

LAWS OF REPUBLIC OF INDONESIA

NO. 29 OF 2000

ON

PLANT VARIETY PROTECTION

WITH THE BLESSING OF GOD THE ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that the Republic of Indonesia is an agricultural country, whereby a developed, efficient and strong agriculture plays an important role in the national development objectives;
- b. that in order to develop a progressive, efficient and strong agriculture, it must be supported by, among others, the ready supply of distinct crops and plants;
- c. that germplasm resources which are the main plant materials, must be preserved and optimized as much as possible in the plan to obtain a superior crop or plant without any loss to the parties that are involved in the seedling industries;
- d. that in order to further increase the interest and role of an individual or corporate body to conduct cultivation activities in producing new and superior varieties, plant breeders or the Plant Variety Protection rights owner are given certain rights and legal protection;
- e. that in accordance with the international convention, plant protection act has to be legalized;
- f. that based on the considerations of sub-paragraphs a,b,c,d, and e, it is deemed necessary to establish laws on the protection of plant varieties within the legal constitution.

In view of:

- 1. Article 5 Paragraph (1), Article 20 Paragraph (1), and Article 33 of the National Constitution Republic of Indonesia of 1945;
- 2. Law No. 6 of 1989 concerning Patent (Official Gazette of 1989 No. 39, Additional Official Gazette No. 3398) as amended by Law No. 13 of 1997 (Official Gazette of 1997 No. 30, Additional Official Gazette No. 3680);

3. Law No. 12 of 1992 concerning Plant Cultivation System (Official Gazette of 1992 No. 46, Additional Official Gazette No. 3478);
4. Law No. 5 of 1994 concerning Confirmation of United Nations Convention on Biological Diversity (Official Gazette of 1994 No. 41, Additional Official Gazette No. 3556);
5. Law No. 7 of 1994 concerning Confirmation of the Agreement of Establishing the World Trade Organization (Official Gazette of 1994 No. 57, Additional Official Gazette No. 3564);
6. Law No. 23 of 1997 concerning the Management of Living Environment (Official Gazette of 1997 No. 68, Additional Official Gazette No. 3699);
7. Law No. 41 of 1999 concerning Forestry (Official Gazette 1999 No. 169, Additional Official Gazette No. 3888).

With the joint agreement between

THE HOUSE OF REPRESENTATIVES REPUBLIC OF INDONESIA

and

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HEREBY RESOLVE:

To enact:

LAW ON PLANT VARIETY PROTECTION

CHAPTER 1 GENERAL PROVISIONS

Article 1

The terminology used in this Act shall have the following meanings:

1. Plant Variety Protection, hereinafter abbreviated as PVP, is a specific protection, provided by the country, in this case represented by the Government and implemented by the Plant Variety Protection Office towards the variety of crops and plants produced by plant breeders through agricultural activities.

2. Plant Variety Protection Rights are specific rights given by the country to plant breeders and/or Plant Variety Protection rights holder to exercise his given rights or give his consent to any parties or corporate bodies to use it for a specified period of time.
3. Plant varieties, hereinafter referred to as varieties, refer to a group of crops/plants from one type or species that is denoted by its shape, growth, leaves, flowers, fruits, seed and its genetic characteristics or genetic combination that can be differentiated from similar types or species by at least one determining attribute and when reproduced do not experience any change.
4. Plant breeding is a series of research activities and experiments or the discovery and development of a particular variety, in accordance with, standard methods for the production of new varieties while protecting the purity of the new seed that is produced.
5. Plant breeders, hereinafter referred to as breeders, are those who carry out breeding activities.
6. The PVP Consultant is a person or legal body which is listed in the Plant Variety Protection Consultant List at the Plant Variety Protection Office.
7. Seeds of plants, hereinafter referred to as seeds, are plants and/or sections of which are used to multiply and/or propagate plants.
8. The Plant Variety Protection Inspector is an officer appointed by the Minister to conduct substantial inspection and provide recommendation for Plant Protection Variety rights applications.
9. The Plant Variety Protection Office is an organizational unit within the department that implements and has the authority in the field of Plant Variety Protection.
10. Minister refers to the Minister of Agriculture.
11. Department refers to the Department of Agriculture.
12. Priority right is the right given to an individual or legal body that submits a Plant Variety Protection rights application in Indonesia after submitting the application for the same plant in another country.
13. License is the permission given by the Plant Variety Protection rights holder to a party or another legal body to exercise the full or partial rights of the Plant Variety Protection.
14. Compulsory Licence is a licence given by Plant Variety Protection rights holder to the applicant based on decisions made by State Court
15. Royalty is compensation with economic value given to the Plant Variety Protection rights holder in the issuance of the license.

16. Public Register of Plant Variety Protection is the official register that records all the decisions and activities relating to Plant Variety Protection.
17. The Plant Variety Protection Official Bulletin is the official communication medium for any activities relating to Plant Variety Protection and is published periodically by the Plant Variety Protection Office for the benefit of the general public.

CHAPTER II

SCOPE OF THE PLANT VARIETY PROTECTION

Part One

Plant Varieties That May Be Issued Plant Variety Protection

Article 2

- (1) Varieties that may be issued Plant Variety Protection include those plants or species that are new, distinct, uniform and stable and given a denomination.
- (2) A variety is deemed as new when at the point of approval of the Plant Variety Protection rights application, the propagation material or the harvested products have not been traded in Indonesia or may have been traded for less than a year, or have been traded overseas for no more than four years for a seasonal plant and six years for annual plant.
- (3) A variety is regarded as distinct when it may be differentiated clearly from other varieties which existence is already publicly known at the time of the approval of the Plant Variety Protection rights application.
- (4) A variety is deemed as uniform when its main or important features are proven uniform although varied as a result of changes in planting method and environment.
- (5) A variety is regarded as stable when its characteristics do not experience any changes after repeated cultivation or when multiplied in large quantities through specific reproduction cycles do not undergo change at the end of each reproduction cycle.
- (6) Varieties that may be given Plant Variety Protection should be given a denomination based on the following provisions:
 - a. The denomination of the variety can still be used despite the expiry of the protection period;
 - b. The denomination should not cause any confusion about the characteristics of the variety;
 - c. The denomination is given by the applicant of the Plant Variety Protection rights and is registered at the Plant Variety Protection office;

- d. If the denomination is not suitable in relation to sub-paragraph (b), the Plant Variety Protection office has the right to reject the denomination and request for another;
- e. If the denomination of the variety has been used for other varieties, the applicant must replace it with another denomination;
- f. The denomination of the proposed variety may be submitted as a trademark is in accordance with prevailing laws.

Part Two Plant Varieties That Cannot Be Issued Plant Variety Protection

Article 3

Varieties that cannot be given Plant Variety Protection are those that are used for purposes which conflict with prevailing laws, social order, ethics/morality, religious norms, health and the conservation of the environment.

Part Three Duration of Plant Variety Protection

Article 4

- (1) The duration of Plant Variety Protection shall be:
 - a. 20 (twenty) years for seasonal plants;
 - b. 25 (twenty-five) years for annual plants.
- (2) The duration of Plant Variety Protection referred to in paragraph (1) begins from the date of the issuance of the Plant Variety Protection rights.
- (3) An applicant is given temporary protection from the time the Plant Variety Protection Office receives a complete application until the application is approved.

Part Four Owner of Plant Variety Protection

Article 5

- (1) A Plant Variety Protection rights owner is a breeder, or any person or legal body or other parties that receive further rights from the previous rights holder.
- (2) If a variety is produced based on a contract of employment, the employer is the Plant Variety Protection rights holder, unless it is agreed otherwise by both parties so long as the rights of the plant breeder is not compromised.

- (3) If the variety is produced as a result of a commissioned work, the party commissioning the work becomes the Plant Variety Protection rights holder unless it is agreed otherwise by both parties so long as the rights of the plant breeder is not compromised.

Part Five
Rights and Responsibilities of Plant Variety Protection Rights Holder

Article 6

- (1) A Plant Variety Protection rights holder has the right to use and exercise the rights and give consent to any party or other legal body to use the varieties in the form of seeds and harvested products for the purpose of propagation.
- (2) The provision referred to in paragraph (1) also applies to the following:
- a. An essentially derived variety that originates from a protected variety or has been registered and given a denomination;
 - b. A variety that cannot be clearly distinguished from a protected variety as stipulated in Article 2 Paragraph (1);
 - c. A variety that is produced by repeatedly using a protected variety.
- (3) The rights to use a variety as stipulated in Paragraph (1) include the following activities:
- a. Production and multiplication of seeds;
 - b. Preparation for propagation purposes
 - c. Advertisement;
 - d. Offering;
 - e. Selling or trading;
 - f. Exporting;
 - g. Importing;
 - h. Preparation for any of the activities stipulated in sub-paragraphs (a), (b), (c), (d), (e), (f), and (g).

- (4) The use of the harvested products for propagation purposes referred to in paragraph (1), which originates from a protected variety, must be with the consent of the Plant Variety Protection rights holder.
- (5) The use of the essentially derived variety referred to in paragraph (2), must be with the consent of the Plant Variety Protection rights holder and/or the original owner of the variety provided:
 - a. the essentially derived variety originates from a variety that has received PVP rights or has been given a denomination according to prevailing regulations and is itself previously an essentially derived variety;
 - b. the variety basically maintains the essential features of the original variety but may be clearly distinguished from the original variety based on new characteristics that appear as a result of the reproduction process;
 - c. the essentially derived variety as indicated in sub-paragraphs (a) and (b) can be obtained through natural or induced mutation, somaclonal variation, individual crop selection, backcrossing and transformation from the original variety through genetic engineering.
- (6) An original variety that is used to produce an essentially derived variety shall be given a denomination and registered by the Government.
- (7) Provisions relating to the naming, registration and the use of the variety as the original variety for an essentially derived variety referred to in paragraph (5) and paragraph (6), as well as the agency that is given the task of implementation, shall be further regulated by the Government.

Article 7

- (1) Local varieties owned by the community shall be under the control of the State.
- (2) The control of the State referred to in paragraph (1) shall be implemented by the Government.
- (3) The Government is responsible for giving a denomination to the local varieties referred to in paragraph (1).
- (4) Provisions relating to the denomination of the variety, registration, and the use of local variety referred to in paragraph (1), paragraph (2), and paragraph (3) as well as the agency that is given the implementation task shall be further regulated by the Government.

Article 8

- (1) The breeder who produces the varieties referred to in Article 5 Paragraph (2) and Paragraph (3) has the right to a fair compensation in consideration of the economic benefits that may be obtained from the said variety.
- (2) The payment referred in paragraph (1) may be disbursed in the following manner:
 - a. In a specified amount and in one payment;
 - b. Based on a percentage;
 - c. A combination of a specified amount, in one payment with a gift or bonus;
or
 - d. a combination of percentage plus a gift or bonus, the value of which is determined by the relevant parties themselves.
- (3) The provisions referred to in paragraph (1) shall not affect the rights of the breeders to include his/her name in the Plant Variety Protection rights certificate.

Article 9

- (1) The Plant Variety Protection rights holder is responsible for:
 - a. implementation of his PVP rights in Indonesia;
 - b. payment of the annual PVP fee;
 - c. preparation and presentation of sample seeds of the variety that has been given the PVP rights in Indonesia.
- (2) The owner is exempted from the responsibility referred to in paragraph (1) sub-paragraph (a), when the implementation of the said PVP is technically and/or economically not feasible in Indonesia.
- (3) The exemption referred to in paragraph (2), may only be agreed by the PVP office once the written application from the PVP rights owner is forwarded together with grounds and evidence provided by an authorized agency.

Part Six **Exceptions to Plant Variety Protection Rights**

Article 10

- (1) It shall not constitute a contravention or violation of the PVP rights when:

- a. Part of the harvested crop of a protected variety is used for non-commercial purposes.
 - b. The protected variety is used for research activities, plant breeding and for constituting new variety.
 - c. The protected variety is used by the Government in the framework of the policy for the supply of food and medicines without infringing the economic rights of the PVP rights owner.
- (2) Provisions for the use of the protected variety by the Government referred to in paragraph (1) sub-paragraph (c) shall be further regulated the Government.

CHAPTER III

PLANT VARIETY PROTECTION RIGHTS APPLICATION

Part One General

Article 11

- (1) A PVP rights application must be submitted to the PVP office in writing in the Indonesian language with the payment of specific costs as determined by the Minister.
- (2) The PVP rights application letter has to include:
- a. Date, month and year of the application;
 - b. Complete name and address of the applicant;
 - c. Complete name, address, and nationality of the plant breeders and their successor in title;
 - d. Denomination of the variety;
 - e. Full description of the variety, including the genealogy traits, morphology characteristics, and other important features;
 - f. Picture and/or photo of the features mentioned in the description to clearly illustrate the description.
- (3) The PVP rights application is submitted by:

- a. Any person or legal body, accompanied by a letter of authorization from the applicant, with the name and complete address of the authorized person;
 - b. the successor in title has to be proven through the proper documentation.
- (4) In the case of a transgenic variety, the description shall include details of the variety's molecular description and genetic stability of the proposed traits, the reproductive system of the original parent, existence of its wild relatives, compound content that can affect the environment and human health and the destruction methods in the event of any deviations; together with a declaration on the safety for human health and the environment from an authorized agency.
 - (5) The provisions pertaining to the PVP rights application shall be further regulated by the Government.

Article 12

- (1) Each PVP rights application may be submitted for only one variety.
- (2) A PVP rights application may be submitted by the:
 - a. Breeder;
 - b. Any person or legal body that employs or commissions the breeder;
 - c. Successor in title; or
 - d. PVP consultant.
- (3) A PVP rights application that is submitted by the applicant referred to in paragraph (2) sub-paragraphs (a), (b), or (c) who is not domiciled or has a permanent residence in Indonesia, shall be submitted through a PVP Consultant in Indonesia acting as the authorized agent.

Article 13

- (1) The PVP Consultant as referred to in Article 12 Paragraph (2) sub-paragraph (d), shall be:
 - a. Registered at the PVP Office;
 - b. Safeguard the confidentiality of the variety and the entire PVP rights application document, until the date that the application is announced.

- (2) Provisions on the conditions for the registration of a PVP consultant shall be further regulated by the Government.

Article 14

- (1) In addition to the terms and conditions of the PVP rights application referred to in Article 11, an application for priority rights shall fulfill the following criteria:
- a. Submission within 12 (twelve) months from the receipt of the first submission of a PVP rights application made outside of Indonesia;
 - b. Accompanied by a copy of the first PVP rights application endorsed by an authorized party in the country in relation to sub-paragraph (a) no later than three months;
 - c. Supplemented by a certified copy of the documents for the first PVP rights application submitted abroad;
 - d. Supplemented by a certified copy of the rejection of the application in the event that the PVP rights had been previously rejected
- (2) Provisions for the PVP rights application for priority rights shall be further regulated by the Government.

Part Two

Acceptance of Plant Variety Protection Rights Application

Article 15

- (1) A PVP rights application is deemed to be submitted on the date that the PVP office receives the application letter and all fees referred to in Article 11 paragraph (1) have been duly paid.
- (2) The acceptance date of the PVP rights application letter referred to in paragraph (1) refers to the date the PVP office receives the said application letter and has complied fully with all the conditions stipulated in Article 11 and/or Article 14 paragraph (1).
- (3) The date that a PVP rights application letter is accepted is recorded in the PVP Public Register at the PVP office.

Article 16

- (1) When any of the conditions are unfulfilled as stipulated in Article 11 and/or Article 14, the PVP office shall inform the applicant to comply within three months from the date that the PVP office sends out the notification letter to the applicant.
- (2) Based on grounds agreed by the PVP office, the time period stipulated in paragraph (1) may be further extended to a maximum of three months at the request of the PVP rights applicant.

Article 17

In the event that there are deficiencies as referred to in Article 16 paragraph (1), the acceptance date of the PVP rights application referred to in Article 16 paragraph (2) shall refer to the date when the PVP office finally receives a revised and complete application.

Article 18

If the deficiencies of the application are not corrected within the specified time period provided in Article 16 paragraphs (1) and (2), the PVP office shall inform the applicant in writing that the PVP rights application is deemed withdrawn.

Article 19

- (1) When there is more than one PVP rights application received for the same variety with identical traits, only the first and complete application received shall be accepted.
- (2) Where there is more than one PVP application as referred to in paragraph (1) submitted simultaneously, the PVP office shall issue a written letter notifying the applicants to hold a negotiation and thereafter decide which is to be submitted. The decision then needs to be made known to the PVP office no later than six months from the date of the said letter is sent from the PVP office.
- (3) In the event there is no agreement or decision from the applicants or the negotiation cannot be held or if the decision is not made known to the PVP office within the stipulated time period indicated in paragraph (2), the PVP rights application is rejected and the PVP office shall then inform the applicant in writing accordingly.
- (4) When a variety referred to in paragraph (1) relates to a variety that is submitted for priority rights, the date deemed as the acceptance date shall be the date of acceptance when the PVP rights application was first submitted abroad.

Part Three
Amendments to Plant Variety Protection Rights Application

Article 20

- (1) A PVP rights application may be amended before and during the time of inspection.
- (2) Amendments referred to in Paragraph (1) may mean more or less explanation/clarification on the traits of the variety applied.
- (3) Amendments in the application as stated in Paragraph (1) are deemed submitted on the date of the re-application.

Part Four
Withdrawal of Plant Variety Protection Rights Application

Article 21

1. An application for PVP rights may be withdrawn by submitting a written letter to the PVP office.
2. Provisions relating to the withdrawal letter shall be further regulated by the Government.

Part Five
Prohibitions On Filing of Plant Variety Protection Rights Application and Obligation to Maintain Confidentiality

Article 22

While still bound officially on government duty a year after retirement or non-employment for any reason, the PVP officer or any authorized individual carrying out the task for and on behalf of the PVP office is prohibited from applying or obtaining PVP rights or any rights related to it through any manner except for PVP rights ownership that is obtained as a successor in title.

Article 23

From the date the PVP application letter is received, all staff of the PVP office are obligated to safeguard the confidentiality of the variety and the PVP rights application documents until the date the PVP rights application is announced.

CHAPTER IV INSPECTION

Part One

Announcement of Plant Variety Protection Rights Application

Article 24

- (1) The PVP office shall make an announcement that a PVP application has fulfilled the provisions of Article 11 and/or Article 14 and has not been withdrawn.
- (2) The announcement referred to in paragraph (1) shall be made at the latest:
 - a. 6 (six) months from the acceptance of a PVP rights application;
 - b. 12 (twelve) months from the acceptance of PVP rights applications for priority rights.

Article 25

- (1) The announcement referred to in Article 24 paragraph (2) is valid for six months and is carried out by:
 - a. using notification facilities that are convenient and clearly understood by the general public;
 - b. publication in the PVP Official Bulletin.
- (2) The date of the first announcement shall be recorded by the PVP office in the PVP Public Register.

Article 26

The announcement referred to in Article 24 paragraph (2) shall include the following:

- a. Complete name and address of the PVP rights applicant or the authorized agent;
- b. Complete name and address of the breeder;
- c. Date of the PVP application submission or the date, number and country where the PVP rights application was first submitted in the case of an application for priority rights;
- d. Denomination of the variety;

- e. Description of variety;
- f. Description that includes the information stipulated in Article 11 paragraph (4) for a transgenic variety.

Article 27

The PVP office shall provide a designated space for interested members of the public the opportunity to examine the documents of the PVP rights application that have been announced.

Article 28

- (1) During the announcement period, any person or legal body may forward in writing any comments or objections towards the PVP rights application together with the grounds for objection.
- (2) In the event that there are comments or objections referred to in paragraph (1), the PVP office shall promptly provide a copy of the said comments or objections to the applicant.
- (3) The applicant has the right to file a response and provide further clarification regarding the objections or comments with the PVP office.
- (4) The PVP office shall use the comments, objections, response, and clarification referred to in paragraph (1) and paragraph (2) as additional factors in the decision making process of the PVP rights application.

Part Two Inspection

Article 29

- (1) An application for a substantive inspection on the PVP rights application shall be submitted to the PVP office in writing together with the fees payable, no later than a month after the announcement period expires.
- (2) The fees for the substantive inspection shall be determined by the Minister

Article 30

- (1) A substantive inspection is conducted by a PVP Inspector and shall investigate whether variety is new, distinct, uniform and stable.
- (2) In conducting the inspection, the PVP office may request for assistance from experts and/or facilities that may be required including information from other institutions from within the country or abroad.
- (3) The PVP Inspector and the PVP office referred to in paragraph (1) and paragraph (2) shall maintain the confidentiality of the variety that is being inspected.
- (4) Provisions relating to the manner of inspection, qualification of the PVP Inspector and the PVP office referred to in paragraph (1), paragraph (2) and paragraph (3) shall be further regulated by the Government.

Article 31

- (1) The status of the PVP Inspector is regarded as an administrative function that is supported by the Minister based on certain terms and conditions.
- (2) The PVP Inspector enjoys administrative aid and support apart from other rights and privileges consistent with the prevailing laws.

Article 32

- (1) In the event that an inspection report finds that the information on the variety is ambiguous or incomplete and such information is considered to be important, the PVP office shall inform the applicant in writing accordingly.
- (2) The notification of the findings of the inspection shall in a clear and detailed manner set out all matters that were earlier deemed unclear, uncertain or incomplete with a time frame for making corrections and amendments.
- (3) In the event that an applicant fails to provide clarification or correct the deficiencies including making corrections or amendments to the application that were made known after the inspection referred to in paragraph (1) and paragraph (2), the PVP office has the right to reject the said application.

Part Three

Acceptance or Rejection of a Plant Variety Protection Rights Application

Article 33

- (1) The PVP office shall decide whether to accept or reject an application within 24 (twenty-four) months from the date of the substantive inspection referred to in Article 29 paragraph (1).

- (2) Should there be a need for an extension of inspection period referred to in paragraph (1), the PVP office shall inform the applicant and state the grounds and explanation for the need of an extension.

Article 34

- (1) When an inspection report on a variety that is the subject of a PVP application complies with all the requirements, the PVP office shall officially inform the applicant of the approval of the PVP rights application.
- (2) The PVP rights referred to in paragraph (1) is issued in the form of a PVP rights certificate.
- (3) A PVP right that is approved is recorded in the PVP Public Register and announced in the PVP Official Bulletin.
- (4) The PVP office may provide the public a copy of the PVP document on payment of a fee.

Article 35

- (1) In the event that a PVP application and/or the inspection reports by the PVP Inspector show that the application does not meet the requirements as stipulated in Article 2, Article 11 and/or Article 14, the PVP office shall reject the application and duly inform the applicant in writing.
- (2) A rejection letter shall clearly state the grounds for rejection and shall be recorded in the PVP Public Register.
- (3) The PVP office shall announce the approval or rejection and the basis for the decision to reject a PVP application in the same manner as the announcement of a PVP application is made.
- (4) Provisions for the format and content of the approval or rejection of a PVP rights application shall be further regulated by the Government.

Part Four Application For Appeal

Article 36

- (1) An application for appeal may be submitted when a PVP rights application is rejected on the grounds and the basis of matters that are substantive as stipulated in Article 2, Article 28 and Article 32.

- (2) An appeal shall be submitted in writing by the applicant or an authorized agent to the PVP Appeal Commission together with details of the objections no later than three months from the date that the rejection letter is mailed out with a copy to the PVP office.
- (3) Grounds for appeal must not be the reasons for rejection of the PVP rights application.
- (4) The PVP Appeal Commission is a specialized body headed by a Head of Department.
- (5) The members of the PVP Appeal Commission shall total an odd number of at least three persons and constitute specialists in various fields and a senior PVP Inspector who did not conduct the substantive inspection on the PVP rights application in question.
- (6) The head and members of the PVP Appeal Commission shall be appointed and terminated by the Minister.

Article 37

When the period of appeal as stipulated in Article 36 paragraph (2) has lapsed without an application for appeal, an applicant is deemed to have accepted the PVP rights application rejection and the decision shall be recorded in the PVP Public Register.

Article 38

- (1) An application for appeal shall be investigated by the PVP Appeal Commission no later than three months from the date an appeal motion is received.
- (2) Any decision of the PVP Appeal Commission is final.
- (3) In the event that the PVP Appeal Commission grants the appeal, the PVP office shall execute the decision of the Appeal Commission and retract the rejection of the PVP rights application.
- (4) When the PVP Appeal Commission rejects an appeal, the PVP office shall promptly inform the applicant of the said rejection.

Article 39

Provisions for the PVP Appeal Commission's organizational structure, its administrative system, procedure for application and investigation of appeal and its decisions shall be further regulated by the Government.

CHAPTER V

TRANSFER OF PLANT VARIETY PROTECTION RIGHTS

Part One

Transfer of Plant Variety Protection Rights

Article 40

- (1) PVP rights may transfer or be transferred in the following circumstances:
 - a. succession;
 - b. grant or bequeath;
 - c. will;
 - d. agreement through a notary; or
 - e. other reasons permissible by law.
- (2) A PVP rights transfer referred to in paragraph (1) sub-paragraphs (a), (b), and (c) shall include the relevant PVP documents.
- (3) Each PVP rights transfer shall be recorded at the PVP office and noted in the PVP Public Register with the fee payable duly paid, an amount of which shall be determined by the Minister.
- (4) Provisions relating to conditions and procedure for transfer of PVP rights shall be further regulated by the Government.

Article 41

A PVP rights transfer does not extinguish the rights of the breeder to add his name and other identification in the PVP rights certificate and his rights to compensation.

Part Two

License

Article 42

- (1) A PVP rights holder has the right to issue a license to any person or legal body based on a license agreement.
- (2) Unless otherwise agreed, a PVP rights holder may decide to exercise his rights or issue a license to a third party.

- (3) Unless otherwise agreed, the scope of the license referred to in paragraph (1) includes one or several activities as stipulated in Article 6 paragraph (3), for the period of the duration of the licence and is applicable in the entire Republic of Indonesia.

Article 43

- (1) A license agreement shall be recorded at the PVP office and included in the PVP Public Register with the fee payable duly paid, an amount of which shall be determined by the Minister.
- (2) In the event that the license agreement is not recorded at the PVP office as stipulated in paragraph (1), the said license will not have any legal implication on third parties.
- (3) Provisions for conditions pertaining to the license agreement shall be further regulated by the Government.

Part Three Compulsory Licence

Article 44

- (1) Any person or legal may, after a period of 36 (thirty-six) months from the issuance of PVP rights, submit a request for a Compulsory Licence to the State Court to exercise the relevant PVP rights.
- (2) An Compulsory Licence application may only be submitted under the following circumstances:
 - a. a PVP right has not been exercised in Indonesia as referred to in Article 9:
 - b. a PVP right has been exercised in a form or manner that has not benefited the public interest.

Article 45

A Compulsory Licence is a license provided by the State Court after having heard confirmation from the relevant PVP rights owner and is non-exclusive.

Article 46

- (1) Apart from the circumstances stipulated in Article 44 Paragraph (2), a Compulsory Licence shall only be given when:

- a. The applicant is able to provide convincing proof that he has the capability and capacity to exercise the PVP rights and has exhausted all other means to obtain a license from the PVP rights owner based on reasonable conditions but has failed.
 - b. The State Court is of the opinion that the PVP rights may be exercised in Indonesia and will be beneficial to the general public.
- (2) The State Court shall conduct a hearing for Compulsory Licence application and hear the opinion of PVP officers and the relevant PVP rights owner.
- (3) A Compulsory Licence is given for a time period that is not longer than a PVP right.

Article 47

Based on evidence and opinion as stipulated in Article 46 paragraph (1) and paragraph (2), the State Court is of the opinion that the PVP rights owner has not had adequate time to exercise his rights commercially in Indonesia, the Court shall temporarily postpone the proceedings or completely reject the application.

Article 48

- (1) The implementation of a Compulsory Licence shall involve a royalty payment payable by the Compulsory Licence owner to the PVP rights owner.
- (2) The amount of royalty payable and mode of payment shall be stipulated by the State Court.
- (3) The quantum of the royalty shall be determined by observing the normal practice in licence agreements or other similar agreements.

Article 49

The decision of the State Court to issue the Compulsory Licence shall include the following matters:

- a. The reasons for granting the Compulsory Licence;
- b. Evidence that includes convincing explanations that form the basis for granting the Compulsory Licence;
- c. The duration of the Compulsory Licence;
- d. The amount of royalty payable and mode of payment to the PVP rights holder;

- e. The expiry terms of the Compulsory Licence and the factors that can lead to its cancellation;
- f. The Compulsory Licence is only used to meet the local market needs;
- g. Other matters that need to be considered to fairly protect the interests of the parties concerned.

Article 50

- (1) The Compulsory Licence holder shall have the Compulsory License registered at the PVP Office and the PVP Public Register.
- (2) A Compulsory Licence that is registered shall be promptly announced by the PVP Office in the PVP Official Bulletin.
- (3) A Compulsory Licence may only be implemented after it has been registered in the PVP Public Register and the royalty payable has been paid
- (4) The implementation of the Compulsory Licence is deemed to be implementation of the PVP rights.

Article 51

- (1) The State Court may cancel the Compulsory Licence at the request of the PVP rights holder when:
 - a. The grounds for issuing the Compulsory Licence are no longer valid;
 - b. The recipient of the Compulsory Licence did not implement the Compulsory License or did not promptly take the necessary measures to implement it;
 - c. The Compulsory Licence holder no longer abides by the terms and conditions, including the obligation to pay royalties.
- (2) The State Court shall hold a hearing to investigate the application for cancellation of the Compulsory Licence and hear the opinions of the officers of the PVP Office.
- (3) In the event that the State Court decides to cancel the Compulsory Licence, no later than 14 (fourteen) days from the date of the decision, the Court shall forward a copy of the decision to the PVP Office for it to be recorded in the PVP Public Register and announced in the PVP Official Bulletin.

- (4) The PVP Office shall after recording and making the announcement as stipulated in paragraph (3), inform the PVP rights holder, the holder of the Compulsory Licence that has been cancelled and the State Court that made the decision to cancel, no later than 14 (fourteen) days from the date that the PVP office receives a copy of the decision of the State Court.

Article 52

- (1) The Compulsory Licence shall expire when:
 - a. The time period for the licence has lapsed;
 - b. It is terminated or in the case where a Compulsory Licence holder returns the license obtained to the PVP office before the end of the licence period.
- (2) The PVP office records the Compulsory Licence that has expired in the PVP Public Register, makes an announcement in the PVP Official Bulletin and informs the PVP rights owner as well as the State Court in writing.

Article 53

The termination or expiry of the Compulsory Licence as stipulated in Article 51 and Article 52 is deemed to restore the rights of the PVP rights owner.

Article 54

- (1) A Compulsory Licence cannot be transferred unless it is done together with the transfer of activities or part of business activities that utilizes the relevant PVP rights or due to inheritance.
- (2) A Compulsory Licence that is permanently transferred continues to be bound by the terms and conditions at the time of the award and shall be registered in the PVP Public Register.

Article 55

Provisions relating to the Compulsory Licence shall be further regulated by the Government.

CHAPTER VI EXPIRATION OF PLANT VARIETY PROTECTION RIGHTS

Part One General

Article 56

A PVP right expires when:

- a. The duration of the time period expires;
- b. Cancellation
- c. Revocation

Part Two Expiration of Plant Variety Protection Rights

Article 57

- (1) A PVP right ends when the duration of the PVP right has expired as stipulated in Article 4.
- (2) The PVP office records the expiration of the PVP right in the PVP Public Register and announces it in the PVP Official Bulletin.

Part Three Cancellation of Plant Variety Protection Rights

Article 58

- (1) The Cancellation of a PVP right is executed by the PVP office.
- (2) A PVP right is cancelled when:
 - a. Terms and conditions for renewal and/or the distinctness as stated in Article 2 paragraph (2) and/or paragraph (3) are not complied with at the time the rights were granted;
 - b. The conditions for uniformity and stability as stipulated in Article 2 paragraph (4) and/or paragraph (5) were not complied with at the time the rights were granted;

- c. The PVP right was granted to party that is not entitled to the right.
- (3) A PVP right shall not be cancelled for reasons other than those stated in paragraph (2).

Article 59

- (1) With the cancellation of a PVP right, all legal implications connected to the PVP right is cancelled as of the date the PVP rights were granted, unless determined otherwise by the State Court.
- (2) The PVP Office records the official decision of the cancellation in the PVP Public Register and announces it in the PVP Official Bulletin

Part Four Revocation of the Plant Variety Protection Rights

Article 60

- (1) The revocation of the PVP right shall be executed by the PVP Office.
- (2) The PVP right may be revoked on the following grounds:
 - a. The PVP rights holder did not fulfill his obligations to pay the annual fees within 6 months;
 - b. The terms/characteristics of the protected variety have changed or are no longer in accordance with the conditions stipulated in Article 2;
 - c. The PVP rights holder cannot provide and prepare sample seeds for the said protected variety;
 - d. The PVP rights holder did not supply the seed for the said protected variety; or
 - e. The PVP rights holder submits a request to have his rights revoked, together with his grounds for doing so, in writing, to the PVP Office.

Article 61

- (1) When a PVP right is revoked, the PVP rights ends as of the date of the revocation.

- (2) The PVP Office records the official decision to revoke the PVP rights in the PVP Public Register and announces it in the PVP Official Bulletin.

Article 62

In the event that a PVP right is revoked as stipulated in Article 60, and the PVP rights holder has given a license or a Compulsory Licence to another party whereby the new party has paid all royalties to the PVP rights owner, the said rights owner shall return the royalties after taking into account the remaining time left for the utilization of the license or Compulsory Licence.

CHAPTER VII FEES

Article 63

- (1) To ensure the execution of PVP rights, the rights owner must first pay the annual fees.
- (2) Fees to be determined under this Act shall be paid for each submission of a PVP rights application, application for inspection, excerpt of the PVP Public Register, copies of the PVP letter, copies of PVP documents, registration of the transfer PVP rights, registration of the licence agreement, registration of the Compulsory Licence and others.
- (3) Provisions on the rates for the fees, conditions and procedure for payment as stipulated in paragraph (1) and paragraph (2) shall be determined by the Minister.

CHAPTER VIII THE MANAGEMENT OF PLANT VARIETY PROTECTION

Article 64

- (1) The PVP Office is established for the purpose of managing PVP.
- (2) The management of the PVP referred to in paragraph (1) is implemented with the expertise of other institutions under the prevailing laws.
- (3) The PVP office manages the administration, documentation, inspection and information service of the PVP.

Article 65

- (1) In managing the PVP, the PVP Office is accountable to the Minister.
- (2) The Minister forms a commission comprising of professionals whose functions are as temporary advisors in managing the PVP efficiently, meeting the need for the development of PVP.

CHAPTER IX RIGHT TO CLAIM

Article 66

- (1) If a PVP right is given to a person or legal body other than those that have the right to the PVP as stipulated in Article 5, the said person or legal body shall have the right to file a claim in the State Court.
- (2) The right to file a claim as stipulated in paragraph (1) is effective from the date the PVP rights certificate is issued.
- (3) A copy of the decision as stated in paragraph (1) by the State Court Registrar shall be promptly relayed to the PVP office and thereafter recorded in the PVP Public Register and announced in the PVP Official Bulletin.

Article 67

- (1) A PVP rights owner or license holder or Compulsory Licence holder has the right to claim for damages through the State Court from anyone who deliberately and without the right commits the acts stipulated in Article 6.
- (2) The submission of claim for damages for the acts stipulated in Article 6 paragraph (3) shall only be accepted when it is proven that variety used is the same as the variety that has been issued with PVP rights.
- (3) The State Court's decision on a claim referred to in paragraph (1) by the State Court Registrar must promptly be relayed to the PVP Office and thereafter recorded in the PVP Public Register and announced in the PVP Official Bulletin.

Article 68

- (1) To avoid increased loss to the party whose rights have been violated, the judge may order the party violating those rights, for the duration of the State Court's investigation, to temporarily cease all activities stipulated in Article 6 paragraph (3).

- (2) The judge may order the delivery of the products of the violation of PVP rights to be implemented, when the judgement of the court has been executed and after the person or legal body sued pays compensation to the *bona fide* owner of the product.

Article 69

The right to submit a claim provided for in this CHAPTER does not derogate from the right of the State to execute criminal charges for the violation of the PVP rights.

CHAPTER X INVESTIGATION

Article 70

- (1) Other than investigation by the Police of the Republic of Indonesia, the office of certain state civil officers at the departments whose scope of work and responsibilities include PVP development by the prevailing legislation, can be given special authority as investigating officers as stipulated in Law No. 8, of 1981 concerning Law of Criminal Procedures to conduct criminal proceedings in PVP.
- (2) An Investigating Officer as stipulated in paragraph (1) has the authority to:
 - a. Conduct an investigation on the authenticity of a report or information pertaining to criminal actions relating to PVP;
 - b. Conduct an investigation on a person or body that is suspected of having committed a criminal action relating to PVP;
 - c. Request for information and evidence from a person or body connected to the criminal incidents relating to PVP;
 - d. Conduct investigation on bookkeeping, recordings and other relevant documents pertaining to criminal actions relating to PVP;
 - e. Conduct investigation at specific locations that are suspected of containing evidence of bookkeeping, recording and other documents as well as confiscating sub-paragraphs that may be used as evidence in criminal proceedings relating to PVP;
 - f. Request for expert assistance in carrying out the investigation of criminal actions relating to PVP.
- (3) An Investigating Officer as stipulated in paragraph (1) will inform the commencement of an investigation and subsequently present the investigation report to the Public Prosecutor through the Police Department of the Republic of

Indonesia in accordance with Article 107 Law No. 8, of 1981 concerning Laws of Criminal Procedure.

CHAPTER XI PENAL PROVISIONS

Article 71

Anyone found to have deliberately committed an offence as stipulated in Article 6 paragraph (3) without the consent of a PVP rights owner, is subject to maximum imprisonment of seven years and a maximum fine of up to Rp 2.500.000.000,00 (2.5 Billion Rupiah).

Article 72

Anyone deliberately not complying with the provisions referred to in Article 13 paragraph (1) and Article 23, is subject to a maximum imprisonment of five years and a maximum fine of up to Rp 1.000.000.000,00 (One Billion Rupiah).

Article 73

Anyone found to have deliberately violated the provisions referred to in Article 10 paragraph (1) for commercial purposes, is subject to a maximum imprisonment of 5 years and a maximum fine of up to Rp. 1.000.000.000,00 (One Billion Rupiah).

Article 74

Anyone deliberately not fulfilling the obligations as stipulated in Article 30 Paragraph (3), is subject to a maximum imprisonment of five years and a maximum fine of up to Rp 1,000,000,000.00 (One Billion Rupiah).

Article 75

Criminal actions as indicated in this CHAPTER refer to criminal felonies.

CHAPTER XII CLOSING PROVISIONS

Article 76

These laws take effect from the date of enactment.

To be publicly known, it is instructed to promulgate the law and publish it in the Government Gazette of the Republic of Indonesia.

Ratified in Jakarta
On 20th December 2000
PRESIDENT OF REPUBLIC OF
INDONESIA,

Signed
ABDURRAHMAN WAHID

Enacted in Jakarta on
20th December 2000
STATE SECRETARY REPUBLIC OF INDONESIA

Signed
DJOHAN EFFENDI

**GOVERNMENT GAZETTE OF THE REPUBLIC OF INDONESIA OF 2000
NUMBER 241**

EXPLANATORY NOTE
ON
LAWS OF REPUBLIC OF INDONESIA
NO. 29 OF 2000
ON
PLANT VARIETY PROTECTION

I. GENERAL

Indonesia is a country with various biological resources that are highly diversified and is often touted as a country that enjoys “mega-biodiversity”. These biological diversity are indeed God’s gift to the people of Indonesia, are germplasmic resources that may be benefited in creating new and distinct crop varieties can further boost the country’s economical development, not only for the agricultural sector but also for the entire development of the nation as a whole.

With globalization, the relationship between national and international economies becomes greater. Economic globalization leads the local products to new and competitive international markets and also allows foreign products to flow into the domestic markets. The dynamics of both the national and global economies must always be given significant consideration. The global economic development has instant impact on the national economy, and this includes various agricultural activities, from pre-production activities, cultivation, harvesting, post harvest, distribution and trading. The effectiveness of agricultural development had often been and always will be determined by the superiority of the variety that is cultivated, and one that has certain harvest potential. The productivity of a variety is greatly influenced by the ability to genetically improve on the potentials of a particular variety. Any activity that is able to produce a high yielding variety needs to be supported by providing incentives to the individual or parties involved so that they in turn can afford to produce something of greater value to the general consumer.

In order to meet the national aspirations and in anticipation of any changes in the international strategic environment, the agricultural sector must work towards increasing the competitive ability of the crops. This is important not only for the exportable crops but also the commodities that are meant to meet domestic needs. Some means of increasing competitive ability is by increasing productivity, the quality of the product, and by developing a solid agri-business system. The increase in productivity and quality is influenced to a large extent by development in innovations, especially in the area of genetically improving a crop variety. Therefore, any individual or party involved in crop planting and who are able to produce variety that are new, distinct, homogeneous and stable should be given due recognition.

One of the ways to show them appreciation is to provide legal protection on the intellectual properties they display in producing these crop varieties. This includes giving them the economic benefits and other rights as a cultivator. Protections such as these will be able to boost their enthusiasm and creativity in agriculture to the point where they are able to yield newfound varieties that are much needed by the people. In essence, these legal protections also becomes an approach that Indonesia needs to take in order to meet the needs of the United Nations Convention on Biological Diversity, International Convention for the Protection of New Varieties of Plants, and the World Trade Organization/Trade Related Aspects of Intellectual Property Rights which among others compels member nations like Indonesia to enforce legal regulations in the area of Rights of Intellectual Property including Plant Variety Protection.

This protection of crop variety is also enforced because it motivates and gives the opportunity to the business world to increase the role of those in the agricultural industry to further improve. This becomes even more significant considering that presently the yielding of new varieties is mostly done by Government Agencies. Hopefully, the business world will continue to play a bigger role until more new and high yielding varieties may be produced.

However, new varieties which are illegal, against the social order, ethics, religious norms, conservation of the living environment and health are not eligible for protection. These protections are also not meant to shut any opportunity for small time farmers from benefiting from a new variety, and permanently protects local varieties for the benefit of the society. Consistent with the national development objectives, the development of agri-business system must be directed to support the potential of the people by making use of the rich biological diversity through the development of knowledge and technology in creating new and distinct varieties for the benefit of the farmers and the society as a whole. Considering that there have never been any laws that comprehensively regulates and provide protection towards the effort to produce and develop new varieties, the laws on PVP becomes increasingly important. These laws can hopefully become the basic legislation towards the development of new and distinct varieties and the development of the seedling industry. These laws are based on basic principles that balance the interest of the general public and the PVP rights holder.

The scope of these regulations covers the issuance of rights to plant breeders of plant varieties that are produced and have new, distinct, stable, uniform and may be named. To obtain PVP rights, plant breeders or an authorized party must submit the PVP rights application and fulfill all the terms and conditions outlined in this law to the PVP office. PVP rights is issued to the applicant for a period of 20 (twenty years) for perennial crops or 25 (twenty-five) years for annual crops after being given a PVP rights certificate. To obtain PVP rights certificate, an application must be registered, inspected, announced and then recorded by the PVP office. These rights may be self implemented and/or transferred to another party to take advantage of the plant variety commercially through an agreement.

Rights that are regulated within these laws include, among others, to produce or reproduce seeds, to prepare for propagation, to sell or trade, to import and export. Plant breeders or other parties that are issued PVP rights must implement them in Indonesia.

In the event that PVP rights are not implemented without any valid and legal reasons, the PVP rights holder may be demanded to provide a Compulsory Licence to another party that fulfills the requirements through the State Court. A PVP right expires due to time lapse, a cancellation or withdrawal due to renewal conditions that are not fulfilled, or the stability and homogeneity that are outlined in the laws are not fulfilled, or when the PVP rights holder submits an application in writing to withdraw the PVP rights. A party disadvantageously affected by the issuance of the PVP rights may demand for a cancellation through the State Court.

These laws are structured based on faith and piety to God Almighty, scientific facts, benefits, competitiveness, functional continuity and quality of the environment, and the conservation of the society and its civilization. Other operational matters may be further regulated in an implementation that may be easily determined, changed and withdrawn consistent with the rapid development of knowledge and technology, national awareness and other global agreements.

II. INTERPRETATION OF ARTICLES

Article 1

1-17

Self Explanatory

Article 2

Paragraph (1)

In general, the definition of varieties is the same definition used in the Law No. 12 of 1992 on Crop Cultivation System. In addition, it includes explanation on genetic attributes or genotype combination as a basic characteristic that can distinguish one variety from another. Genotype means the genetic composition that produces a particular characteristic. Assessment is done on one or several characteristics or the entire characteristic of the relevant plant variety. A variety that does not experience changes when reproduced is considered as a stable variety where seed multiplication process or propagation with certain methods, for example seedling hybrid production, network culture and grafting will still leave the variety stable. Varieties from plant species that qualify to be issued with PVP rights include all types of plants, whether they reproduce generatively or vegetatively except bacteria, bacterioids, microplasma, virus, viroid and bacteriophage. Generative reproduction refers to plant reproduction through the cross breeding of reproductive cells while vegetative reproduction refers to plant production that is not done through cross breeding reproductive cells.

Paragraph (2)
Self explanatory

Paragraph (3)
Self explanatory

Paragraph (4)
Self explanatory

Paragraph (5)
Multiplication cycles in this paragraph refers to the multiplication cycle of the hybrid plants or multiplication pattern through network culture and grafting from the leaves / stem.

Paragraph (6)
The objective of giving a denomination to a variety is to give it an identity based on the characteristics of the particular variety and shall last for as long as the variety remains in existence.

Article 3

A variety which does not conform to the prevailing laws, or the usual norms of general public order, health, ethics, and the environment, for example the production of psychotropic plants, or those that conflict with the religious principles for instance using genes from animal sources which are against the norms of particular religions.

Article 4

Paragraph (1)
Plants whose production period exceeds one year refers to trees and vines, whereas other plants are referred as seasonal plants.

Paragraph (2)
Self-explanatory

Paragraph (3)
Temporary protection refers to protection that is granted from the submission of a complete application to the presentation of a PVP Certificate. Throughout this temporary protection period, the applicant has the right to receive protection over the use of a particular variety.

Article 5

Paragraph (1)
A breeder, in his plant breeding activities, may work alone or in a group, whether via commission or contractual agreement with any individual or legal body. As the person who develops a particular variety, a breeder has the rights that are attached to the said variety and this includes the right to have his name incorporated or to receive payment. The party that receives further PVP rights from the previous PVP rights holder may be an individual or legal body that receives a transfer from the former PVP rights holder. PVP

rights holder does not enjoy the rights that are attached to a breeder that is to incorporate his name and the right to payment.

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 6

Paragraph (1)

As with other fields of intellectual property rights, the right to PVP is a specific right. Based on this right, a PVP rights owner may use a variety that has been given PVP rights and prevent others who without his consent use that variety for their own commercial benefit.

In essence, the distinctness of a particular variety is yielded through the multiplication of seeds. However, with certain technique the product of the harvested crop in the form of vegetative parts could also be used as propagation materials. Therefore, PVP rights must be made effective not only for seed utilization but also for the usage of harvested products for propagation purposes.

Paragraph (2)

A PVP right on a variety is also effective against the use of the original variety to create an essentially derived variety, a variety that cannot be distinguished or the repeated use of the protected variety to create new varieties.

This provision ensures that payment will be made for the use of the protected variety in the production of a new variety through genetic engineering techniques.

This provision also protects the usage of the protected variety under another denomination, or by being repeatedly used in producing other varieties such as propagation beds for the creation of hybrids.

Paragraph (3)
sub-paragraph (a)

Seed multiplication is the production of seed; seeds exist in various forms like seedling, stem, bud, trunk and seed network culture.

sub-paragraph (b)

Preparation for propagation purposes emphasizes processes and techniques of propagation like preparation of buds, seed network culture and others.

sub-paragraphs (c) - (h)
Self-explanatory

Paragraph (4)

Protection of harvested products used for propagation must be given to ensure that the part of the harvested product is not used for seed multiplication. For example, a section from a cut flower that is traded is developed into a seedling through culture methods is still covered by PVP protection.

Paragraph (5)

sub-paragraph (a)

Modern biotechnological development like genetic engineering has led to cultivation activities that produce new varieties through the technique of transferring genes which have specific genetic expressions, with a high degree of certainty. Genetic engineering can produce new varieties that maintain the basic salient features of the original variety with the exception of one or two traits, generally enhancing the distinctness of the variety. This new variety is eligible for PVP rights but the consent from the owner of the original variety that is used must be obtained. This is to ensure that the PVP rights holder or the owner of the denomination of the original variety continues to enjoy protection and his economic rights from the essentially derived variety.

sub-paragraph (b)

These varieties refer to varieties that are produced from an original variety or those that are not from the original variety, and maintains most of the essential traits from the original variety but may still be clearly distinguished from the original variety with specific traits that are emerge from the process of its own derivation.

sub-paragraph (c)

Self-explanatory

Paragraph (6)

An original variety is a variety that is used as the stock in the process of producing an essentially derived variety. This variety includes both that have and have not been issued with PVP rights but have been given a denomination and registered by the Government

Paragraph (7)

Self-explanatory

Article 7

Paragraph (1)

Local varieties refer to varieties that are already in existence and have been cultivated by farmers for generations and have become communal property.

Paragraph (2)

The meaning of implementation of control over a local variety by the Government includes regulations on right to payment and the use of the said variety in relation to PVP and other genetic resources conservation efforts.

Paragraph (3)

In relation to giving a denomination for a local variety that has specific localised traits, consideration must be given to factors such as the description, origin and location.

Article 8

Paragraph (1)
Self-explanatory

Paragraph (2)

It is the right of a breeder to receive payment as the developer of a particular variety, and this shall be outlined and specified clearly in a written agreement.

Paragraph (3)
Self-explanatory

Article 9

Paragraph (1)
Self-explanatory

Paragraph (2)

Certain varieties, due to technical or economic reasons at a given point of time, may face certain constraints from being developed in Indonesia.

Paragraph (3)
Self-explanatory

Article 10

Paragraph (1)
sub-paragraph (a)

Not for commercial purposes as referred to in this sub-paragraph, are the individual activities particularly those of small farmers for their own needs and does not include activities that are extended to meet the needs of the larger community. This must be stressed so that the market segment for the said variety that has been issued PVP and the interest of the PVP rights holder continues to be protected.

sub-paragraph (b)

Breeders are given the freedom to use the protected varieties for cultivation activities as stock for cross breeding as long as they are not used as original varieties as stipulated in Article 6 Paragraph (5).

sub-paragraph (c)

This provision is to accommodate the possibility of being faced with unsafe food and health threats. The use by the Government is one way of overcoming these possible threats. However, the implementation has to take into account the interest of the breeder or the PVP rights holder and therefore, this decision has to be cast in the form of a Presidential Decree.

Paragraph (2)

The Government regulations shall stipulate among others the grounds and procedure for the decision as well as the determining factors.

Article 11

Paragraph (1)

With respect to PVP rights applications from outside the territory of the Republic of Indonesia, either for a first time application or those with priority rights, if there are sections of the application document that due to the technicalities used will be difficult to translate, these sections therefore need not be translated.

Paragraph (2)

sub-paragraph (a)

Self-explanatory

sub-paragraph (b)

Self-explanatory

sub-paragraph (c)

Self-explanatory

sub-paragraph (d)

Self-explanatory

sub-paragraph (e)

Morphology traits, refer to, among others, traits of the plant that are clearly distinguished whether in its form, size, and colours of the different parts of the part.

sub-paragraph (f)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Transgenic varieties are varieties that are produced through genetic engineering techniques. Safety in this paragraph refers to a condition that is safe for the environment including the biological resources and human health. Considering that in its production process, transgenic varieties may make use of matter or parts of matter from organisms that in its original form may pose some environmental risks, including biological resources and human health, the potential dangers of these transgenic varieties must first be studied by an authorized agency before these varieties are widely used by the general public. The results of this study must be included in the dossier of PVP rights application for a particular transgenic variety.

Paragraph (5)

Further provisions that are regulated by the Government include the format and procedure of the application, its component and the amount of the processing fees, a sample of the letter of authorization, and the format for letter of declaration of safety for the transgenic variety.

Article 12

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

sub-paragraph (d)

A consultant is an individual or a designated agency that provides related services concerning PVP rights application submissions. The purpose of this regulation is to provide the breeder or PVP rights holder with assistance in understanding the legal or technical administrative aspects of PVP.

Paragraph (3)

For PVP rights applicants from outside the territory of Republic of Indonesia, applications are done through the PVP consultant in Indonesia. This requirement is to accommodate an applicant that does not have any official legal representative in Indonesia. Another reason for this requirement is to ensure the effective handling of the PVP rights application submission in accordance with the provisions stipulated in these laws. Apart from providing convenience to the breeder, this requirement also ensures the smooth handling by the PVP office.

Article 13

Paragraph (1)

sub-paragraph (a)

The work of the PVP consultant requires knowledge, attitude and specific skills to ensure that the PVP rights application process and other further measures may be carried out effectively, adhering to the provisions of the law and without causing any losses to the PVP rights applicant.

sub-paragraph (b)

The PVP consultant, including those under their employment, for instance, the translator and others, shall be responsible to maintain confidentiality. This responsibility ends the moment the PVP rights application is announced by the PVP office.

Paragraph (2)

Regulations that are stipulated by the Government include administrative conditions, office facilities, knowledge criteria and sufficient dedicated staff with technical

competency. The function and capability of the PVP consultant shall be assessed periodically.

Article 14

Paragraph (1)
sub-paragraph (a)
Self-explanatory

sub-paragraph (b)

The party that is authorized to endorse a copy of the first submission of the PVP rights application is the PVP office within the country in which the PVP rights application is first submitted.

sub-paragraph (c)
Self-explanatory

sub-paragraph (d)
Self-explanatory

Paragraph (2)

Further provisions stipulated by the Government include technical, financial and administrative terms and conditions that must be fulfilled.

Article 15

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)

Details recorded in the PVP Public Register include: application, inspection, issuance of rights, rejection of rights, transfer of rights, change of rights, license, Compulsory Licence, lapse of duration of time, cancellation, and revocation together with the exact date and time of the receipt of the said application letters.

Article 16

Paragraph (1)
Self-explanatory

Paragraph (2)

Reasons that may be considered are only limited to technical matters, for example the inability to complete the analysis or the description of the plant variety and the supporting pictures.

Article 17

Self-explanatory

Article 18

Self-explanatory

Article 19

Paragraph (1)

Self-explanatory

Paragraph (2)

What is meant by simultaneously received as referred to in this paragraph is receipt on the same date, month and year during the official working hours of the PVP office.

With this requirement, a PVP application that is received at a different time but still within the official working hours of the same day is deemed to have the same time of receipt. In matter of carrying out the negotiation, the PVP office shall facilitate the negotiation.

Paragraph (3)

Agreement between the parties submitting PVP rights application must be made known in writing to the PVP office within a specified time period. If this written notification is not received by the PVP office before the specified time period, the PVP office shall inform in writing the rejection of the said application.

Paragraph (4)

This is consistent with the International Convention for the Protection of New Plant Varieties whereby the date deemed to be the submission date for a variety with priority rights is the date when the PVP rights application is first received abroad. A PVP right applicant from Indonesia who submits PVP rights application abroad is also given similar priority.

Article 20

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 21

Paragraph (1) **Self-explanatory**

Paragraph (2)

Provisions concerning the withdrawal of the PVP rights application that are stipulated by the Government covers technical, financial and administrative requirements.

Article 22

What is meant by a person who, due to his assignment, works for and on behalf of the PVP office is a person who works for an agency outside of the PVP office and is permanently assigned as a substantive inspector at the PVP office, except when the person is assigned on a non-permanent basis, then he may continue to submit PVP rights application.

Article 23

This responsibility is absolute and meant for the protection of the breeder or whoever has the right towards the variety. This responsibility takes effect as of the date the application is received and runs through until the announcement is made.

Article 24

Paragraph (1)

An application is announced with the intention of informing the general public that there is a formal application for PVP rights for a particular variety. This would allow the public, particularly those with an interest to protect, an opportunity to examine whether there will be a violation of their rights or the rights of others should the PVP rights be awarded to the applicant. The announcement is made on a designated bulletin board at the PVP Office which is accessible to the public at large. The said announcement shall also be made in the PVP Official Bulletin, which shall be issued periodically by the PVP Office. It is made after the PVP office is of the opinion that all terms and conditions stipulated in Article 11 and Article 14 have been met and the application will not be withdrawn.

Paragraph (2)

The deadline given for a PVP rights application with priority rights is longer due to the fact that the PVP office needs a considerable amount of time for the investigation process in an application with priority rights.

Article 25

Paragraph (1)

The period of six months provides the opportunity for the public, especially those who may have an interest to protect, to know that there is an application for PVP for a particular variety. This announcement is posted on the PVP office bulletin board and published in the PVP Official Bulletin.

sub-paragraph (a)
Self-explanatory

sub-paragraph (b)

The PVP Official Bulletin contains announcements of PVP applications, issuance, rejection, cancellation and revocation of rights including other pertinent information on PVP for the benefit of the public.

Paragraph (2)
Self-explanatory

Article 26
Self-explanatory

Article 27
Self-explanatory

Article 28
Paragraph (1)

Comments or objections towards the application that has been announced, shall be submitted within a period of six months. Any submission beyond this time period will not be accepted. In this case, the PVP office will inform of the delay, in writing to the parties submitting the comments or objections.

Paragraph (2)
Self-explanatory

Paragraph (3)

The delivery of the objection by the breeder or the person submitting PVP rights is not restricted to this time period. These objections and clarifications shall be used as additional information to be considered by the PVP Inspector during the inspection period of the PVP application.

Paragraph (4)
Self-explanatory

Article 29
Paragraph (1)

In the event that the PVP office does not receive an application for an inspection one month after the announcement period expires, the PVP application is deemed to have been withdrawn.

Paragraph (2)
Self-explanatory

Article 30

Paragraph (1)
Self-explanatory

Paragraph (2)

There is a possibility that the expertise needed for the inspection of a particular variety, is not within the control of the PVP Inspector. Similarly, the facilities required to carry out a proper inspection may be owned by another institution. In such instances, the PVP office may seek the assistance and/or make use of the facilities of another institution. However, this does not mean that the inspection is not done by the PVP office. The inspection is still conducted by the PVP office and the institution with the expertise and facilities is merely assisting the process. The final decision and responsibility towards the acceptance or rejection of a PVP rights application still rests with the PVP office.

Paragraph (3)

In the event that the PVP office obtains the assistance of experts and/or makes use of the facilities of other institution, all parties involved in the inspection process are bound by the responsibility to maintain the confidentiality of the variety and all the documents relating to the PVP application including the clarification or the information submitted to complete the application.

Paragraph (4)

Provisions to be the subject of further regulation by the government in relation to the inspection cover the substance, methodology and duration of inspection. Provisions relating to the qualification of the investigating personnel and office include the level and field of expertise.

Article 31

A substantive inspection for a PVP application shall only be conducted by a PVP Inspector. A PVP Inspector refers to expert personnel specially trained and assigned to perform this task. The PVP Inspector is from within the PVP Office and may also come from another Government agency and is specially trained until fully qualified to act as a PVP Inspector. Due to its expertise and specialised scope of work, the PVP inspection department is given the status of a functional department.

Paragraph (2)
Self-explanatory

Article 32

Paragraph (1)

Examples of ambiguity or incomplete information that are considered important are unclear genealogy, ambiguous, inappropriate description or pictures that are not supportive. In the event that these matters are considered mandatory for a better understanding, the PVP office will formally inform the applicant in writing.

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 33

Paragraph (1)
Self-explanatory

Paragraph (2)

In certain cases, and for the majority of the trees and vines, a substantive inspection for new, distinct, uniform and stable conditions can only be completed in a time period of more than 24 months. In which case, the PVP Office shall notify the applicant of the necessity for the extension of the inspection period. The notification to the applicant may be given when the application for the substantive inspection is received or after that, depending on when the need for the extension of the inspection period is known.

Article 34

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Article 35

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)

Provisions to be further stipulated by the government include the format and content of the PVP rights certificate, copies of the application formula or the collection and the recording procedures of the PVP document.

Article 36

Paragraph (1)

An appeal cannot be filed in cases where a rejection occurs as a result of not forwarding the corrections or amendments to the claims made during a substantive inspection. Similarly, no appeal may be filed where a preliminary inspection carried out before an announcement is made leads to a withdrawal of the application.

Paragraph (2)

No later than three months as of the date of the rejection of the PVP rights application, refers to the post-mark date on the said rejection letter.

Paragraph (3)

Grounds, clarifications or evidences that accompany an appeal must be substantive and based on justification or proof that has or should be conveyed during the substantive inspection period. This is to avoid the possibility of abuse whereby an appeal is used merely as a tool to support deficiencies in the application.

Paragraph (4)

A PVP Appeal Commission is a specially designated agency established to investigate the appeals into the rejection of PVP rights and to forward the outcome to the PVP office. This PVP Appeal Commission works on the basis of expertise and independence.

Paragraph (5)

The PVP Appeal Commission comprises several experts in the necessary areas of expertise and one Senior PVP Inspector. With the exception of the head, all PVP Appeal Commission Members are appointed to the task each time there is an appeal and are responsible to conduct the investigation on the relevant appeals.

Paragraph (6)

Self-explanatory

Article 37

Self-explanatory

Article 38

Paragraph (1)

Self-explanatory

Paragraph (2)

Any decision from the PVP Appeal Commission is deemed to be final and may not be further appealed to other institutions or departments because any assessment on a variety is very much technical in nature.

Paragraph (3)

When an appeal is granted, the PVP office shall issue a PVP certificate.

Paragraph (4)

In the case where a motion of appeal is rejected, the party submitting the appeal must be notified. When the appeal is submitted by an authorized party, the rejection is then made known to the authorized party with a copy given to the authorizing party.

Article 39

Provisions to be further stipulated by the Government include the following: organizational structure, working procedure, application and appeal investigation.

Article 40

Paragraph (1)

In general, a PVP right may be transferred from an individual PVP rights holder to another individual or legal body.

What is meant by other reasons permissible by law is, for example the transfer of PVP rights through a court judgment.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Provisions to be further regulated by the Government include terms of transfer, format of transfer application and its supporting documents, components and the fee for registering the transfer.

Article 41

Self-explanatory

Article 42

Paragraph (1)

Unlike a PVP rights transfer where ownership rights are also transferred, a license agreement only provides for the right to enjoy the economic benefit from the PVP rights within a specified time period and with certain terms and conditions. The ownership of the PVP rights remains with the PVP rights holder and is not transferable to the license holder. Therefore, a license holder may not issue a license to another party.

Since a PVP rights holder has the right to issue a license to a third party, a license agreement must clearly state any rights transferred to the third party for a reasonable period of time. When a PVP rights owner draws up a licence agreement with a third party, it is only confined to the rights that have not been already been licensed. The PVP rights owner shall inform all license holders of the issuance of new licences.

Paragraph (2)

Self-explanatory

Paragraph (3)
Self-explanatory

Article 43

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)

Matters that will be further regulated by the government pertaining to the license agreement include the rights and obligation of the party issuing and receiving the license, sections of the PVP rights implementation that may be licensed, duration and format of the license agreement.

Article 44

Paragraph (1)

These stipulations are meant to enhance the use of PVP rights and to benefit the community. At the same time, it prevents the possibility of the PVP rights being exploited for illegal purposes. A license application for a Compulsory Licence shall be submitted to the State Court, and not the PVP office.

Paragraph (2)

The term ‘not exercised’ refers to the 36 month time period from the time that a PVP rights is granted, on grounds that are not technical and/or *force majeure* (natural catastrophes, fire, uncontrollable diseases, and policies of the Government). The non-utilization of the PVP rights results in the inability of the community to gain any benefit otherwise obtainable from the relevant variety.

Article 45

The State Court has the authority to accept or reject a Compulsory Licence application after listening to a presentation by the PVP rights holder into matters relating to justification for not exercising the PVP rights and/or the validity of the grounds for issuing the Compulsory Licence.

A non-exclusive Compulsory Licence refers to a PVP rights that may be licensed to more than one party based on the duration, type of activity or location.

Article 46

Paragraph (1)

These provisions are meant to ensure that the granting of a Compulsory Licence is not exploited for unhealthy competition, unless of real benefit to the public.

Paragraph (2)

The expert opinion from the PVP office and the comments of the PVP rights holder are essential for the State Court to consider and arrive at a decision in a fair and objective manner. The experts may come from the PVP office itself or other Government agencies or relevant parties, at the request of the PVP office.

Article 47

A reasonable postponement may be needed to provide an opportunity for the PVP rights holder to show proof that he has actually exercised his PVP rights and demonstrate with clear evidence his activities and the results of the implementation of his PVP rights. When PVP rights holder is able to show proof of his activities and results of the implementation of his PVP rights, the State Court may then reject an application for a Compulsory Licence. However, if new evidence is found towards the end of the postponement period or if it appears that the PVP rights are not likely to be implemented commercially, the court may resume the proceedings and continue with an investigation on the Compulsory Licence application.

Article 48

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Other similar agreements are agreements that are typically done in other Intellectual Property Rights license agreements.

Article 49

What is meant by “other matters needed to protect fairly the interest of other parties” refers to facts that are revealed during the proceedings.

Article 50

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Article 51

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Article 52

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 53

Self-explanatory

Article 54

Paragraph (1)

In principle, a Compulsory Licence cannot be transferred because it is given only under special circumstances and is confined to specific terms and conditions in the course of its implementation. However, exception is made for successors in title, when the person who had obtained the Compulsory Licence dies. Meanwhile for a legal body, this exception is not applicable.

]

Paragraph (2)
Self-explanatory

Article 55

The basis of the governing laws covers the implementation criteria, the ability to fully utilize the PVP rights, complete equipment and facilities and the technical and financial capabilities of the applicant to utilize PVP rights that originates from a Compulsory Licence.

Article 56

Self-explanatory

Article 57

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 58

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)

This provision is meant to prevent the cancellation of a PVP right arbitrarily by the PVP office.

Article 59

Paragraph (1)

A third party who considers he loses out as a result of a decision to cancel a PVP right may submit his objections and claims to the State Court.

Paragraph (2)
Self-explanatory

Article 60

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 61

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 62

Self-explanatory

Article 63

Paragraph (1)

A license holder includes a Compulsory Licence holder.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 64

Paragraph (1)

A PVP office is managed by professionals, working in collaboration with other experts and/or local or foreign institutions.

Paragraph (2)

Self-explanatory

Paragraph (3)

The administration, documentation, inspection, and PVP information service is implemented through a PVP documentation and information network system.

Article 65

Paragraph (1)

Self-explanatory

Paragraph (2)

The PVP management shall constantly be updated on the latest developments in knowledge, technology and socio-economic issues of the society.

Article 66

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 67

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)
Self-explanatory

Article 68
Paragraph (1)
Self-explanatory

Paragraph (2)
Bona fide owner of products are those whose products originated from a transaction with a PVP rights holder whose PVP rights was later proved to have been obtained through a violation of PVP rights.

Article 69
This provision is to emphasize that PVP rights have a great impact on the economical and political social order.

Article 70
Paragraph (1)
The authority given to the officers of the state civil office does not impinge the authority of the Republic of Indonesia National Police to investigate any PVP criminal acts. In carrying out the given authority, the state civil office shall work under the coordination and supervision of the office of the Investigating Officer from the Republic of Indonesia National Police.

Paragraph (2)
Self-explanatory

Paragraph (3)
In the interest of the investigation, the Republic of Indonesia National Police investigation department may or may not be required to provide guidance and assistance to the State Civil Investigation office as stated in paragraph (1). What is meant by guidance includes investigation techniques and tactics, whereas assistance with investigation covers arresting, restraining or laboratory examination. Therefore, the State Civil Investigation office shall notify early the Republic of Indonesia National Police of the said investigation. The outcome of the investigation in the form of the confiscated materials and evidence shall be handed over to the Public Prosecutor through the Republic of Indonesia National Police.

Article 71
Self-explanatory

Article 72
Self-explanatory

Article 73
Self-explanatory

Article 74
Self-explanatory

Article 75
Self-explanatory

Article 76
Self-explanatory

**SUPPLEMENT TO THE GOVERNMENT GAZETTE OF THE REPUBLIC OF
INDONESIA NUMBER 4043**