protection for plant breeders when a violation occurs. Of course, all protection provided depends on regulations. So it is suggested that in addition to intensively conducting socialization, the government can reopen related regulations and make adjustments through the renewal of these regulations.

Keywords: effectiveness; legal protection; plant variety.

I. INTRODUCTION

Being a tropical country, Indonesia has great potential in the agricultural sector. The abundant variety of natural resources and germplasm also produces various types of quality agricultural products. So that in order to build an advanced and efficient agricultural sector as an agricultural country, it is necessary to support and support the availability of superior plant varieties. Seeds or seeds in agriculture that become products in a plant breeding process, generally have certain characteristics and advantages, which play a role in determining the limits of productivity and in ensuring the success of plant cultivation. However, the development of plant genetics in Indonesia is still limited using conventional methods when compared to the highly developed plant breeding process in developed countries.

The development of Indonesia cannot be separated from the role of creators who produce works¹. Of course, agricultural development is one of the things that is very important to pay attention to. Looking back at the era of globalization, trade liberalization, industrial and trade development in Indonesia has an impact in the form of challenges, namely increasingly difficult business competition.

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¹ Nurwati & J. Jopie Gilalo, Legal Protection Copyright of Building of Cultural Heritage Architecture (Case Study of Architectural Architecture Building in City of Bogor), *Jurnal Hukum De'Rechtstaat*, Bogor, 2017, page 137.

Of course, the existence of the Trade Organization (WTO), APEC in 2010 for developed countries and 2020 for developing countries as well as the CEPT scheme in the framework of AFTA-ASEAN in 2003, makes world trade more dynamic and faster.

Concerning intellectual property rights or can be abbreviated as IPR is the word *pandangan* from Intellectual Property Rights. In IPR there are two categories of understanding, the first is the understanding of IPR in everyday terms, namely everything that comes from the results of human thought such as ideas, inventions, copyrighted works, brands, designs, semi-conductors and so on.

In the legal perspective, it is defined as a set of legal rules that guarantee exclusive rights to exploit IPR within a certain period of time based on the types of IPR². Intellectual property arises from works that are born from the existence of human intellectual abilities produced by humans through their power, taste and work which are realized with intellectual works³.

Dutfield states there are three important characteristics of IPRs⁴, which are:

1. Expansion of the scope of objects of IPR protection, for example, copyright protection of computer programs and the application of patents covering genetic engineering and gene cloning;
2. Establishment of new types of rights (*sui generis*), for example for plant variety rights, copyright, integrated circuit layout design rights and rights to the viewer;
3. Development of global IPR rules and requiring member countries to adopt these provisions in their national laws, for example TRIPs.

Dutfield suggested that international agreements that must be considered in the regulation of IPRs concerning plants, biodiversity and international trade regulation are the TRIPs agreement which is the only international agreement that also applies minimum standards of protection for all types of IPRs and the International Union for Protection of Newyork of Plant (UPOV) which is directly related to the protection of plant varieties⁵.

The Constitution states to be able to increase the value and dignity of consumers or users in terms of awareness, knowledge, care, ability and independence as well as the development of the attitude of responsibility of the creator who will be able to feel the economic value of his work through royalties. "Royalty is the essence or copyright holder"⁶. Royalty is the essence of the economic rights of creators or people who hold copyright.

Legal protection of plant varieties is a relatively new thing in immaterial property rights which is part of Intellectual Property Rights, so that in everyday life there are still farmers who carry out innovation activities in presenting new plant varieties but the findings are not submitted to obtain PVP Rights, besides that there are still violations by farmers related to plant varieties that already have protection rights. This is due to either the lack of public initiative to seek information related to plant varieties, the lack of effective socialization, or the lack of evenly distributed socialization to all corners of the country. Of course this requires an important role from specialized institutions related to the

² Andrie Budiman, Nurwati Nurwati, and Aal Lukmanul hakim, "PERLINDUNGAN HUKUM TERHADAP MEREK DAGANG PADA INDUSTRI KECIL MENENGAH (IKM) PANGAN DI KABUPATEN BOGOR," *DE' RECHTSSTAAT* 7, no. 1 (April 17, 2021): 21–31, <https://doi.org/10.30997/jhd.v7i1.4183>.

³ Nurwati, *Hak Kekayaan Intelektual (Hak Cipta Sebagai Jaminan Kredit Dalam Perspektif Hak Kebendaan)* (Depok: PT. Rajawali Buana Pusaka, 2022).

⁴ Graham Dutfield, "Intellectual Property Rights, Trade and Biodiversity: The Case of Seed and Plant Varieties," *Background Paper Inter Sessional Meeting on The Operation of The Convention*, no. Intellectual Property Rights (June 28, 1999).

⁵ *Ibid.*

⁶ Adi Sulistiyono, Martin Roestamy, and Nurwati, "Mechanism of Economic Value Determination of Music and Song Copyrights Made as Objects of Fiduciary Collateral," *INTERNATIONAL JOURNAL OF SCIENTIFIC & TECHNOLOGY RESEARCH* 8, no. 09 (2019), www.ijstr.org.

provision of plant variety protection. In case of intellectual property, the protection of plant varieties is the same as when the brand owner has not registered or applied for the acquisition of a license, he can bind himself due to increasingly fierce commercial competition and the existence of fraud or imitation of the branded goods⁷. Which also applies to the output or results of plant breeding work.

Efforts to protect plant varieties in Indonesia have started since the 1990s which further developed so that in 1999 Law Number 29 of 2000 was enacted as a consequence of the signing of the international agreement General Agreement on Tariffs and Trade (GATT) and ratified under Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. The agreement contains the TRIPs agreement, one of which concerns PVP.

The concept of Plant Variety Protection Rights is in accordance with the concept of Intellectual Property Rights which includes property rights resulting from thought (intellectual), attached to the owner, permanent and exclusive, and rights obtained by other parties with permission from the owner, temporary. The special aspects as owned by IPR are economic rights, moral rights and social functions. Economic rights are the rights to obtain economic benefits for creations and third products to use them for commercial purposes based on agreements or licenses (Sulistiyono & Roestamy, 2019).

The right of creation itself is an exclusive right for the creator or recipient of the right to publish, reproduce his creation, or give permission for it without reducing restrictions according to applicable laws and regulations, meaning that other than the creator, other people are not entitled to it except with the permission of the creator, because the right is born together with a creation (O.K. Saidin, 2015).

In addition, the object of IPR protection is plant varieties that have qualified BUSS produced by plant breeders. The granting of PVP rights by the state is necessary because breeders assemble new varieties of plants with standard breeding methods, which take a long time with costs that tend to be large on an ongoing basis. However, after the innovation in the form of new varieties is released to the public or market, plant breeders as owners of findings as well as investors have their rights violated because irresponsible people easily reproduce these varieties without obtaining permission so that breeders can no longer obtain economic rights from their inventions. If the law does not provide protection to breeders, the assembly of varieties will be very cornered and less attractive.

In order to increase knowledge, interest and participation of individuals and legal entities to obtain rights in plant breeding activities to produce new superior varieties, to breeders or holders of plant variety protection rights, it seems very necessary to participate in government institutions that focus on the protection of plant varieties, namely the Plant Variety Protection and Agricultural Licensing Center Office which of course refers to the provisions in Law Number 29 of 2000. The role of these institutions is very important in terms of protecting Intellectual Property in the form of plant varieties as well as plant breeders and farmers. So that the role of the PVTTP Center needs to be considered for its effectiveness. Based on the description above, the researcher is interested in studying it as writing material with the title of the thesis "Effectiveness of the Central Office for Plant Variety Protection and Agricultural Licensing in Providing Legal Protection of Plant Varieties".

⁷ Budiman, Nurwati, and Lukmanul hakim, "PERLINDUNGAN HUKUM TERHADAP MEREK DAGANG PADA INDUSTRI KECIL MENENGAH (IKM) PANGAN DI KABUPATEN BOGOR."

II. RESEARCH METHODS

What is meant by research method is a procedure or way of obtaining true knowledge or truth through systematic steps⁸. The research method used is in accordance with the Identification which is the focus of the research, namely the effectiveness of the Central Office for Plant Variety Protection and Agricultural Licensing in providing legal protection for plant varieties.

The approach used in this research is an empirical juridical approach (sociologically, economically, anthropologically and others) data collection techniques and non-legal materials. The data can be in the form of research data (directly) from the field or data from other parties' research that is related and has been scientifically tested.⁹

Empirical juridical research is legal research on the enactment or implementation of normative legal provisions in action in certain legal events that occur in society¹⁰.

III. DISCUSSION AND RESULTS

Effectiveness of the Implementation of Providing Legal Protection for Plant Varieties

Improving regulations that are used as the basis for creating something new is certainly necessary to prepare for the era of the global economy. Findings in agricultural midwives are expected to be better than previous varieties. Of course, for the sake of progress in agriculture. This also cannot be separated from the role of plant breeders who are the inventors or creators of new plant varieties.

A creator is a person or several people who independently or jointly produce a distinctive and personal creation. Therefore, all creation activities need to be supported, strengthened and considered with the assistance of adequate legal instruments.¹¹

In terms related to plant breeding, in addition to making new superior plant varieties useful in a sustainable manner, opportunities are also opened for other parties to utilize these findings without harming the inventor, of course, by providing economic benefits. As a national product, plant variety protection (PVP) contains legally protected rights. This right is granted by the Center for Plant Variety Protection and Agricultural Licensing to breeders and/or holders of PVP rights to use it themselves or give approval to people / legal entities to use it within a certain time.

Legal protection is an effort regulated by law to prevent violations of intellectual property rights by unauthorized persons. The purpose of legal protection of intellectual property rights is intended to provide legal clarity regarding the relationship between the creation or invention which is the result of human intellectual work with the creator or inventor or right holder with the user who uses the intellectual work. The existence of legal clarity and the owner of intellectual property rights is a legal recognition and reward given to people for their efforts and creative human works that have been created or discovered¹².

Based on the Article 8 of Law No. 29/2000 on Plant Variety Protection, legal protection is given to plant breeders who produce plant varieties that in accordance with the law are entitled to be rewarded by taking into account the economic aspects obtained from the breeding varieties. Other provisions that support the protection of plant breeders are Government Regulation No. 20 of 2005 concerning Transfer of Intellectual Property Technology and the Results of Research and Development Activities by

⁸ Martin Roestamy, Endeh Suhartini, and Ani Yumarni, *Metode, Penelitian, Laporan Dan Penulisan Karya Ilmiah Hukum Pada Fakultas Hukum*, 4th ed., vol. 1 (Bogor: Fakultas Hukum Universitas Djuanda, 2020).

⁹ *Ibid.*

¹⁰ A Muhammad, *Hukum Dan Penelitian Hukum* (Cintra Aditya Bakti, 2004).

¹¹ Nurwati, *Hak Cipta Karya Musik Dan Lagu* (Bogor: Unida Press, 2018).

¹² Y.W.D.S Irianti, "Perlindungan Dan Pemanfaatan Varietas Tanaman Melalui Perjanjian Benefit Sharing," *Rechtidee* 12, no. Perlindungan Varietas Tanaman (2017).

Universities and Research and Development Institutions, in Article 5 paragraph (1), Article 6 through Article 11 and Article 38 paragraph (2b), which provide legal certainty for the provision of legal protection to plant breeders to obtain royalties. Plant Variety Protection Rights include property rights in the utilization of intellectual property, according to the provisions of Article 570 of the Civil Code stated that:

"The right of property is the right to enjoy the use of an object freely, and to act freely on the object with full sovereignty, provided that it does not contravene the law, or a general regulation established by a power entitled to establish it, and does not interfere with the rights of others; all of which thereby reduce the possibility of revocation of rights in the public interest based on statutory provisions and on payment of compensation."

Economic benefits are one form of appreciation, recognition, and PVP rewards for the success of plant breeders, as based on Article 1 number 15 of Law No. 29 of 2000, explaining that:

"Royalties are compensation of economic value given to holders of Plant Variety Protection rights in the context of granting licenses."

Then based on Article 8 paragraph (1) of Law No. 29 of 2000, stipulates that:

"Breeders who produce varieties are entitled to receive appropriate compensation by taking into account the economic benefits that can be obtained from these varieties."

As for the Government's participation, including based on Article 2 of the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 121/PERMENTAN/OT.140/11/2023 concerning Terms and Procedures for Application and Granting Plant Variety Protection Rights with the intention of this regulation as a legal basis for services for granting PVP Rights, which are:

- a. Protecting the breeding of new, unique, uniform and stable plant species;
- b. Protecting plant breeders in producing plant varieties; and
- c. Provide certainty in the acquisition of PVP Rights.

The conditions above can be obtained by submitting an application to the PVTTP Center. In carrying out its duties over the past decades, the Center for Plant Variety Protection and Agricultural Licensing has issued and approved hundreds of Plant Variety Protection rights that have been filed by the public, whether from individuals, universities, governments, domestic companies, or foreign companies.

Apart from the data in this study, there are more than a thousand seed companies that are incorporated, but still few of these companies carry out plant breeding activities. The following is the development of applications and issuance of PVP rights in (Picture 1).

Picture 1. Development of Applications and Issuance of PVP Certificates 2017-2021



So far, if we look at the data provided by the Center for Plant Variety Protection and Agricultural Licensing in Table 1 and Picture 1, that since the announcement of the Regulation on Plant Variety Protection, there have been many applications for PT rights and PVP Rights Holders. So that the implementation can be said to be quite effective because many breeders have applied for the protection of plant varieties to the PVTTP center.

In addition, when referring to applicants who have registered or have obtained plant variety protection rights, it can be seen in Table 1 that the number of applicants and owners of PVP rights is mostly held by domestic companies and the government, while the number of owners of PVP rights from universities and individuals is the least. This indicates that more PVP rights are held by companies than by ordinary farmers.

From the research conducted in the field, the author found many independent farmers who always conduct trials on plants (breeding) but choose not to register the varieties they get from the breeding process. These things can be caused by several things such as the inability of farmers to pay a fee to register their glorified plant varieties, besides that the processes that must be passed are not small because there are several stages of examination such as substantive examination which must be carried out within a maximum of 24 (twenty-four) months which of course also takes more time and money, so that for middle to lower class farmers will feel objected, and it also makes the ineffectiveness of the purpose of protecting plant varieties that lead to the welfare of farmers.

In addition, although the regulations already exist and are felt to be quite perfect with the community. However, there are still many users of breeders' work who do not fulfill their obligation to pay the economic rights of the creator¹³. In this case, it is related to the use of seeds that already have protection rights that are freely traded in the community.

However, the implementation of the PVP Act in terms of supervision, which is very necessary as a preventive effort, does not seem to be clearly regulated in Law No. 29/2000 on Plant Variety Protection. Therefore, to implement this, a regulation is needed, the result of the author's analysis is the need for renewal of Law No. 29/2000 on Plant Variety Protection.

Obstacles in Providing Legal Protection for Plant Varieties

The creation of something new in agriculture is closely related to the process of finding new varieties that are better than before which will certainly provide progress in the agricultural sector. Improving the agricultural sector will clearly have an impact on increasing product competitiveness. With that, the activities of creating new and superior products need to be supported and strengthened with adequate legal instruments. This legal tool will provide a guarantee that the creator will obtain rights from the results of his thoughts. This is the reason for the establishment of Law No. 29/2000, which grants Plant Variety Protection (PVP) rights.

In order to implement the regulation, of course the regulation cannot run alone, there needs to be an institution that helps to succeed in the establishment of the regulation. The PVP Law has not yet regulated the institutions authorized to supervise violations of plant varieties. Regarding the discussion this time, of course the Central Office for Plant Variety Protection is one that plays a role in providing protection for plant varieties.

¹³Adi Juardi and Nurwati Nurwati, "EFFECTIVENESS OF COLLECTIVE MANAGEMENT ORGANIZATION IN COLLECTIVE ROYALTIES OF MUSIC AND COPYRIGHT WORK ON KARAOKE BUSINESS ACHIEVEMENT BASED ON LAW NUMBER 28 YEAR 2014 ON COPYRIGHT," *DE RECHTSTAAT* 4, no. 2 (January 10, 2019): 129–40, <https://doi.org/10.30997/jhd.v4i2.1521>.

Regarding the protection of plant varieties, the PVTTP Office plays a role in processing the granting of certificates of plant variety protection rights. The process of granting plant variety protection rights begins with the process of registering plant varieties resulting from breeding which is a prerequisite for obtaining protection. The application for plant variety protection is addressed to the PVTTP Headquarters in writing in Indonesian by paying a fee determined by the Minister of Agriculture.

The operation of the PVTTP Central Office, which has been running since 2002, has had many achievements, one of which is in an effort to increase the number of applicants for plant variety protection carried out by plant breeders through a lot of socialization and promotion.

Based on data obtained by researchers from the PVTTP Center, since the start of PVP rights application services from 2004 to 2019 cumulatively continues to grow. From the data obtained by researchers, from 2004 to July 25, 2022, 582 (five hundred and eighty-two) certificates have been issued by the Central Office for Plant Variety Protection from a total of 906 applications for protection of plant variety rights.

While the Law No. 29 of 2000 on Plant Variety Protection has provided legal certainty over a series of economic benefits, there are still many farmers who carry out activities in presenting new varieties but do not apply for the acquisition of PVP Rights¹⁴. This condition is very worrying, where it is possible for other parties to apply for PVP Rights from the activities of plant breeders, and in the end plant breeders are only used as a tool for the sale of superior products, this can be seen from the number of Percentage of PVP Rights Holders in Table 1.

Table 1. Cumulative Update of PVP Right Certificate Applications Until July 2022

No	Title holder status	Number of PVP Rights	
		Frequency	Percentage
1.	Individual	32	6,81%
2.	Government	97	20,64%
3.	Universities	15	3,19%
4.	Domestic Companies	286	60,85%
5.	Overseas Companies	40	8,51%
	Total	470	100,00%

It can be seen from the table above that the number of individual PVP rights holders, the majority of which are farmers and universities, is very small compared to those owned by companies, the factors that cause this include:

1. Difficult process in applying for PVP;
2. Relatively expensive costs (especially among small farmers);
3. Time consuming;

In fact, in the practice the protection of plant varieties in its regulation is implemented by one of the institutions, namely the PVTTP Central Office. The prevalence of PVP violations by farmers is also a big question mark about how efforts have been made by the PVTTP Center. However, the forms of violations that are found apparently do not have many reports, which at the time of the proliferation of

¹⁴ Moch. Najib Imanullah, "Politik Hukum Ketahanan Pangan Nasional (Kanjian Sinkronisasi Politik Hukum Undang-Undang HAK PVT Dan Undang-Undang Pangan)," *Yustisia*, no. Politik (2013).

sellers of ornamental plants and other types of plants there are still many small farmers who sell plant seeds whose varieties have received protection.

From the survey conducted by the author, it can be seen that many farmers suddenly sell various types of plants in one of the South Bogor areas without knowing that the plants have plant variety rights. Of course, this must be done by the Central Office for Plant Variety Protection which is part of supervision as a preventive legal protection effort.

In the application in daily life, it is appropriate if the legal aspects of PVP are directly confronted as a special case. This is necessary due to the diverse levels of education and comprehensive legal knowledge

IV. CONCLUSION

Optimally, the Center for Plant Variety Protection and Agricultural Licensing has a good achievement by issuing many PVP rights. However, the largest percentage of applicants or owners of PVP rights are owned by the government and domestic companies, so that the development of natural resources of individual farmers, which should be the main object for agricultural development, has not been optimized. The high cost and long testing time make it difficult for farmers to apply for PVP rights. PVP violations are still rampant where farmers who lack knowledge propagate or trade seeds which already have protection rights. In addition, the low number of individual farmers who apply for PVP rights is due to the difficult process for applications, relatively expensive costs and long processes.

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