

**THE NAMING, REGISTRATION AND USE OF ORIGINAL VARIETIES FOR
PRODUCING ESSENTIAL DERIVATIVE VARIETIES**
(Government Regulation No. 13/2004 dated March 17, 2004)

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

that in order to implement the provisions in Article 6 paragraph (7) and Article 7 paragraph (4) of Law No. 29/2000 (BN No. 6617 pages 18A - 27A and so on) on protection of plant varieties, it is deemed necessary to stipulate a government regulation on the naming, registration and use of original varieties for producing essential derivative varieties;

In view of:

1. Article 5 paragraph (2) of the Constitution of 1945;
2. Law No. 29/2000 (BN No. 6617 pages 18A - 27A and so on) on protection of plant varieties (Statute Book of 2000 No. 241, Supplement to Statute Book No. 4043);

D E C I D E S :

To stipulate:

THE GOVERNMENT REGULATION ON THE NAMING, REGISTRATION AND USE OF ORIGINAL VARIETIES FOR PRODUCING ESSENTIAL DERIVATIVE VARIETIES.

CHAPTER I
GENERAL PROVISION
Article 1

Referred to in this government regulation as:

1. Protection of Plant Varieties, hereinafter called PVT is special protection provided by the state, in this case, represented by the government and implemented by PVT Office, for plant varieties resulting from plant flourishes through flourishing activities.
2. Plant Variety Protection Right is a special right given by the state to nourishers and/or holders of plant variety protection right to use directly varieties resulting from their nourishment or give approval to other people or statutory bodies to use them for a specified period.
3. Plant variety, hereinafter called variety, is a group of plants of one kind or species marked by shape of plant,

growth of plants, leaf, flower, fruit, seed and expression of genotype characteristic or combination of genotype that can differentiate from the same kind or species by at least one decisive characteristic and does not change if it is multiplied.

4. Plant nourishment is a series of activities of research and test or activities of discovery and development of a variety, in accordance with the standard method to produce new variety and maintain purity of seed of the produced variety.
5. Original variety is a variety used as the basic substance to produce essential derivative varieties including varieties obtaining and not obtaining PVT but already named and registered by the government.
6. Essential derivative variety is a variety resulting from assemble of original variety by using certain selection in such a way so that the variety maintains expression of the essential characteristics of their original variety but can be differentiated clearly with their original variety from characteristics arising from the derivation.
7. Local varieties are varieties already existing and cultivated by farmers from generation to generation, as well as becoming people's property and controlled by the state.
8. Varieties resulting from nourishment are varieties resulting from nourishment of plants.
9. Naming of varieties given PVT is an activity to give name to variety to be requested for PVT to PVT Office as identity of the relevant variety.
10. Naming of variety not given PVT is an activity to give name to local variety and variety resulting from nourishment not given PVT, as identity of the relevant variety and fulfill the legal requirements for obtaining economic benefit for the owner.
11. Registration of variety is an activity to register an activity

for the interest of collection of data on local variety, released variety and variety resulting from nourishment, which is not released, as well as data on legal relations between the said variety and the owner and/or user.

12. Minister is the Minister of Agriculture.

13. Day is working day.

CHAPTER II

PRODUCTION OF ESSENTIAL DERIVATIVE VARIETIES

Article 2

- (1) Production of essential derivative varieties from original varieties must meet two requirements:
- through certain selection methods; and
 - characteristic of original varieties is still maintained.

- (2) The certain selection methods as meant in paragraph (1) letter a includes:
- natural mutation;
 - induction mutation;
 - individual selection of the existing varieties;
 - reverse hybrid;
 - somaklonal variation; and/or
 - genetic engineering.

- (3) The characteristic of original varieties which can be maintained as meant in paragraph (1) letter b is 70% (seventy percent) at the minimum.

- (4) Further provisions on the selection methods as meant in paragraph (2) and procedures for calculation of percentage of characteristic of original varieties as meant in paragraph (3) are stipulated by the Minister by observing recommendations and considerations of institutions concerned.

Article 3

- (1) Original varieties used for producing essential derivative varieties can be in the form of:
- local varieties;
 - varieties resulting from nourishment, whether given PVT or not.
- (2) The local varieties or varieties not given PVT as meant in paragraph (1) must be named and registered first by

PVT Office before they are used as original varieties for producing essential derivative varieties.

CHAPTER III

NAMING, REGISTRATION AND USE OF LOCAL VARIETIES TO PRODUCE ESSENTIAL DERIVATIVE VARIETIES

Part One

Naming and Registration

Article 4

Naming of local varieties must meet the following requirements:

- reflecting identities of the said local varieties;
- not confusing characteristic, value or identity of a local variety;
- not already used for name of the existing variety;
- not using name of famous people;
- not using name of nature;
- not using state symbol; and/or
- not using trade mark for goods and services resulting from substances of propagation, such as seed or substances resulting from other variety, plant transport and rental service.

Article 5

- Regents/mayors or governors acting for and on behalf as well as representing interests of communities owning local varieties in their respective regions give names of local varieties on the basis of the naming requirements as meant in Article 4.
- Regents/mayors or governors register local varieties already given name to PVT Office.
- PVT Office registers the local varieties as meant in paragraph (2) in the PVT General List in a period not more than 30 (thirteen) days as from the registration is conveyed by the regents/mayors or governors.
- In the case of name of local varieties being not in accordance with the requirements as meant in Article 4, PVT Office recommends the improvement of the name of the local varieties in writing in a period not later than 30 (thirteen) days as from the registration is conveyed by the regents/mayors or governors.
- In the case of in the period not later than 3 (three)

months as from the date of recommendation about the improvement of name of local varieties from PVT Office as meant in paragraph (4), regents/mayors or governors not responding, the registration is considered withdrawn.

Article 6

PVT Office announces the naming and registration of local varieties as meant in Article 5 in PVT Gazette.

Article 7

PVT Office names and registers local varieties whose geographical distribution covers inter-province as well as announces them in PVT Gazette.

Article 8

Further provisions in the naming and registration of local varieties as meant in Articles 5, 6 and 7 are stipulated by the Minister.

Part Two

U s a g e

Article 9

- (1) Everybody or statutory body planning to use a local variety as original variety for producing essential derivative variety is obliged to make an agreement first with regents/mayors, governors or PVT Office representing interests of communities owning the local variety.
- (2) The agreement as meant in paragraph (1) must be made before notary.
- (3) The agreement as meant in paragraph (1) at least must contain the following provisions:
 - a. name and address or domicile of people or statutory body producing essential derivative varieties;
 - b. rights and obligations of parties;
 - c. method of settlement of dispute possibly arising between the parties.
- (4) The agreement as meant in paragraph (1) can regulate compensation for communities owning original varieties obtained from essential derivative varieties having basic substance of local varieties.

Article 10

- (1) In the case of the agreement as meant in Article 9 regu-

lating compensation for communities owning local varieties, the compensation is used for:

- a. enhancing welfare of communities owning the local varieties; and
- b. conservation of the local varieties and preservation of microorganisms in locations of the local varieties.

- (2) Regents/mayors, governors or PVT Office representing interests of communities owning local varieties implement the use of compensation as meant in paragraph (1).

Article 11

If essential derivative varieties whose original varieties come from local varieties are requested for PVT Office, in addition to the copy of the agreement as meant in Article 10, other documents required for applications for PVT must be enclosed.

CHAPTER IV

NAMING, REGISTRATION AND USE OF VARIETIES RESULTING FROM NOURISHMENT FOR PRODUCING ESSENTIAL DERIVATIVE VARIETIES

Part One

Naming and Registration

Article 12

- (1) Every variety resulting from nourishment, which will be used as original varieties for producing essential derivative varieties must be given names which constitute identities of the said varieties.
- (2) The naming of varieties resulting from nourishment as meant in paragraph (1) must meet the following requirements:
 - a. reflecting identities of the said local varieties;
 - b. not confusing characteristic, value or identity of a local variety;
 - c. not already used for name of the existing variety;
 - d. not using name of famous people;
 - e. not using name of nature;
 - f. not using state symbol; and/or
 - g. not using trade mark for goods and services resulting from substances of propagation, such as seed or substances resulting from other variety, plant transport and rental service.

Article 13

- (1) Owners of varieties resulting from nourishment to be used as original varieties for producing essential derivative varieties must be given names of the varieties by fulfilling the requirements as meant in Article 12 paragraph (2).
- (2) The owners of varieties resulting from nourishment as meant in paragraph (1) register varieties resulting from their nourishment to PVT Office.
- (3) PVT Office registers varieties resulting from nourishment in the PVT General List in a period not later than 30 (thirty) days as from the date when the registration is conveyed by owners of varieties resulting from nourishment.
- (4) In the case of names of varieties resulting from nourishment being not in accordance with the requirements as meant in Article 12 paragraph (2), PVT Office recommends the improvement of the names of varieties resulting from nourishment in writing in a period not later than 30 (thirty) days as from the date when the registration is conveyed by owners of varieties resulting from nourishment.
- (5) In the case of in the period not later than 3 (three) months as from the date of recommendation about the improvement of name of varieties resulting from nourishment from PVT Office as meant in paragraph (4), owners of varieties resulting from nourishment not responding, the registration is considered withdrawn.

Article 14

PVT Office announces the naming and registration of varieties resulting from nourishment as meant in Article 13 in PVT Gazette.

Article 15

Further provisions in the naming and registration of as meant in Articles 12, 13 and 14 are stipulated by the Minister.

Part Two

U s a g e

Article 16

- (1) Everybody or statutory body planning to use varieties resulting from nourishment for producing essential derivative variety is obliged to make an agreement first with owners of the varieties resulting from nourishment.
- (2) The agreement as meant in paragraph (1) must be made before notary.
- (3) The agreement as meant in paragraph (1) at least must contain the following provisions:
 - a. name and address or domicile of parties;
 - b. rights and obligations of parties;
 - c. method of settlement of dispute possibly arising between the parties.
- (4) The agreement as meant in paragraph (1) can regulate compensation for owners of varieties resulting from nourishment.
- (5) In the case of owners of varieties resulting from nourishment being not nourishers of the varieties, the agreement as meant in paragraph (1) must continue guaranteeing rights of the nourishers to obtain adequate compensation by observing economic benefits which can be obtained from the essential derivative varieties.

Article 17

If the essential derivative varieties having original varieties of varieties resulting from nourishment are requested for PVT to PVT Office, in addition to the copy of the agreement as meant in Article 16, other documents required for applications for PVT must be enclosed.

CHAPTER V

PVT DOCUMENTATION SYSTEM AND INFORMATION NETWORK

Article 18

- (1) PVT Office executes PVT documentation system and information network in interests of naming and registration of varieties throughout Indonesia, both local varieties and varieties resulting from nourishment given and not given PVT.

(2) The PVT documentation system and information network as meant in paragraph (1) cover data and information on local varieties existing throughout Indonesia and regional government institutions representing interests of communities owning local varieties, as well as data and information on varieties resulting from nourishment, whether given PVT or not.

(3) The data and information on local varieties as meant in paragraph (2) include names of varieties, shape of plants, growth of plants, stem, leaf, flower, fruit, seed, special characteristics, growth habit, geographical distribution, picture and/or photo, communities owning local varieties and date of registration.

(4) The data and information on varieties resulting from nourishment as meant in paragraph (2) include names of varieties, shape of plants, growth of plants, stem, leaf, flower, fruit, seed, origin of varieties, growth habit, picture and/or photo made in description, names of owners, nourishers, nourishment methods, moment of nourishment and date of registration.

Article 19

Everybody or statutory body needing the information on varieties as meant in Article 18 can ask them from PVT Office.

CHAPTER VI

TRANSITIONAL PROVISION

Article 20

With the enforcement of this government regulation, the naming in the framework of release of varieties submitted to the National Seed Agency and not yet securing decision on release is based on the provision in this government regulation.

CHAPTER VII

CONCLUSION

Article 21

Technical directives for Government Regulation No. 44/1995 on plant seedling related to naming of varieties are declared null and void.

Article 22

The government regulation comes into force as from the date of promulgation.

For public cognizance, the government regulation shall be promulgated by placing it in Statute Book of the Republic of Indonesia.

Stipulated in Jakarta

On March 17, 2004

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

sgd

MEGAWATI SOEKARNOPUTRI

Promulgated in Jakarta

On March 17, 2004

THE STATE SECRETARY OF THE REPUBLIC OF INDONESIA

SIA

sgd

BAMBANG KESOWO

STATUTE BOOK OF
THE REPUBLIC OF INDONESIA YEAR 2004 NO. 30

ELUCIDATION ON

GOVERNMENT REGULATION NO. 13/2004 CONCERNING

NAMING, REGISTRATION AND USE OF ORIGINAL VARIETIES FOR PRODUCING ESSENTIAL DERIVATIVE VARIETIES

I. GENERAL

Efforts to enhance competitiveness of plants are executed by means of, among others, enhancement of productivity and quality through improvement of genetic potentials of plant varieties. In relation thereto, nourishment resulting new superior varieties needs to be encouraged by giving incentives to people or statutory bodies undertaking business activities in the said field.

Efforts to accelerate assemble of a superior variety are done by producing essential derivative varieties, through the enhancement of the added value of a variety by supplementing one or several superior characteristics through natural mutation, induction mutation, somaklonal variety, individual selection of plant, reverse hybrid and

transformation with genetic engineering from local varieties.

Original varieties for producing essential derivative varieties can be in the form of varieties securing and not securing plant variety protection (PVT) but already given name and registered by the government. Varieties not securing PVT can be in the form of local varieties and varieties resulting from nourishment.

The use of original varieties for producing essential derivative varieties must secure approval from the owners and in the agreement, the sharing of economic benefits of the use of the essential derivative varieties must be regulated. The approval of the use of local varieties basically constitutes right and authority of communities owning a variety. Yet, since members of the community are numerous, difficult to identify and frequently do not understand their right and methods to secure the rights, regents/mayors or governors whose regions cover location of a variety for and on behalf and in interests of community owning a local variety give approval to persons or statutory bodies planning to use the local variety as original variety in the production of essential derivative variety as the form of a written agreement. In order to facilitate the verification, the written agreement must be made in the form of a notary deed.

Compensation which must be given by persons or statutory bodies making essential derivative varieties for communities owning local varieties with regard to economic benefit obtained from the essential derivative variety can be stipulated in the agreement. The compensation is used for enhancing welfare of the said community and conservation of the local variety in situ or ex situ.

The principle of granting of compensation for economic benefits of essential derivative varieties having original variety of local variety also applies to essential derivative varieties having original varieties of varieties resulting from nourishment.

By obtaining the compensation for economic benefits of the use of essential derivative varieties made from varieties resulting from nourishment, persons or statutory bodies undertaking nourishment obtain compensation for result of their work. Such a situation will motivate nourishers to be more productive to result in new superior variety, which in due time, will be able to enhance welfare of the Indonesian people.

In a bid to enable owner of a local variety or variety resulting from nourishment used as original variety for producing essential derivative variety to obtain compensation for economic benefits obtained from the use of the essential derivative variety, the local variety and variety resulting from nourishment must be named and registered first.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear

Article 2

Paragraph (1)

Sufficiently clear

Paragraph (2)

The current methods of production of essential derivative varieties from original varieties include natural mutation, induction mutation, individual selection of the existing varieties, reverse hybrid, somaklonal variation or genetic engineering. Following the progress of science and technology, other new methods are possible to use in the future.

Natural mutation means spontaneous mutation.

Induction mutation means mutation arising from irradiation, physics and chemical treatment.

Individual selection of the existing varieties means selection to obtain individuals with certain characteristics from a variety.

Somaklonal variation means variation arising from the use of multiplication of plants in invitro media.

Reverse hybrid means repeating hybrid by using varieties as repeating parent.

Genetic engineering is insertion of one character or more through recombined DNA (Deoxyribose Nucleic Acid) technology.

Paragraph (3)

A variety can be called essential derivative variety if the variety results from assemble of original variety by using certain selection in such a way so that the variety maintains at least 70% of the expression of characteristics of the original variety.

Paragraph (4)

In order to determine the calculation of percentage of the same characteristics between essential derivative variety and original variety, a list of characteristics as identities of every plant related to the granting of PVT right is needed. In a bid to ensure the same tool and method of comparison, the quantity and list of characteristics of plants need to be stipulated.

The institutions concerned include the National Atomic Energy Board for method of selection by induction mutation using irradiation of gamma ray, and the Biological and Food Security Commission for method of selection by genetic engineering.

Article 3

Paragraph (1)

Letter a

Local varieties include Indonesian original varieties and varieties coming from other countries but already cultivated by farmers and becoming property of local communities from generation to generation.

Letter b

Since PVT is a law of choice, owners of varieties resulting from nourishment can determine directly whether their varieties are requested for PVT or not.

Paragraph (2)

If varieties resulting from nourishment are to be requested for PVT or to be used as original varieties for producing essential derivative varieties, the varieties must be named and registered first by PVT Office.

Article 4

The naming of local varieties must reflect identities of the local varieties. In relation thereto, the naming should not cause confusion or misleading in connection with characteristics, value or identities of the varieties, for instance, the shape of plant of the variety is shorter than other varieties of the same species, but it is named "Si Jangkung". The naming causes confusion. In addition, if there has been a name, e.g. "Si Jangkung Putih" for melati variety, later another melati variety with characteristics nearly the same but flower corona collecting and recommended for having the same name, namely "Si Jangkung Putih", the naming is not permitted.

The naming of a variety by name of famous people is not allowed, unless otherwise securing approval from the

relevant persons or heirs, such as "Soekarno Merah" for a mawar variety whose flower is light red.

Article 5

Paragraph (1)

Representation of interests of communities owning local varieties are determined on the basis of geographic distribution of the local varieties, namely in the case of a local variety being located in a regency/city, the local regent/mayor represents the interest, and in the case of a variety being located in more than one regency/city in one a province, the local governor represents the interest, while PVT Office represents the interest if location of a local variety is inter-provincial.

The representation of interests of communities owning a local variety starts from the naming of local variety.

Paragraphs (2) and (3)

Sufficiently clear

Paragraph (4)

The recommendation about the improvement of naming of local varieties is conveyed with a view of assisting the naming to be in accordance with the requirements as meant in this government regulation.

Paragraph (5)

Since the naming of local varieties having geographical distribution in one regency/regency constitutes responsibility of regents/mayors and having geographical distribution inter-provincial constitutes responsibility of governor, PVT Office is waiting.

In the case of governor not giving response after the opportunity to improve the naming in accordance the recommendation of PVT Office, for the purpose of legal certainty, it needs a legal assumption that the registration of the local variety is withdrawn.

Article 6

PVT Gazette constitutes a media of provision of information on varieties in the form of printed matter published periodically by PVT Office in fulfilling the principle of publicity.

Articles 7 and 8

Sufficiently clear

Article 9

Paragraph (1)

See elucidation on Article 5 paragraph (1)

Paragraph (2)

The provision solely aims at facilitating verification.

Paragraphs (3) and (4)

Sufficiently clear

Article 10

Local varieties are microorganisms whose conservation needs to be managed and maintained. In relation thereto, compensation obtained from economic benefit of the use of essential derivative varieties having basic substance of local varieties must be used for not only enhancing welfare of communities owning the local varieties, such as provision of production facilities and infrastructure, but also efforts to conserve of the local varieties, such as the development of microorganism banks.

It also applies to local varieties which are no longer found in the original areas because of certain causes but preserved in other regions, if the local varieties are used for producing essential derivative varieties.

Excessive exploitation of natural resources or uniform variety development in a broad scale, such as the clearing of forest areas saving microorganisms to be converted into plantation, with certain kinds of plants, can make a local variety no longer found in the original area. The absence of the local variety in the original area is not attributable fully to mistake of communities in the original area, but rather caused by external factor and beyond capability of the community to maintain it. For example, variety of black orchid is increasingly rare in Kalimantan because forests being habitat of the plant are exploited excessively. In the case, someone or statutory body may view the existence of the local variety as collection or hobby. In the case of local varieties being used for producing essential derivative varieties, the economic benefit earned from the use of the local varieties for producing essential derivative varieties must be given to original regions of the varieties for interests of welfare of the local communities and conservation of the said varieties.

Article 11

The other documents required for applications for PVA are, for example, name and address or domicile of person or statutory body submitting application for PVT and identities of local varieties as original varieties for producing essential derivative varieties, which are required in the applications for PVT on the basis of the law in force.

Article 12

Paragraph (1)

The provision constitutes elaboration of the provision in Article 6 paragraph (6) of Law No. 29/2000 on plant variety protection.

Paragraph (2)

See elucidation on Article 4.

Article 13

Paragraph (1) up to paragraph (3)

Sufficiently clear

Paragraph (4)

The recommendation about the improvement of the naming of varieties resulting from nourishment is conveyed to ensure the naming in accordance with the requirements as regulated in this government regulation.

Paragraph (5)

Since the naming of varieties resulting from nourishment constitutes responsibility of owners of the varieties, PVT office is in a waiting position.

In the case of owners of the varieties not giving response after the opportunity to improve the naming in accordance the recommendation of PVT Office, for the purpose of legal certainty, it needs a legal assumption that the registration of the local variety is withdrawn.

Articles 14 and 15

Sufficiently clear

Article 16

Paragraph (1)

A variety resulting from nourishment can be given PVT or not, dependent on the owner. Even though a variety resulting from nourishment is not given PVT, since essential derivative variety having basis substance of variety

resulting from nourishment only supplements one or several new characteristics to the characteristics of the variety resulting from nourishment, the use of variety resulting from nourishment as basic substance of essential derivative variety must give comparable appreciation to the owner of variety resulting from nourishment. In relation thereto, people or statutory bodies planning to use varieties resulting from nourishment as original varieties for producing essential derivative varieties must make an agreement first with the owners of the original varieties.

Paragraph (2)

The provision solely aims at facilitating verification.

Paragraphs (3) and (4)

Sufficiently clear

Paragraph (5)

The nourisher right constitutes a right guaranteed by Law No. 29/2000 on plant variety protection, particularly Article 8.

Article 17

The other documents required for applications for PVA are, for example, name and address or domicile of person or statutory body submitting application for PVT and identities of varieties resulting from nourishment as original varieties for producing essential derivative varieties, which are required in the applications for PVT on the basis of the law in force.

Article 18

Paragraph (1)

The PVT documentation system and information network is organized by PVT Office by means of processing data on local varieties throughout Indonesia, including names of varieties, descriptions of varieties, special characteristics, pictures and/or photos, geographical distribution, communities owning and representatives of interests of the communities as well as date of naming and registration; data on varieties resulting from nourishment including names of varieties, names of owners and/or nourishers, nourishment methods, moment of nourishment, description of varieties, sources as well as pictures and/or photos and data on varieties given PVT through both ordi-

nary applications or application with priority. The data are processed in a computerized manner and always renewed as well as accessible by whomever needing them.

Paragraph (2)

The development of data and information on local varieties is needed to ascertain identity of every local variety and community owning local variety as well as government institution representing interest of the community.

The development of data and information on varieties resulting from nourishment is needed to ascertain identity of every variety resulting from nourishment, especially for varieties to be requested for PVT and to be used as original varieties for producing essential derivative varieties as well as legal relations between the varieties and holders of the PVT right.

Paragraphs (3) and (4)

Sufficiently clear

Article 19

Sufficiently clear

Article 20

The naming of varieties by the previous systems before the enforcement of this government regulation was already applied to many varieties and known widely by communities using the said varieties so as to result in difficulties if they are changed promptly on the basis of this government regulation.

Article 21

Based on the consideration as meant in elucidation on Article 20, new provisions on the naming of varieties based on this government regulation are only applied to new varieties before the enforcement of this regulation.

Article 22

Sufficiently clear

SUPPLEMENT TO STATUTE BOOK OF
THE REPUBLIC OF INDONESIA NO. 4375

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