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Examining the Criminal Aspects of the Indonesian Plant Varieties Regime and Farmer Protection for Food Sovereignty

Eny Suastuti¹✉, Hayyan Ul Haq², Uswatun Hasanah³,
Dewi Martini⁴, Sartika Nanda Lestari⁵

^{1,3} Faculty of Law, Universitas Trunojoyo Madura, Bangkalan,
Indonesia

² Faculty of Law, Universitas Mataram, Mataram, Indonesia

⁴ School of Law, University of Sheffield, United Kingdom

⁵ School of Law, University of Aberdeen, Scotland, United Kingdom

✉ eny.suastuti@trunojoyo.ac.id

ABSTRACT

This research investigates the Plant Varieties Regime's role in safeguarding farmers' rights in plant development and cultivation in Indonesia. Specifically, it scrutinizes criminal provisions concerning farmers accused of producing seeds without the right holder's consent, as evident in multiple court decisions. These verdicts have ignited legal debates that conflict with the principles of food sovereignty. Given that nearly 90% of corn plants are cultivated through traditional farmer knowledge, the increasing dependence on



the seed industry disrupts agricultural practices passed down through generations. The Plant Variety Protection Act (PVP Act) inadvertently encourages seed industry monopolization. This paper advocates a coherent approach in compliance with Article 27(2) of the 1945 Constitution to address these legal issues and establish a just legal framework. The primary legal discourse centers on equitable protection, necessitating a re-evaluation of the PVP Law, which is perceived as restricting plant development opportunities and discriminating against farmers. Farmers, as stewards of seed development and livelihood, should not face criminal charges encroaching upon their rights. Employing a normative methodology involving statutory, conceptual, and case analyses, this study examines the criminal aspects and legal protection of farmers' rights in corn seed cultivation. Ultimately, the paper recommends revising the PVP Law, emphasizing the importance of coherent legal thinking when shaping criminal policies. On a practical level, it calls for collaborative efforts among stakeholders to bolster agricultural sovereignty, particularly in the corn sector, by prioritizing farmers' rights. In summary, this research aims to provide recommendations for enhancing farmers' protection against the criminal provisions outlined in the PVP Act, which holds a pivotal role in shielding farmers engaged in corn seed cultivation.

Keywords: Criminal Aspect, Legal Protection, Farmer Protection, Farmer Rights

INTRODUCTION

The existing legislation, specifically Law No. 29 of 2000 on Plant Variety Protection (hereinafter as PVP Law), requires a thorough evaluation to ensure effective legal protection for farmers, particularly

those engaged in corn cultivation. Corn holds a significant role as a crucial commodity, not only in securing food sources for both humans and livestock but also in fulfilling the requirements for national food exports. The assessment of the PVP Law is imperative to address the evolving needs and challenges faced by corn farmers. In the context of contemporary Indonesia, where agriculture plays an important role in sustaining the economy and ensuring food security, a robust legal framework is essential to safeguard the interests of farmers and contribute to the overall well-being of the nation. This study is especially crucial considering the broader implications on food supply, health, and the economy, emphasizing the interconnectedness of legal provisions with the current conditions and future aspirations of Indonesia.¹

In many countries—such as the United States—food regulation is an ever-evolving domain, adapting to contemporary issues and agricultural concerns. This adaptation is particularly critical due to ongoing worries about the presence of food additives like pesticides and synthetic substances that are linked to cancer. Consequently, regulations pertaining to food matters undergo constant scrutiny, aligning with principles such as the Delaney Clause. This principle underscores the significance of evaluations to guarantee the safety of additives and mandates producers to establish safety standards, especially in agriculture, notably concerning the use of pesticides and food. Similarly, various countries globally are refining their food regulations in response to emerging challenges and health considerations, creating a complex and interconnected landscape of international food safety standards.²

¹ Tri Rahayuningsih, et al. "Pendampingan Hukum Mengenai Pupuk Bersubsidi dan Teknologi Pertanian Bagi Petani Jagung." *JIIP-Jurnal Ilmiah Ilmu Pendidikan* 6, No. 1 (2023): 230-235.

² Neal D. Fortin, *Food Regulation: Law, Science, Policy, and Practice*. (Hoboken, New Jersey, US: John Wiley & Sons, 2022). Furthermore, it is highlighted that Food Regulation represents a holistic approach to overseeing the entire food supply chain, encompassing legal, scientific, policy, and practical dimensions. The legal facet establishes regulatory frameworks, delineating standards for food production, labeling, and safety. These laws empower government agencies to

The existence of legal protection of plant varieties is essentially the rights and interests of breeders or rights holders are recognized and protected by law, so they can criminalize anyone who violates their rights and interests in relation to these plant varieties.³ Considering the number of cases that have led farmers to court on charges of distributing seeds without a license. In East Java, approximately 14 (fourteen) corn farmers, mostly from Kediri district, have been charged with theft of seeds and cultivation of corn seeds. The farmers were convicted on a report from PT BISI International which is a subsidiary of a Thai Agribusiness Company.

In the similar context, Barizah stated that the PVP Law is a law that provides protection for economic rights that have been registered by breeders. Protection of farmers' rights in the PVP Law and the Sustainable Agricultural Cultivation law is minimal. Based on the two laws are very unclear provisions governing the privileges of farmers. In its implementation, the rules are multi-interpretive so that they

enforce compliance and impose penalties for violations. The scientific aspect involves rigorous research to determine safety standards, permissible additives, and acceptable contaminant levels, ensuring that food is not only safe but also meets quality criteria. Concurrently, food policy sets strategic guidelines, addressing issues like food security, public health, and sustainable agriculture. Policies aim to strike a balance between economic, health, and environmental considerations. The practical implementation involves the day-to-day enforcement of regulations, including inspections, testing, and monitoring of the food industry. Additionally, public education initiatives promote awareness about food safety and healthy dietary practices. Thus, this comprehensive framework ensures a secure, nutritious, and reliable food supply, navigating the intricate interplay of legal, scientific, policy, and practical elements. *See also* David F. Smith, and Phillips Jim. "Food policy and regulation: a multiplicity of actors and experts." *Food, science, policy and regulation in the Twentieth Century*. (London: Routledge, 2013), pp. 1-16; Rodiyah Rodiyah, et al. "Child food security policy: The problems and challenges in the globalization era during Covid-19 outbreak." *AIP Conference Proceedings* 2573 (2022): 030021; Siti Hafsyah Idris, et al. "Bioethical issues on farmers' rights relating to genetically modified crops." *AIP Conference Proceedings* 2881 (2023): 050002.

³ Luthfiatul Fikria, "Perlindungan Hukum Terhadap Pemegang Hak Perlindungan Varietas Tanaman Jagung Manis Talenta." *Pro Patria: Jurnal Pendidikan, Kewarganegaraan, Hukum, Sosial, dan Politik* 6, No. 1 (2023): 179-192.

cannot provide legal certainty and do not favor farmers.⁴ The two laws stated above must be related to the Food Law, which is the legal umbrella for all regulations in the agricultural sector. According to Debora Pasaribu, Rizky Karo Karo by quoting the opinion of Jamin Ginting, it is said that one of the considerations in the issuance of the Food Law is to realize the availability, affordability and fulfillment of food needs and food security, both at the national and regional levels which must be fulfilled equally and this is the responsibility of the state.⁵

Many farmers were prosecuted in a report from PT BISI International, a subsidiary of a Thai Agribusiness Company. PT BISI accused the farmers for commercializing the company's cross-breeding seeds with local corn seeds. This can be seen in several Supreme Court Decisions sentencing corn farmers for being found guilty of misusing the company's crossbred seeds with local corn seeds. The farmers were sentenced to imprisonment and banned from planting corn and breeding corn seeds again.⁶

As an example in case No. 261/Pid.Sus/2019/PN.Gpr, the judge sentenced the first defendant and the second defendant in the form of imprisonment for 1 (one) year and 2 (two) months respectively and a fine of Rp. 25,000,000, - (twenty five million rupiah) with the provision that if the fine is not paid, it shall be replaced by imprisonment for 1 (one) month. The defendant was found guilty of committing the crime of participating in the trade of goods and/or services that are prohibited to be traded. In the decision of the Supreme Court of the Republic of Indonesia on behalf of the defendant Candra Bayu Fernanda, Kediri farmer in case Number 261/Pid.Sus/2019/PN, Gpr, dated July 31, 2019 which in the verdict stated: Defendant. Kediri farmer, has been proven legally and convincingly guilty of

⁴ Nurul Barizah, *Hukum Internasional tentang Hak-Hak Petani dan Pemulia Tanaman: Upaya Mewujudkan Ketahanan Pangan Nasional Berbasis Prinsip Keadilan*. (Surabaya: Revka Prima Media, 2018).

⁵ Debora Pasaribu, and Rizky Karo Karo. "Perlindungan Hukum Untuk Mewujudkan Ketahanan Pangan Masyarakat di Masa Covid-19." *Jurnal Esensi Hukum* 3, No. 2 (2021): 202-221.

⁶ See The District Court Verdict in Case No. 261/Pid.Sus/2019/PN.Gpr

committing the crime of participating in the trade of goods and / or services that are designated as goods and / or services that are prohibited for trade. In this case, the defendants were sentenced because they were proven to have traded corn seeds without business legality in trading activities not equipped with a trade business letter from the government, and not appointed by the government in trading Bisi 18 Hybrid corn seeds under the brand Cap Kapal Terbang, a producer of PT BISI International Tbk.

In terms of philosophical issues, the legal protection of farmers in Law No. 29 of 2000 on Plant Variety Protection, hereinafter referred to as the PVP Law. The existence of the law has not been in favor with the farmers because the spirit of the law has separated the farmers from their activities as plant breeders which disregards the hereditary tradition of farmers as plant breeders that is guaranteed by the constitution. Article 28C Paragraph (1) of the 1945 Constitution, *"Every person has the right to develop themselves through the fulfillment of their basic needs, the right to education and to benefit from science and technology, art and culture, in order to improve the quality of their lives and for the welfare of mankind."*

Regarding the distinction between farmers and their activities, Imanudin Affandi, Devi Siti Hamzah Marpaung said as follows:

The conversion of agricultural land to non-agricultural land has a negative impact on society, such as the conversion of agricultural land to industrialization, because it can cause the loss of livelihoods for farmers' daily lives, the reduction of agricultural land which can reduce national food production, threaten the balance of the ecosystem, increase food prices, the flow of urbanization will be higher and the lack of access of farmers to land.⁷

⁷ Imanudin Affandi, and Devi Siti Hamzah Marpaung. "Sosialisasi Perlindungan Hukum terhadap Petani atas Ketersediaan Lahan Pertanian di Indonesia serta Sebagai Wujud Menciptakan Ketahanan Pangan Daerah." *Jurnal Pengabdian Nasional (JPN) Indonesia* 4, No. 2 (2023): 439-446.

Based on the judicial review of the PVP Law in the Constitutional Court Number 99/PUU-X/2012 on October 3, 2012, it was stated that the legal construction of the agricultural and seed system in Indonesia runs parallel to the phenomenon of agricultural modernization in developing countries at the insistence of transnational companies, both of them do not consider small farmers as subjects of plant breeding. Meanwhile, economic opportunity is wide open for investors and seed companies to seize market opportunities. In fact, 60% of Indonesia's population work as farmers. Law No. 12 of 1992 on Plant Cultivation Systems and Law No. 29 of 2000 on Plant Variety Protection have narrowed and blocked opportunities for farmers to participate in the development of plant cultivation. Therefore, the implementation of this law has the potential to become a barrier to the access of the community, especially farmers, to fulfill the right to food and the right to work.⁸

The state's responsibility for providing legal protection to corn farmers has not been fully carried out as stated in the considerations of the PVP Law. In PVP Law, the point of consideration specifically and explicitly said that Indonesia as an agricultural country, advanced and resilient agriculture has an important role in order to achieve national development goals, so it needs to be supported by the availability of varieties. Related to this, Tatiek Sri Djatmiati stated as follows:

State responsibility relates to the use of government authority in the public service function. In carrying out this function, loss or suffering to the public could arise. The loss for the community can occur due to defects in the use of authority or related to the behavior of the apparatus as a person. These two things become the parameters of

⁸ See The Constitutional Court Verdict in Case Number 99/PUU-X/2012, Dated July 18, 2013, P.5-6.

whether or not a responsibility or state liability for existing losses exists.⁹

The PVP Law regulates the primary material of plant breeders referred to as germplasm which is a superior variety of plants for the growth of the seed industry. In order to increase the interest and participation of individuals and legal entities to carry out plant breeding activities that produce new superior varieties, plant breeders or holders of Plant Variety Protection rights need to be given certain rights and legal protection over these rights adequately with international conventions, the protection of plant varieties needs to be regulated by the law.¹⁰

Protection of plant varieties is part of Intellectual Property Rights and protection of immaterial objects produced by plant breeders is given special protection by the State to breeders/holders of plant variety rights¹¹. Plant variety protection is implemented to encourage and provide opportunities for the business world to increase its role in various aspects of agricultural development. Arini Yunia Pratiwi said that breeders who hold breeding rights are not allowed to set prices freely, because their wealth may be replaced by the same thing¹².

Cross-cropping is a method of farming to produce and multiply corn seeds that needs to be protected. The centralized control of crop seeds in several multi-national companies greatly affects the

⁹ Tatiek Sri Djatmiati, and Bagus Teguh Santoso. *Bunga Rampai Hukum Administrasi*. (Jakarta: UBJ Press, 2020).

¹⁰ See important point in The Provisions of Law No. 29 of 2000 on Plant Variety Protection

¹¹ Emi Indah Lestari, Kholis Raisah, and Adya Paramita Prabandari. "Perlindungan Hukum terhadap Varietas Tanaman dalam Memberikan Kepastian Hukum kepada Pemulia Tanaman." *Notarius* 12, No. 2 (2019): 972-984.

¹² Arini Yunia Pratiwi, Muhamad Amirulloh, and Anita Afriana. "Harmonisasi Hukum Ketentuan Lisensi Wajib (Compulsory License) Perlindungan Varietas Tanaman di Indonesia." *Jurnal Poros Hukum Padjadjaran* 2, No. 2 (2021): 284-301.

availability of these seeds.¹³ As Richard Cook said, it is time for countries to reemphasize the importance of clear policy support in the agricultural sector, because food production should not be left in the hands of agribusiness companies and international financial capitalism.¹⁴

¹³ Muchamad Yusuf, "Pembatasan Hak Eksklusif Pemulia Tanaman Untuk Melindungi Hak-Hak Petani". *Thesis* (Surabaya: Universitas Airlangga, 2015). See also Vania Irawan, "Propagasi pada Varietas Tanaman yang Dilindungi Berdasarkan Undang-Undang Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman." *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, No. 2 (2022): 3768-3775; Riezka Eka Mayasari, and Nur Hidayani Alimuddin. "Analisis Hukum Perkembangan Perlindungan Varietas Tanaman di Indonesia." *Sovereign: Jurnal Ilmiah Hukum* 2, No. 4 (2020): 1-14.

¹⁴ Furthermore, it is emphasized that the Law Number 29 of 2000 on Plant Variety Protection in Indonesia is designed to safeguard the rights of farmers in relation to plant varieties. This law emphasizes the importance of protecting the rights of farmers who have developed or conserved certain plant varieties through their traditional agricultural practices. The primary objective is to ensure that farmers receive due recognition and benefits for their contributions to the conservation and development of plant varieties. Under this law, farmers are granted specific rights over the plant varieties they have cultivated, improved, or conserved over generations. These rights include the privilege to save, use, exchange, and sell the seeds or propagating materials of protected plant varieties. Additionally, the law seeks to strike a balance between the rights of farmers and those of plant breeders or developers. It establishes a framework for the fair and equitable sharing of benefits derived from the commercial use of plant varieties. The Law on Plant Variety Protection also includes provisions to encourage the continued innovation and development of new plant varieties. It outlines the procedures for obtaining plant breeder's rights and sets forth the conditions under which such rights may be granted. See also Rajeswari Kanniah, "Plant variety protection in Indonesia, Malaysia, the Philippines and Thailand." *The Journal of World Intellectual Property* 8, No. 3 (2005): 283-310; Christoph Antons, Yunita T. Winarto, and Adlinanur F. Prihandiani. "Farmer-plant-breeders and the law on Java, Indonesia." *Critical Asian Studies* 52, No. 4 (2020): 589-609; Nurul Barizah, "The Protection of Farmers' Rights Under International Law and its Implementation in Indonesia." *Environmental Policy and Law* 49, No. 4/5 (2019): 226-232; Elsy Gracella, Budi Santoso, and Edy Sismarwoto. "Legal Protection of Breeder Rights and Farmer Rights concerning Protection of Plant Varieties." *Proceedings of the 1st International Conference on*

Numerous instances have arisen within the community where farmers have faced legal proceedings, accused of engaging in unauthorized cross-planting of corn seeds. Allegations include theft, production, and sale of parent seeds owned by agricultural companies. This is evident in various court rulings, such as those rendered by the Kediri District Court, including verdicts No. 516/Pid.B/2005/PN.Kdi, No. 562/Pid.B/2006/PN.Kdi, No. 188/Pid.Sus/2010/PN.Kdi, and No. 447/Pid.Sus/2019/PN Gpr. The inadequacies in overseeing cross planting and the existing regulatory framework in the current agricultural sector necessitate a thorough evaluation to enhance legal protection for farmers.

Therefore, this research primarily focuses on the criminal aspects and legal protection associated with the implementation of the PVP Law. Derived from this central issue, the following inquiries emerge: What constitutes the foundation for imposing criminal sanctions on farmers engaged in cross-planting of corn, and what specific protective measures does the PVP Law afford to farmers.

EXAMINING THE CRIMINAL ASPECTS OF THE INDONESIAN PLANT VARIETIES REGIME & FARMER PROTECTION FOR FOOD SOVEREIGNTY

A. Criminal Aspect in Protection of Plant Varieties Law

According to Jacob Oberg, the criminal aspect is generally used by judges and courts to refer to severe sanctions that are intended to punish rather than to deter or compensate, in contrast to civil or

Science and Technology in Administration and Management Information, ICSTIAMI 2019, 17-18 July 2019, Jakarta, Indonesia. 2021.

administrative sanctions.¹⁵ Plant variety protection rights are special rights granted by the state to plant breeders or holders of protection rights to use their own breeding varieties or give approval to other persons or legal entities to use them for a certain time.¹⁶ In addition, plant breeders need to prevent the use of freely developed plants by other parties.¹⁷ The purpose of plant breeding activities can be achieved if the new varieties produced by plant breeders are likely to be used by farmers.¹⁸

The regulation of criminal sanctions and purposes of criminal sanctions is part of the PVP Law and Law No. 12 of 1992 concerning the Plant Cultivation System. Both laws include criminal sanctions for those who carry out unlicensed cultivation or unlicensed certification. Only licensees or seed companies are entitled to produce seed of protected varieties, acting on the basis of a written license agreement concluded with a breeder who owns a specific variety or plant varieties.¹⁹

Bambang Sayaka, Frans B. M. Dabukke, and Sri Suharyono have asserted that Memorandum of Agreement (MoA) No. 2 of 2014 implicitly addresses the 2012 Constitutional Court Decision concerning the distribution of foster seeds. Specifically, the MOA exempts small farmers who distribute seeds within a limited or local community from the obligation to label the seeds they sell. This exemption streamlines the process for farmers to produce seeds for

¹⁵ Jacob Öberg, "The definition of criminal sanctions in the EU." *European Criminal Law Review* 3 (2014): 273-299.

¹⁶ Reza Erica Wuner, "Tinjauan Hukum Tindak Pidana Terhadap Hak Varietas Tanaman Ditinjau Dari Undang-Undang Nomor 29 Tahun 2000 Tentang Perlindungan Varietas Tanaman." *LEX CRIMEN* 10, No. 3 (2021): 204-214

¹⁷ Bernardo Pontes Guimarães, Paulo Gustavo Barboni Dantas Nascimento, and Grace Ferreira Ghesti. "Intellectual property and plant variety protection: Prospective study on Hop (*Humulus lupulus* L.) cultivars." *World Patent Information* 65 (2021): 102041.

¹⁸ Luthfiatul Fikria, "Perlindungan Hukum Terhadap Pemegang Hak Perlindungan Varietas Tanaman Jagung Manis Talenta." *Pro Patria: Jurnal Pendidikan, Kewarganegaraan, Hukum, Sosial, dan Politik* 6, No. 1 (2023): 179-192.

¹⁹ Dorota Stankiewicz, "Regulation on the use of seeds (ECPRD Request No. 4635)." *Zeszyty Prawnicze BAS* 72, No. 4 (2021): 189-193.

personal use or for the benefit of neighboring farmers, eliminating formal procedures that often impede the adoption of improved seeds. Under this provision, farmers are afforded greater flexibility in seed circulation, facilitating easier access to improved varieties. In areas where the MHMB (Horticulture, Agriculture, and Plantation Extension) program is implemented, such as every village or nearby village, there exists a production input shop that not only sells certified seeds but also provides valuable production advice to support farmers in enhancing their agricultural practices.²⁰

The inclusion of criminal sanctions has created fear among farmers to develop seeds according to their own techniques. Cases of farmers being prosecuted for using or distributing corn seeds without certification, imitating company farming methods, falsifying brands,

²⁰ Bambang Sayaka, Frans BM Dabukke, and Sri Suharyono. "Membangun kemandirian industri benih padi nasional." *Jurnal Ekonomi Indonesia* 9, No. 3 (2020): 189-207. Furthermore, it is also highlighted that Memorandum of Agreement (MoA) Number 2 of 2014 in Indonesia is construed as an implicit response to the 2012 Constitutional Court Decision pertaining to the distribution of foster seeds. Within this framework, the MoA grants an exemption to small-scale farmers engaged in the distribution of seeds within limited or local communities, relieving them of the obligation to affix labels to the seeds they vend. This exemption is consequential, facilitating a more straightforward process for farmers to generate seeds for personal consumption or for the benefit of neighboring farmers, exempting them from the burdensome formalities often associated with the adoption of improved seed varieties. In addition, MoA Number 2 of 2014 introduces a degree of flexibility into the seed circulation process, effectively streamlining the accessibility of improved seed varieties. This nuanced approach to seed distribution is interpreted as a responsive measure to the Constitutional Court's 2012 decision, creating an environment conducive to farmers harnessing superior seed varieties unencumbered by excessive regulatory constraints. *See also* Briana Batrisyia, and Imam Haryanto. "Analisis Regulasi Pada Tanaman Transgenik dalam Perlindungan Varietas Tanaman Bagi Pemulia Tanaman." *Jurnal USM Law Review* 6, No. 3 (2023): 931-942; Fahrul Fauzi, "Perlindungan Hukum Bagi Pemulia dan Varietas Tanaman dalam Kerangka Hukum Perlindungan Varietas Tanaman di Indonesia." *Wijaya Putra Law Review* 2, No. 2 (2023): 95-116; Simona Bustani, Rosdiana Saleh, and Christine ST Kansil. "Budaya Hukum Penerapan Perlindungan Varietas Tanaman dalam Mewujudkan Kedaulatan Pangan Indonesia di Era Global." *Hukum Pidana dan Pembangunan Hukum* 4, No. 2 (2022): 1-11.

or stealing seeds against corn farmers in cultivating crops and varieties reported by seed companies, show how farmers are not sovereign over their own seeds in producing or multiplying local corn seeds.

From the results of a study conducted on several Supreme Court jurisprudence on the application of criminal sanctions against farmers who cross-crop corn, it shows how farmers are not sovereign over their crops. This can be seen in the Decision of the Supreme Court of the Republic of Indonesia on behalf of Muhamad Mintoro in the case verdict, Number: 447/Pid.Sus/2019/PN, dated January 8, 2020, which in its verdict stated: The defendant, Muhamad Mintoro, has been proven legally and convincingly guilty of committing the crime of intentionally selling or trading plant varieties without the consent of the holders of plant variety protection rights. In relation to the cases of farmers, this shows that the law must provide a way for the executive authority to protect all members of society (including farmers)²¹ as much as possible, so that cases that befall farmers will

²¹ John Locke, *The Second Treatise of Civil Government*. (Ontario: Broadview Press, 2015). It is also emphasized that the notion that the law should provide a means for the executive authority to protect all members of society aligns with John Locke's political philosophy. Locke, an influential Enlightenment thinker, emphasized the concept of natural rights, including life, liberty, and property. According to Locke, individuals enter into a social contract to form a government, primarily with the purpose of protecting these fundamental rights. In Locke's view, the executive branch plays a crucial role in preserving the natural rights of citizens. The government, particularly the executive, is entrusted with the responsibility of maintaining order, ensuring security, and safeguarding the rights and well-being of all members of society. The executive authority, according to Locke, should act as a custodian of the social contract, upholding justice and protecting individuals from harm or infringement upon their rights. Therefore, the idea that the law must empower the executive to protect all members of society resonates with Locke's philosophy, as it reflects the foundational principle that government exists to secure the rights and interests of individuals within a collective political community. This alignment reinforces the importance of a just and effective legal system that empowers the executive authority to fulfill its role in ensuring the welfare and rights of the entire populace. *See also* John F. Henry, "John Locke, property rights, and economic theory." *Journal of Economic Issues* 33, No. 3 (1999): 609-624; Lisa Hill,

not happen again. Some cases related to maize seeds can be described as follows the defendant was convicted on the basis of selling sweet corn seeds of Talenta Variety owned by TP Agri Mitra Pertiwi without the consent and knowledge of the PVP right holder, namely PT Agri Makmur Pertiwi in accordance with the provisions in Article 6 of Law Number 29 of 2000 concerning PVP. The defendant's actions violate the rights of the holder of the Plant Variety Protection License that has been granted by the state to PT Agri Makmur Pertiwi with PVP Rights Certificate Number 00213/PVT/S/2013 dated August 13, 2013 issued by the Ministry of Agriculture of the Republic of Indonesia.

Based on the comparison of plant varieties tested by the Laboratory of plant variety protection examination results and DNA test results from the Brawijaya University Laboratory in Malang, it can be explained that the Talenta sweet corn seeds of PT Agri Makmur Pertiwi with the putihan sweet corn circulating in the market are the same as the Talenta variety owned by the PVP right holder, namely PT Agri Makmur Pertiwi and the Certificate of Analysis Results Number: 229/UN10.D40/TU/2019 made and signed by Prof. Widodo, S.Si., M.Si., Ph.D., Med.Sc., Head of LSIH based on PCR DNA testing on telenta sweet corn samples obtained the results that from the primers obtained suspect samples (D, E, and F) have fragment bands similar to sample C (F1) which are around 400bp and 180bp. Likewise, the District Court's decision in case Number 446/Pid.Sus/2019/PN Gpr, Number 445/Pid.Sus/2019/PN Gpr.

In light of the aforementioned scholarly discourse, it is posited that the primary obligation incumbent upon judges universally is the impartial and equitable adjudication of disputes or applications. Consequently, the imperative for judges, in delivering their decisions, is not confined solely to the strictures of written law; it extends to a conscientious consideration of unwritten legal principles. In the adjudication of legal matters, judges are duty-bound to hear cases

and Prasanna Nidumolu. "The influence of classical Stoicism on John Locke's theory of self-ownership." *History of the Human Sciences* 34, No. 3-4 (2021): 3-24; Jennis J. Biser, "Locke Versus Hobbes: Political Economy of Property Rights." *Journal For Economic Educators* 20, No. 1 (2020): 1-27.

without exception, rendering decisions that adhere to the principles of fairness and justice.²²

This narrative serves to underscore the contention that the potential for errors in legal rulings is mitigated when judges conscientiously apply established legal principles and recognize their inherent capacity to contribute to the evolution of legal precedent through their judgments. The discernible implication is that the judicial process inevitably becomes a source of legal development. When transposed to the specific realm of seed-related issues, it is argued that judges should embrace the perspective that seeds represent a divine endowment, originating from the Creator. Consequently, farmers engaged in the reprocessing of seeds should be exempt from legal censure, given that the processed seeds may inherently replicate the characteristics of superior seeds attributed to a seed company.

In practice, there has been a mistake in assessing the existence of criminal acts related to the implementation of the PVP Law. The processing of corn seeds by purchasing which is then reprocessed by farmers so as to produce superior seeds is not a crime. Given that seeds are a gift from God, even purchased seeds can be reprocessed by anyone including farmers. Therefore, it cannot be criminalized. It is impossible for a seedling to grow exactly the same considering that the seeds are superior because they are related to soil structure, rainfall and soil fertility.

The case against the farmer who was brought to trial on charges of committing a criminal offense of intentionally producing or multiplying seeds, preparing for propagation purposes, advertising, offering, selling or trading, exporting, importing, backing up without the consent of the PVP right holder as stipulated in Article 71 Jo. Article 6 paragraph (3) of Law No. 29/2000 on Plant Variety Protection. As stated by Pratyush Jhunjunwala, the existence of

²² Peter Mahmud Marzuki, *Teori Hukum*. (Jakarta: Prenada Media, 2020); Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory*. (Oxford: Oxford University Press, 2020); Marmor, Andrei. *Interpretation and Legal Theory*. (Oxford: Hart Publishing, 2005).

Article 27(3)(b), contains a lot of flexibility as it allows WTO member countries to choose intellectual property protection as well as the strength of intellectual property protection²³, which is a problem for farmers.

This shows that the protection of farmers' rights in the PVP Law and the Plant Cultivation System Law has not been maximized and has caused multiple interpretations in its application so that it cannot provide legal certainty to farmers. In addition, these laws have not provided farmers' sovereign rights and legal protection because these laws were designed in order to protect researchers, the agricultural industry and biotechnology so that they do not provide protection for those who practice traditional farming methods. The PVP Law is related to the regulation of superior seeds and introductions from abroad. According to Marthalia et al, it is said that there is still a long way to go to provide protection for one's creativity through simple patent protection for small and medium businesses if the requirements for simple patents are still equated with ordinary patents.²⁴ This could happen to farmers using superior seeds that are often disputed. Therefore, in some of the judges' considerations in several decisions have not considered the interests of plant breeders.

The government's authority to carry out planning for regional determination and production regulation, at the level of implementation, often clashes with the rights of farmers. Fahrul Fauzi stated that legal protection is given to plant varieties produced through plant breeding activities by farmers. The existence of this protection is to encourage passion and creativity in the field of plant breeding.²⁵ But in practice, farmers do not have the flexibility to grow crops according to their needs. The forced way of growing crops will cause damage to agriculture and the downturn of farmers' lives and

²³ Pratyush Jhunjunwala, "Analysis of Article 27 (3)(b) of TRIPs-the Content and Implications of the IP Protection on Plant Varieties." *American Journal of Economics and Business Administration* 1, No. 4 (2009): 313-319.

²⁴ Debby Marthalia, et al. *Perlindungan Hukum Terhadap HKI*. (Batam: Cendikia Mulia Mandiri, 2022).

²⁵ Fauzi, "Perlindungan Hukum Bagi Pemulia dan Varietas Tanaman dalam Kerangka Hukum Perlindungan Varietas Tanaman di Indonesia."

farmers' rights are being ignored. Production regulations packaged in government programs make farmers unable to determine the type and method of farming, this is due to the exclusion of farmers by the government in planning agricultural programs.

For farmers, farming is a matter of life and livelihood that is protected by the Constitution in accordance with Article 28A of the 1945 Constitution. Farmers who do not follow government programs will be criminalized with accusations of farming that invites pests and farmers will not be given help. The socialization forum contains the government's appeal for farmers to follow the program held by the government. If farmers do not follow the government's appeal, they can be criminalized and discriminated against. The government program is only based on the interests of entrepreneurs with funding charged to the state that is not based on the needs of farmers. In addition, the use of seeds from the government damages the ecological balance because they contain various chemicals that cause the loss of local seeds.

Supervision in the conduct of plant varieties has not been found in the legislation. However, it is argued by Kadek Sutrisna Dewi and I Wayan Wiryawan that the field of supervision in the protection of plant varieties should be strictly regulated in legislation. This is because these theories have a deep meaning for the protection of plant varieties.²⁶ With the supervision of the protection of plant varieties, the use of seeds is increasingly controlled and can be monitored regularly. Regarding the use of seeds Sinoma Bustani, Rosdiana Saleh, Christine S.T. Kansil stated as follows:

Sector development of plant varieties can be done through plant breeding in order to obtain superior plant varieties that survive weather changes, pests and increase agricultural production. Therefore, industrial countries

²⁶ Kadek Sutrisna Dewi, and I. Wayan Wiryawan. "Pengaturan Bidang Pengawasan dalam Rangka Memperkuat Hak Perlindungan Varietas Tanaman." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, No. 4 (2020): 796-810.

based on the capitalist concept emphasize legal protection for breeders and inventors individually as a form of appreciation of their hard work by emphasizing the utilization of economic value. On the other hand, farmers do not get attention from the economic side. So that small farmers will find it difficult to obtain good seeds, because their basic capital to buy seeds, fertilizers, and anti-pest drugs is very limited in availability.²⁷

From the above explanation, it appears that the Government has not shown its support for seed sovereignty among farmers in providing legal protection for the use of local seeding. Considering that the practice of exploitation of farmers continues. Agricultural land management has been built since long ago through trust between farmers reflected in local corn seed transactions. This shows that farmers in various regions are not sovereign over their own seeds. In addition, socio-economically, farmers have a weak bargaining position. The role of the state is needed in order to solve farmers' problems. As Dinar Wahyuni said, the main problem faced by farmers is their weak bargaining position²⁸. Farmers' activities are still focused on production activities (on farm), and not on agribusiness activities. This results in production that is not maximized because farmers' mastery and knowledge are still limited as well as in terms of information in agricultural production. The role of the state is needed in order to solve farmers' problems. Regarding the role of the state, Tatiek Sri Djatmiati stated that an understanding of state responsibility is related to the concept of Administrative Law which concerns the use of authority in carrying out tasks for public services²⁹. Ghana passed a new seed law, the Plant and Fertilizer Act, in 2010. The law requires a commitment from the state, supported by

²⁷ Bustani, Saleh, and ST Kansil. "Budaya Hukum Penerapan Perlindungan Varietas Tanaman dalam Mewujudkan Kedaulatan Pangan Indonesia di Era Global."

²⁸ Dinar Wahyuni, "Penguatan kelembagaan petani menuju kesejahteraan petani." *Jurnal Kesejahteraan Sosial* 10, No. 17 (2017): 9-12.

²⁹ Tatiek and Santoso. *Bunga Rampai Hukum Administrasi*

the donor community, to undertake the responsibility of marketing and multiplying seeds that are handed over to the private sector³⁰. This aims to accelerate the increased availability of improved seeds to farmers by providing opportunities to the private sector

The existence of the PVP Law is the government's effort to provide legal protection to farmers. As a country of law, the presence of law is to solve the problems faced by farmers. The existence of seed producer companies in various places must be controlled. The provision of unauthorized criminal sanctions for the use of plant seeds applied to farmers needs to be terminated. The Regional Government must be active by cooperating between companies and farmers, and by cooperating with the local government. The law must be there to protect farmers who are in a weak position both economically and from a juridical aspect. The reasons for the enactment of the Plant Variety Act in Indonesia are inseparable from the demands and consequences of Indonesia's participation as a signatory country to the 1994 GATT/WTO agreement, one of which contains the TRIPs agreement.³¹ The discovery of new varieties by farmers from their own traditional cultivation but producing seeds that are the same as protected seeds because they have been certified by the company.³²

Legal protection for corn farmers over the seeds they sell has not been fully implemented. The farmer's sale and purchase of seeds is related to the superiority of the seeds he planted, abundant yields and can be replanted repeatedly. Meanwhile, the company's hybrid corn seeds can only be planted once. In this case, there is no legal

³⁰ Adu-Gyamfi Poku, Regina Birner, and Saurabh Gupta. "Why do maize farmers in Ghana have a limited choice of improved seed varieties? An assessment of the governance challenges in seed supply." *Food Security* 10 (2018): 27-46.

³¹ Wuner, "Tinjauan Hukum Tindak Pidana Terhadap Hak Varietas Tanaman Ditinjau Dari Undang-Undang Nomor 29 Tahun 2000 Tentang Perlindungan Varietas Tanaman."

³² Simona Bustani, "Budaya Hukum Masyarakat Berdampak Terjadinya Kriminalisasi Petani yang Memanfaatkan Benih Varietas Baru (Dalam Mewujudkan Ketahanan Pangan)." *Hukum Pidana dan Pembangunan Hukum* 1, No. 2 (2019).

protection for farmers. As a result, many farmers in East Java were charged with stealing the company's seeds. As in the cases No. 516/Pid.B/2005/PN.Kdi, No. 562/Pid.B/2006/PN Kdi, No. 188/Pid.Sus/2010/PN/Kdi, and No. 447/Pid.Sus/2019/PN Gpr.

The role of the agricultural sector is very important for the growth of the country's economy in the field of food and for the utilization of labor. One of the food needs is corn, which is a plant originating from America and is the second staple food in Indonesia, which continues to increase every year so that its production needs to be increased in order to increase the growth and production of corn.

In relation to the above, Achmad Amseri, said that in Madura most of the land (>90%) of corn developed for food is local varieties, while in East Java, apart from Madura, it has been dominated (>70%) by high-yielding varieties of free-range and hybrids. Corn cultivation in Madura is still carried out in a simple (traditional) manner that has been practiced for generations. Farmers are still difficult to persuade to make changes and apply farming practices that can increase production, both regarding the use of superior varieties, the use of fertilizers, planting maintenance and plant spacing. Until now, the type of corn cultivated still uses local varieties whose production levels are still low. Looking at the potential of agricultural land for corn in Madura, the paradigm of farmers utilizing corn for consumption (subsistence) must be changed to industrial corn.³³

In addition, the problem of law enforcement and legal protection of farmers who discover new seeds is often interpreted as seed theft or misuse of the company's crossbred seeds with local corn seeds, leading to several corn farmers being put on trial and convicted. The verdicts were handed down on the basis of misusing the company's crossed seeds with local corn seeds and banning the farmers from planting corn by breeding corn seeds again.³⁴

This condition encourages the economic position of people in industrialized countries as a strong financier, more easily developing

³³ Achmad Amzeri, "Tinjauan Perkembangan Pertanian Jagung di Madura dan Alternatif Pengolahan Menjadi Biomaterial." *Rekayasa* 11, No. 1 (2018): 74-86.

³⁴ Amzeri

technology in the field of plant varieties that are private rights and prioritize the protection of inventors and plant breeders' rights. The position of Indonesian legal culture, which is based on the communal concept, is more public rights. In the communal concept, the results of invention or breeding are intended to be utilized jointly in the community. This is in accordance with the mentality of indigenous peoples in Indonesia who recognize the communal style, which prioritizes common interests over individual interests.³⁵

The stakeholders, especially the Government of Madura, have not been able to provide protection for seed sovereignty among farmers, considering that the practice of exploitation of farmers continues and the fate of farmers in various regions, especially in Madura, is a mirror of how farmers are not sovereign over their own seeds, which includes the use of activities to produce or reproduce local seeds of corn. The Plant Variety Protection Act (PVP Act) is outlined in Law No. 29 of 2000. This law regulates sanctions for those who carry out unauthorized cultivation or unauthorized certification. Farmers are unlikely to produce or multiply seeds (corn) for use by people who use plant varieties that have the potential to be developed but have not been managed properly and optimally.

This regulation would only benefit big investors. Farmers will not be able to grow, and they may be punished if they are found to have violated Law No. 29/2000 on Plant Variety Protection. This law regulates sanctions for those who carry out unlicensed cultivation or unlicensed certification. Farmers are unable to produce or reproduce seeds (corn) for use by people who use plant varieties that have the potential to be developed but have not been managed properly and optimally.

B. Protection Against Farmers in Conducting Plant Variety

³⁵ Bustani, Saleh, and ST Kansil. "Budaya Hukum Penerapan Perlindungan Varietas Tanaman dalam Mewujudkan Kedaulatan Pangan Indonesia di Era Global."

The issue of legal protection of farmers has been regulated in the 1945 Constitution of the Republic of Indonesia, which mandates legal protection of human rights, including farmers as stated in Article 28A of the 1945 Constitution of the Republic of Indonesia, the existence of this provision gives responsibility to the government. This is reinforced by the existence of Article 4 of the Human Rights Law which emphasizes the obligation of the state to fulfill all the rights of its citizens including farmers.³⁶

Before delving into the legal protection afforded to farmers, a critical legal concern that merits examination is the potential risk of seed patent infringement. Seed patent infringement typically ensues from the unauthorized utilization of patented seeds or plants, presenting a spectrum of risks that warrant explicit consideration. These risks encompass legal, financial, reputational, and operational dimensions.

In terms of legal risks, the foremost consideration involves the prospect of facing lawsuits for the unauthorized use, sale, or importation of patented seeds or plants. Legal consequences may encompass penalties, potentially entailing fines or imprisonment. Financial risks, as the second dimension, pertain to the potential obligation to pay damages or compensation to the patent holder, coupled with the possible loss of revenue resultant from legal actions impinging on business operations. The third facet, reputational risks, underscores the conceivable harm to a business's reputation stemming from legal actions, leading to a loss of trust among customers or business partners. Lastly, operational risks encompass potential disruptions to business operations due to legal proceedings and constrained access to specific seed varieties as a result of legal restrictions. Each of these dimensions underscores the multifaceted challenges that farmers may confront in navigating the legal landscape surrounding seed patent infringement. For these reasons,

³⁶ Agus Budiarto, and Rizky Karo Karo. "Marapu Customary Law Reconstruction Through The Establishment of Regional Regulations as an Attempt of Human Rights Protection Againsts The Native Sumba Society." *Multicultural Education* 7, No. 1 (2021): 195-201.

the government needs to thoroughly consider ethical and social implications, including: (i) A questionable ethical standing arising from the infringement of intellectual property; (ii) The potential for backlash from communities.

Law serves as a foundational framework encompassing values such as justice, truth, and social benefit. In this context, the state assumes a pivotal role in harmonizing the diverse needs of the populace, aligning with the economic principles outlined in Article 33 of the 1945 Constitution of the Republic of Indonesia.

Considering the state's crucial responsibility in addressing the broader needs of the populace, including intellectual property, as articulated by Niru Anita Sinaga, legal protection for intellectual property is diligently provided by the Republic of Indonesia. These protections are outlined in regulations designed to foster appreciation, respect, and safeguarding, thereby instilling a sense of security and bolstering enthusiasm for the creation of innovative, inventive, and productive works.³⁷

In the context of the state's crucial role in addressing the diverse needs of its populace, including matters of intellectual property as articulated by Niru Anita Sinaga, the Republic of Indonesia ensures legal protection for intellectual property through established procedures delineated in relevant regulations. These provisions embody an ethos of appreciation, respect, and protection, fostering a sense of security and kindling enthusiasm and passion for the creation of innovative, inventive, and productive works.³⁸ In light of this, it becomes evident that farmers necessitate protection not only to provide a secure environment but also to cultivate a space for creativity in the development of plant varieties. Such legal safeguards not only acknowledge and respect the contributions of farmers but also serve as a catalyst for sustained enthusiasm and ingenuity in

³⁷ Eny Suastuti, Muhammad Zulkifli Luman, and Anggi Syahbani. *Kedaulatan Petani dan Perlindungan Hukum*. (Malang: Inara Publishing, 2023).

³⁸ Niru Anita Sinaga, "Pentingnya Perlindungan Hukum Kekayaan Intelektual Bagi Pembangunan Ekonomi Indonesia." *Jurnal Hukum Sasana* 6, No. 2 (2020): 144-165.

agricultural innovation.

Law enforcement is an activity of harmonizing the relationship of values that manifest behavior as a series of value explanations to create and maintain a peaceful life.³⁹ The purpose of the PVP Law is to provide a strong legal basis for breeders to develop research that produces superior varieties in agriculture and economic value. The development of superior varieties is developed and utilized by using capital and technology as well as resources in order to prosper human needs better. In order to provide protection towards farmers, there are 4 (four) aspects that need to be evaluated in the PVP Law including, (1) the basic concept of varieties, (2) the scope of legal protection, (3) the procedure for applying for rights and (4) the right to sue and criminal provisions.⁴⁰

Government responsibility relates to the use of authority in carrying out duties for public services. The four aspects are related to the use of authority that includes the four aspects to conduct an evaluation in the context of legal protection of farmers. Therefore, the preparation of plans for the development of sustainable agricultural cultivation and plant varieties must be adjusted to the stages of the national development plan based on national interests in order to prosper the lives and livelihoods of farmers.

Basically, the PVP Law prioritizes the facilitation of the seed industry with the aim of monopolizing seeds.⁴¹ This is very contrary to the point of consideration in the PVP Law. Thus the presence of the PVP Act has ignored the hereditary traditions of farmers as plant breeders and discriminates against farmers, as well as narrowing

³⁹ Ivaini Andesgur, "Analisa kebijakan hukum lingkungan dalam Pengelolaan Pesticida." *Bestuur* 7, No. 2 (2019): 93-105.

⁴⁰ Raffael Moreno Chrishans, et al. "Perlindungan Hukum Terhadap Varietas Tanaman Sebagai Salah Satu Bentuk Hak Kekayaan Intelektual." *Multilingual: Journal of Universal Studies* 3, No. 4 (2023): 526-537; Yuliati Yuliati. "Perlindungan Hukum Bagi Konsumen Terkait Peredaran Pangan Hasil Rekayasa Genetika di Indonesia." *Arena Hukum* 11, No. 3 (2018): 540-557.

⁴¹ Rudy Rudy. "Implementation of Civil Rights against Vulnerable Groups in the Legal and Constitutional System in Indonesia." *Hasanuddin Law Review* 8, No. 3 (2022): 299-309.

opportunities for farmers to participate in the development of sustainable plant cultivation, so that it has the potential to become a barrier to community access, especially farmers.

In relation to the above, Rudi Natamiharja stated that discriminating against farmers and narrowing opportunities in the development of plant cultivation is a violation of human rights. Human rights include civil, political, economic, and socio-cultural rights that must not be violated by state administrators in exercising their power. Because this right has been guaranteed by the 1945 Constitution of the Republic of Indonesia. The PVP Law must reflect the protection and respect for human rights and dignity, including farmers. Therefore, the development of sustainable plant cultivation that is discriminatory is a violation of human rights. Philipus Hadjon agrees, stating that legal protection of dignity is a recognition of human rights that have been owned by legal subjects, especially corn farmers.

Legal construction should be built with agriculture and seed systems parallel with the phenomenon of agricultural modernization in developing countries and position small farmers not as subjects of plant breeding. Furthermore, advanced and resilient agricultural land management requires the responsibility of the State for the use of authority in carrying out duties for public services. Therefore, the state has an important role in developing the growth of the seed industry as well as increasing the role of farmers in plant breeding to produce superior varieties. Thus it is necessary to provide adequate legal protection to farmers.

Corn cross-planting by farmers is a step forward in developing local corn seeds for the welfare of farmers. However, the role of local governments in providing opportunities for farmers' welfare is strongly influenced by the socio-cultural conditions of corn farmers, which are clearly regulated in legislation. Unfortunately, not all regions are able to predict the proper utilization of corn cross-fertilization.

Government policies related to the application of criminal sanctions in the cultivation of corn cross-fertilization must be

interpreted in order to provide legal protection. The implementation of the PVP Act and legal protection aspects need further research and study in order to provide protection to corn farmers. As a supporting action, local regulations are needed to provide protection and legal certainty, which is strongly influenced by the socio-cultural conditions of farmers.

According to Vania Irawan, Plant Variety Protection (PVP) rights extend to both the utilization of seeds and the utilization of crops for propagation materials. The crux of plant variety benefits lies in seed propagation, making the use of crops for propagation material a pivotal aspect for PVP rights holders that warrants protection. Within this framework, the legal protection stipulated by the implementation of the PVP Law emerges as a crucial endeavor aimed at enhancing the welfare of farmers.⁴²

However, a noteworthy observation pertains to the insufficient maximization of legal protection by the local government, as evidenced by the prosecution of numerous corn farmers assembling plant varieties using local seeds. This underscores the imperative of robust legal protection to uphold the rights of farmers employing local seeds, ultimately contributing to the economic potential of the region and the well-being of the agricultural community. In order to fortify this initiative, collaborative efforts with local governments and seed company owners in respective regions become imperative. Such collaborations are instrumental in preventing cases from one region, such as Madura, adversely affecting other areas. Safeguarding farmers' rights to economic prosperity and creativity is not only a sovereign right but also a fundamental human right that necessitates protection.

In this context, the state's presence is pivotal, with the Regional Government taking legal actions to shield the welfare of corn farmers

⁴² Irawan, "Propagasi pada Varietas Tanaman yang Dilindungi Berdasarkan Undang-Undang Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman." *See also* Hariyanto Hariyanto. "Perlindungan Hukum Terhadap Hak Pemulia Tanaman Atas Produk Tanaman Hibrida Sebagai Bagian Dari Hak Kebendaan." *Mimbar Hukum* 20, No. 3 (2008): 487-494.

utilizing local seeds. Such measures not only enhance the economic potential of the region but also elevate the well-being of corn farmers, fostering a conducive environment for the successful implementation of the plant variety assembly program for local corn seed users, while simultaneously addressing critical legal protection aspects.

Furthermore, in the similar context, it is emphasized that the production targets used as parameters for agricultural development in the crop sector include rice, corn and soybeans. The existence of quality superior seeds needs to be pursued because the government is obliged to guarantee the quality of seeds to be circulated and traded as provided in Law No. 22 of 2019 concerning the Plant Cultivation System which is elaborated in PP No. 26 of 2021 concerning the Implementation of Agricultural, MOA No. 12/Permentan/TP.020/4/2018 concerning Production, Certification, and Distribution of Plant Seeds and other regulations. Based on the regulations mentioned above, efforts to provide protection for farmers' rights and protection of their rights already exist so that farmers need to be enforced so that they get a sense of security from various intimidation that could harm the farmers.⁴³

COURT VERDICTS IN PLANT VARIETY CRIMES

The problem of law enforcement in the case of several farmers being brought to trial on the basis of deliberately producing or reproducing seeds without the consent of the right holder as stipulated in the PVP Law. For example, the verdict of the Kediri District Court in case No. 261/Pid.Sus/2019/PN, Gpr. This also happened in the Aceh region where farmers were also criminalized. The criminalization of Munirwan took place quickly, lasting only 12 days after the

⁴³ Eny Suastuti, and Umi Purwandari. "Criminal Aspects of Plant Cultivation." *Technium Social Sciences Journal* 50 (2023): 359-363. See also Shaila Seshia. "Plant variety protection and farmers' rights: law-making and cultivation of varietal control." *Economic and Political Weekly* (2002): 2741-2747.

emergence of a police report numbered LP.A/57/VII/2019/SPKT dated July 11, 2019, allegedly reported by the Aceh Agriculture and Plantation Office⁴⁴. In reality, farmers who are suspects have facts and evidence that can be used to mitigate or show the truth in the case, so their cases do not reach the court. The verdict has caused legal debates that are considered conflicting because on the one hand to get the protection of human rights, on the other hand, the community also has an interest in maintaining that law enforcement based on the rules can also be implemented consistently in order to create a just legal certainty as stated in the constitution, UUDNRI 1945, Article 28.

Related to the issue of legal protection of farmers, Daud Septian and Gabriel Cahya Anugrah said, legal protection and empowerment of farmers in this case are related to planning, empowerment of financing and funding all the needs of farmers. Besides, community participation and the provision of criminal sanctions for people who commit crimes against farming⁴⁵. The legal protection in developing seeds cannot be resolved through criminalization because it involves the sovereign rights of farmers in cultivating crops and varieties.

In visualizing the study and ideas of the PVP Law on corn cross-fertilization with reference to the implementation of the provisions of the law, it shows the responsibility of the state to play an important role in protecting farmers regarding their sovereignty. Therefore, the issue of legal protection and law enforcement on corn cross-fertilization has not been fully implemented. As a state of law, the government is bound by the freedom of every citizen, especially farmers. It also needs to prepare a set of legal rules and regulations for farmers to receive legal protection. As explained by Tatiek Sri Djatmiati in relation to the theory of power, the power approach relates to the authority granted by law based on the principle of

⁴⁴ Muhammad Ihsan, "Perlindungan Hukum Bagi Pemulia Varietas Tanaman (Petani) Pasca lahirnya Undang-Undang Nomor 22 Tahun 2019 tentang Sistem Budi Daya Pertanian Berkelanjutan." *Jurnal Sosial dan Budaya* 8, No. 3 (2021): 867-880.

⁴⁵ Dandi Septian, and Gabriel Cahya Anugrah. "Perlindungan petani melalui konsep asuransi pertanian pada gabungan kelompok tani Desa Argorejo, Kabupaten Bantul." *Jurnal Penelitian Hukum Gadjah Mada* 1, No. 2 (2014): 92-108.

legality, which results in the supervision of the use of power by the government in the event of irregularities, the responsibility of the state based on the principle of legality.⁴⁶

Several farmers who were brought to court pointed out that farmers' rights had been ignored, leading to a fear of developing seeds according to their own techniques. According to Bustani Simona, the discovery of new varieties by farmers is their own traditional cultivation that produces seeds that are the same as protected seeds because they have been certified by the company⁴⁷. Therefore, it is not appropriate to criminalize farmers only based on the criminal provisions in the PVP Law and the Plant Cultivation System Law, on the basis of using plant varieties without the permission of the PVP rights holder.

PVP holders provide licenses to third parties for essential derivative varieties derived from a protected variety or a variety that has been registered and named, while the type of variety cannot be clearly distinguished from the protected variety, and varieties produced by always using the protected variety. In the indictment, the public prosecutor will find it difficult to use the PVP Law because it is allegedly difficult for the reporting company to prove infringement of plant varieties.

The criminal provisions in the corn seed legislation have resulted in the victimization of corn farmers. In the case of farmer Budi Purwo Utomo, who was acquitted by the Tulungagung District Court, he had to undergo trial at the Kediri District Court. The Kediri District Court then sentenced the defendant Budi Purwo Utomo to probation. In addition to the defendant Budi Purwo Utomo, there are several farmers facing similar cases on the basis of distributing corn seeds without certification, imitating the company's farming methods, falsifying brands and stealing seeds, as seen in Supreme Court Verdicts Number 516/Pid.B/2005/PN.Kdi, Number:

⁴⁶ Djatmiati, and Santoso. *Bunga Rampai Hukum Administrasi*

⁴⁷ Bustani, "Budaya Hukum Masyarakat Berdampak Terjadinya Kriminalisasi Petani yang Memanfaatkan Benih Varietas Baru (Dalam Mewujudkan Ketahanan Pangan)."

562/Pid.B/2006/PN Kdi, Number 188/Pid.Sus/2010/PN/Kdi, and Number 447/Pid.Sus/2019/PN Gpr.

In the case of Tukirin, a farmer from Nganjuk, East Java, he was accused of stealing seeds belonging to a hybrid corn seed producer, PT BISI, a subsidiary of Charoen Pokphand. The company reported Tukirin accusing him of illegally certifying their patented corn seeds. Farmer Suprpto, with charges of developing corn seeds so that they can be used as seeds. The method used by Tukirin and Suprpto was to plant hybrid corn seeds purchased from PT BISI. When the corn was 3 months old, and started to release pollen, then 3 lanes of corn were cut off. He calls these lanes female corn. One lane of corn was left to develop its pollen, this lane he called male corn. With this arrangement, the 3 female corns will be cross-pollinated from the male line. This unusual method of cultivation was successful. The harvested corn can be used as seed and grows well. Other farmers who found out about this were very happy because they did not have to spend a lot of money buying seeds.

According to Sudjana, Hernadi, Dede Mulyanto, Hazar Kusmayanti, the most fundamental right of farmers is to get direct protection of rights from the state to plant varieties.⁴⁸ In practice there are still some farmers who are criminalized in exercising the rights of plant varieties based on the case of Tukirin who was brought to trial on the basis of committing the crime of corn cross-pollination, whereas in accordance with these rights farmers must be directly protected by the state.

In its verdict on February 15, 2005, the panel of judges found the two farmers (defendants) in violation of Article 61 (1) letter b jo. Article 14 (1) of Law No.12 of 1992 concerning Plant Cultivation Systems. What Tukirin and Suprpto did was learned in cross-fertilization, not related at all to certification activities. Then the BISI company reported them for allegedly copying the cultivation method.

⁴⁸ Sudjana Sudjana, Hernadi, Dede Mulyanto, Hazar Kusmayanti, "Penyuluhan Perlindungan Hukum Hak Petani Berkaitan dengan Pemuliaan Varietas Tanaman di Desa Sayang Kecamatan Jatinagor Kabupaten Sumedang," *Jurnal Pengabdian Dharma Laksana Mengabdi Untuk Negeri* 4, No. 2 (2022): 118-125.

Several farmers who were brought to court shows how farmers are not sovereign over their own seeds in terms of producing or multiplying local corn seeds, which has an impact on farmers' reluctance to develop seeds according to their own techniques.

Law No. 29/2000 concerning Plant Variety Protection includes criminal sanctions against seeding activities. This law is part of intellectual property rights, and the legal protection of plant varieties is relatively new in Indonesia. The protection of plant varieties is based on the idea of something that humans have realized in national activities, so it is necessary to respect property rights and recognition. In China, the protection of plant varieties has been implemented since 1997. Overall, the laws and regulations related to plant varieties refer to the UPOV Convention and the legal content of other countries, and have not implemented the ultimate goal of protecting new plant varieties in China and its characteristics⁴⁹.

In accordance with Law No. 12 of 1992 on the Plant Cultivation System, one of the articles includes criminal sanctions for those who carry out cultivation and or certification without a license. Therefore, the inclusion of criminal sanctions in the law needs to be limited. This restriction is also on the power of the state in establishing criminal threats or criminal sanctions into the law.

Several farmers who were brought to court based on reports from the BISI corn seed company are based on economic interests alone. The hybrid corn seeds owned by the company when harvested cannot be used as seeds again for the next planting season, so that farmers must buy hybrid corn seeds again to be planted and the hybrid corn harvest can only be sold and consumed. Therefore, the cross-fertilization of corn by Tukirin and Suprpto and other farmers will be detrimental to the company that owns the hybrid seeds. The company is worried that its profits will decrease and farmers will no longer depend on the seeds sold by the company. Tukirin and other

⁴⁹ Yangkun Hou, "Protecting New Plant Varieties in China and Its Major Problems." *Innovation, Economic Development, and Intellectual Property in India and China: Comparing Six Economic Sectors* (2019): 327-346.

farmers have knowledge of local corn seed cultivation using cross planting.

According to Peter Mahmud Marzuki, cross-crop cultivation of local seeds, which results in good quality corn, is a right that is a package in the creation of humans as beings that have physical and existential aspects. Recognized or not by law, the right still exists as part of human existence itself.⁵⁰

The fact that numerous farmers have faced legal proceedings indicates a suboptimal performance of local governments and agricultural offices in supporting the agricultural community. Furthermore, the lack of evident support from local authorities for the autonomy of local seeds in crop cultivation highlights the absence of legal protection for corn farmers engaging in cross-planting with local seeds. The imposition of legal consequences on farmers for enhancing crop varieties through cross-fertilization of local seeds is not only legally questionable but also morally objectionable. Priyono underscores the ethical dilemma, questioning how moral values and justice can serve as a legal validation when positive law falls short in delivering justice. This moral and legal conundrum emphasizes the need for a more nuanced and comprehensive legal framework that aligns with both ethical considerations and the pursuit of justice in the context of agricultural practices.

Several farmers who have been brought to court shows that the role of local governments and agricultural offices in the regions has not worked optimally in helping farmers. In addition, the local government has not shown its support for the sovereignty of local seeds used by farmers in crop cultivation. This shows that there is no legal protection for corn farmers' cultivation in cross planting corn using local seeds. It is morally inappropriate to punish farmers for creating superior varieties through cross-fertilization of local seeds. In regard to this, many scholars stated, how can moral values and justice

⁵⁰ Hou.

be used as a legal validation when positive law is unable to reach justice.⁵¹

In Tukirin's case, prior to proceeding to trial, the Nganjuk District Government endeavored to facilitate a resolution between the farmer and the company through deliberation, with the hope that the company would withdraw its report. Regrettably, the attempt to bring the two parties together proved unsuccessful. Despite the efforts made, the company persisted with its report, prompting the initiation of legal proceedings. The Nganjuk Regency Government expressed profound disappointment with the company's decision to pursue the report, particularly given the pre-existing cooperation agreement between the local government of Nganjuk Regency and PT BISI. Before this case, the Nganjuk Regency Government and PT BISI had entered into a cooperative arrangement to cultivate corn on farmers' land. The local government asserted that the cooperative program aimed to enhance farmers' capabilities in cultivating hybrid corn. The company's decision to proceed with the report was seen as a departure from the collaborative spirit of the pre-established cooperation program, causing disappointment within the Nganjuk Regency Government.

Based on the results of research conducted in the Madura region, namely Pamekasan and Sumenep districts, the use of cross planting of local corn seeds has not been done, because in Madura the seeds used by farmers come from companies. Farmers obtain corn seeds through aid and by purchase, so the cases that occur in Nganjuk and Kediri and Tulungagung do not exist in the Madura region. The PVP Act in its implementation has not been able to provide protection to farmers because the practice of exploitation of farmers continues and the fate of farmers in various regions has become worse. The role of the Regional Government in the Madura Region needs to be

⁵¹ Salman Luthan, "Dialektika hukum dan moral dalam perspektif filsafat hukum." *Jurnal Hukum Ius Quia Iustum* 19, No. 4 (2012): 506-523; Hans Kelsen, *What is justice?: Justice, law, and politics in the mirror of science*. (California: Univ of California Press, 2022); Alf Ross, *On law and justice*. (Oxford: Oxford University Press, 2019).

increased so that farmers have sovereignty and receive legal protection against all means that harm farmers, including the provision of criminal sanctions for the implementation of the PVP Act and the Plant Cultivation System Act. In addition, it is reminded that related to the implementation of the law, the law must be aimed at fulfilling both the needs of the physical and existential aspects of humans in a useful life.⁵² Therefore, in relation to food security in agriculture, there are many problems with the implementation of the PVP Law, whether it concerns the recognition of farmers' rights, the regulation of plant cultivation rights, the protection of local varieties to the mechanism of seed trading, so that the protection of farmers must be adequate and prioritized.

The right of every farmer to decide on their own agricultural and food management by using local seeds that have been built since. In the absence of protection against the use of local corn seeds, the practice of exploitation of farmers continues, which is a reflection of how farmers in various regions are not sovereign over their own seeds. Therefore, philosophically, the legal protection of farmers' cultivation of cross-planted corn is the right of corn farmers and the state is responsible for providing legal protection to corn farmers. The few corn farmers who have been brought to court show that legal protection of corn farmers has not been fully implemented. It is the duty and responsibility of the local government to provide legal protection for farmers' cultivation of corn cross-fertilization in accordance with the constitution. According to Achmad Amzeri, corn cultivation in Madura is traditional and hereditary in farming. This is an obstacle to increasing corn production by using superior varieties. Corn cultivation still uses local varieties with low production levels.⁵³

⁵² Frances Stewart, "Basic needs strategies, human rights, and the right to development." *Human Rights Quarterly* 11, No. 3 (1989): 347-374; Paul Streeten, "Basic needs and human rights." *World Development* 8, No. 2 (1980): 107-111; David Bilchitz, *Poverty and fundamental rights: The justification and enforcement of socio-economic rights*. (Oxford: OUP Oxford, 2007).

⁵³ Amzeri, "Tinjauan Perkembangan Pertanian Jagung di Madura dan Alternatif Pengolahan Menjadi Biomaterial".

Implementation of the Plant Variety Assembly Law in the aspect of legal protection of corn farmers as an effort to improve farmers' welfare. The many corn farmers who are prosecuted for assembling plant varieties using local seeds show that protection has not been maximized by the local government. The issue of protecting farmers who use local seeds is important to increase the potential of the regional economy and the welfare of farmers. Regulating the assembly of plant varieties using local corn seeds and legal protection aspects by cooperating with local governments and seed company owners in the Madura region.

Instances occurring outside Madura are unlikely to have a substantial impact, given the proactive measures taken to anticipate issues related to the assembly of corn plant varieties using local seeds. Prioritizing legal protection for farmers is crucial, serving as a pivotal factor in enhancing the economic potential of the region and promoting the welfare of farmers. Safeguarding farmers' welfare and protecting their creative rights are not only sovereign rights but also communal rights that demand protection. In this context, it emphasizes the imperative of implementing people's sovereignty in alignment with legal provisions, ensuring that individuals can exercise their sovereignty within the framework established by the law. This underscores the significance of the constitution in a democratic rule-of-law state, highlighting the strategic value of the 1945 Constitution amendment in laying down the principles of such a state.⁵⁴

In light of these considerations, the state's presence is indispensable, necessitating the Regional Government to take legal measures to shield the welfare of local seed users. Continued support for the implementation of the assembly program for local seed users of corn varieties is pivotal to uphold the interests and well-being of the community.

⁵⁴ David Held, "Law of States, Law of Peoples: Three Models of Sovereignty." *Legal Theory* 8, No. 1 (2002): 1-44; Pavlos Eleftheriadis, "Law and Sovereignty." *Law and Philosophy* 29, No. 5 (2010): 535-569.

CONCLUSION

This study concluded that Plant Variety Protection Rights represent specific entitlements granted by the state to breeders or holders of plant variety rights, permitting them to share breeding varieties with others for a defined duration. Philosophically, engaging in cross planting of corn using local seeds to yield high-performance seeds is an expression of farmers' sovereignty. It is the State's responsibility to extend legal protection to farmers based on its authority in fulfilling public service duties. However, the prosecution of several farmers for producing or reproducing seeds without the right holder's consent, as evident in court decisions, indicates a shortfall in the state's responsibility to provide adequate legal protection to corn farmers, as mandated by the Plant Variety Protection (PVP) Law. The implementation of criminal provisions and legal safeguards for farmers remains incomplete, despite nearly 90% of locally developed corn crops relying on traditional farmer knowledge.

The potential criminalization of farmers for exercising their right to life and livelihood in seed development is not only unjust but also a violation of farmers' rights. Farmers deserve the opportunity to develop crops through their inherited knowledge without fear of legal repercussions. The presence of the PVP Law, rather than facilitating fair competition and innovation, has contributed to industry monopolization, limiting farmers' opportunities in plant development. This signifies an incomplete implementation of legal protection for corn farmers, highlighting that the local government's responsibility has not been maximized in ensuring the legal protection of corn cross planting. The imperative lies in fortifying legal frameworks to empower farmers and foster an environment conducive to agricultural development.

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“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

Martin Luther King Jr.

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