

# Justice Aspects on the Rights to Protection of Plant Varieties

(Review of Decision Number 447/Pid.Sus/2019/Pn.Gpr)

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**Abstract:** *Plant variety protection, abbreviated as PVP, is special protection granted by the state, which in this case is represented by the Government, and the Office of Plant Variety Protection carries out its implementation for plant varieties produced by plant breeders through plant breeder activities. Law no.29 of 2000 concerning the Protection of Plant Varieties guarantees that Intellectual Property Rights (IPR) are granted to breeders or anyone who claims to have discovered or developed new plant varieties. Several problems occurred when many Indonesians did not know about the existence of the PVP Law, so violations were rife, including cases of resale of food seeds which should not be allowed. The company was harmed in this case because the turnover would decrease, and there was no legal protection for the rights of plant breeders who had already registered. It is necessary to look at the legal protection aspects of PVP rights violations in Law No.29 of 2000, as well as an analysis of the justice aspects of cases of PVP rights violations. The research method used in this paper is normative juridical. The result of the analysis of this case is that the violation of PVP rights occurs because the community does not know that the activity of intentionally selling or trading plant varieties without the approval of the PVP rights holder is against the law and can be punished. From the case that occurred, the legal considerations carried out by the judge only looked at the aspects that were fulfilled in the article on violation of PVP rights so that the violator was sentenced to imprisonment, but from the aspect of legal justice and humanity, it was not fulfilled because the person concerned should be able to get leniency.*

**Keywords:** Rights, Plant Variety Protection, PVP

## 1. Introduction

### 1.1 Background

Sunaryati Hartono argued that science and technology, especially in the food sector, have shown rapid progress so that the problems that arise are not only focused on food products that can be used as potential commodities to increase people's and the state's income but the source of food production itself can be engineered such as the creation of plant varieties that of course can disseminate superior products.<sup>1</sup>

Legal provisions in Indonesia that can protect plant varieties were initially regulated in the Patent Law. The 1989 Patent Law Article 7 letter c states that all plant varieties can be patented, except for certain commodities such as rice, cassava, corn, and sweet potato. Then this Patent Law was amended to become the 1997 Patent Law, wherein the 1997 Patent Law the provisions related to the exception of patent applications for plant varieties were abolished so that all types of plant varieties could be requested for patent rights without exception, not only covering the plants mentioned above. The 1997 Patent Law changed again to Law Number 14 of 2001 concerning Patents (Patent Law 2001). Article 7 letter d stipulates that plant varieties as living things are inventions that are not granted a patent. An invention is an idea from the inventor which is poured into a specific problem - solving activity in the field of technology, and it

can be in the form of a product or process or improvement and development of a product or process.<sup>2</sup>

The amendments to the rules for the protection of patent rights granted to these plant varieties are made based on the consideration that to meet the food needs of all Indonesian people, research and development efforts are needed towards technological inventions that can produce food ingredients in quality, variety, and quantity as much as possible. However, the provisions for the protection of plant varieties based on the Patent Law have not been able to fully meet the breeding parties' expectations to obtain certainty of legal protection for the results of their inventions or findings.

The development of intellectual property rights relating to the protection of new plant varieties began with the 1989 Patent Law, which did not allow patent protection for food, drink, and plant varieties.<sup>3</sup> In 1997, the Law was amended, which revoked the right, which could then be interpreted in the 1997 Patent Law, that food, drink, and new varieties of plants can obtain patent protection. The basis for these changes is the impact of the ratification of Trade - Related Aspects of Intellectual Property Rights (TRIPs).

Legal protection is protection given to the whole community, so they have all the rights granted by law. In other words, legal protection is various legal remedies that

<sup>1</sup>C.F.G. Sunaryati Hartono, Aspek Globalisasi Internasional dan Regional Yang Berkaitan dan Berpengaruh

<sup>2</sup>Law No 14Year

2001 on Patent, Lembaran Negara RINomor 109 Tahun 2001, Tambahan Lembaran Negara RINomor 4130 Tahun 2001, Pasal 1 Bagian 2.

<sup>3</sup>Damardjati S.D dan W.H. Adil, *Development of Plant Variety Protection in Indonesia*, National Seminar on the Protection of Plant Variety, Ministry of Agriculture, Jakarta, 2000, p. 34.

law enforcers must provide to provide a sense of security, both mentally and physically, from various disturbances and threats from other parties. <sup>4</sup>According to Philipus M. Hadjon, two kinds of legal protection are eminent: preventive legal protection, which aims to prevent problems or disputes, and repressive legal protection, which aims to resolve problems or disputes that arise.

The author then looks more deeply into cases of violation of PVP rights that occur in areas where the population is very close to the agricultural environment, both farmers and sellers of seeds. Although the rights of plant varieties have long been enacted, the community, especially the community among small traders, does not know that reselling seeds/food products without the permission of the owner of the breeder's rights is a violation. This ignorance has made the courts, especially in the Klaten area, hear many cases of PVP rights disputes, namely disputes between companies that own PVP rights and individual communities.

From the description that has been stated, it is essential to discuss, among others, how to get legal protection for plant varieties and how legal protection for plant varieties is to provide legal certainty to plant breeders, and it is necessary to review the legal justice aspect of court decisions regarding PVP rights disputes.

Based on the background of the problems described above, the problem in this paper can be formulated, namely how the aspect of justice in the case of plant variety protection rights (study of decision number 447/Pid. Sus/2019/Pn. Gpr).

## 2. Method

### 2.1 Research Type

The type of research used is normative juridical, meaning that the issues raised are discussed and described in this paper focused on applying the rules or norms in positive law. This type of research is carried out by examining various formal legal rules such as the law on literature that are theoretical concepts that are then linked to the problems that are the subject of discussion. <sup>5</sup>

### 2.2 Problem Approach

In the preparation of this paper, the author uses 2 (two) approaches, namely the statutory approach, which is an approach that is carried out by examining all laws and regulations related to the legal issues being handled. For research for practical activities, this legal approach will open opportunities for authors to study whether there is consistency and conformity between laws and other laws, laws and the constitution, or between regulations. <sup>6</sup>  
A *conceptual approach* is an approach that originates from the views and doctrines that develop in the science of law that by studying the views and doctrines that develop in the science of law, the author can find ideas that give birth to the

legal understanding of concepts. Law and legal principles relevant to the issues faced by the understanding and views of these doctrines are the basis for the author in building a legal argument in solving the problems faced. <sup>7</sup>

### 2.3 Legal Material

Legal materials are a means of writing used to solve existing problems and provide prescriptions about what should be. Legal materials used in writing this script include primary legal materials and secondary legal materials, namely:

#### 2.3.1 Primary Legal Material

Primary legal materials are authoritative legal materials, consisting of legal observers, official notes, or minutes in the making of laws and judges' decisions, including

- 1) Code of Civil law.
- 2) Law Number 29 Year 2000 concerning Protection of Plant Varieties
- 3) Government Regulation Number 13 Year 2004 concerning Guidelines for the Protection of Plant Varieties

#### 2.3.2 Secondary Legal Material

Secondary legal material is also all information about the laws that apply or have been in force in a country; the existence of secondary legal materials is not formally positive law. Included in these secondary legal materials are textbooks on legal research reports and legal journals containing critiques of experts and academics on various legal products or other publications and related internet sites with a study of the problem

#### 2.3.3 Non - Legal Material

Supporting materials from primary and secondary legal sources can be non - legal materials, in the form of internet sources or non - legal research reports and non - legal journals that have relevance to the topic of this writing.

#### 2.3.4 Legal Material Analysis

To conclude from the results of writing that are easily collected, a deductive legal material analysis method is used, which is when research methods based on general concepts or theories are applied to explain a set of data or show a comparison or relationship between a data set and another data set systematically based on a set of data. Legal material was obtained, plus the opinion of scholars who relate to the study material as comparative material. The following steps used are, namely

- a) Identifying legal facts and examining irrelevant matters to determine the legal issues to be resolved.
- b) Collection of legal materials and, if deemed necessarily have relevance also non - legal materials
- c) Conduct a study of the proposed law based on the materials that have been collected
- d) Conclude in the form of argumentation that answers the question
- e) Giving prescriptions based on the arguments that have been built into the conclusions

<sup>4</sup> Raharjo, S. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti. 2000

<sup>5</sup> Peter Mahmud Marzuki, 2015, *Penelitian Hukum*, Kencana Prenda Media Group Jakarta, page 194

<sup>6</sup> *Ibid* page 59

<sup>7</sup> *Ibid* page 60

### 3. Discussion

#### 3.1 Legal Protection of Plant Variety Rights According to Law No.29 of 2000

Intellectual Property Rights (IPR) are granted to breeders or anyone who claims to have discovered or developed new varieties of plants. The law guarantees the ownership and every human being to control and enjoy exclusively the objects or creations produced with the state's help. So it can be concluded from the description above that legal protection is for the benefit of the owner, namely the breeder, personally and in groups who are legal subjects.

Legal protection for the owner or breeder can be understood as an acknowledgment of the natural rights that the breeder has for the new varieties he finds. The exercise of this natural right owned by this breeder is facilitated and protected by applicable legal provisions.

The scope of legal protection for rights owned by breeders or owners lies in the legal protection model that regulates them, meaning that there is a legal protection model under patent law and an effective sui generis system. Then in this patent protection, the exclusive right of a patent owner or breeder to a variety of his findings is powerful. This can prevent other parties from using, selling, or multiplying the seeds or plant varieties without the patent holder's permission. Whereas under the sui generis model, Intellectual Property Rights are specific to plant varieties, there are usually some exceptions to this right, namely the exception of the right that farmers are allowed to sell, store, or reuse part of their harvest as seeds for later replanting.

Seeing its implementation to limit individual interests, the law also guarantees that the interests of the community are maintained. This is in line with the explanation of the PVP Law, which states that "in its implementation, this law is based on basic principles that bring together the balance of public interest and PVP rights holders." The legal protection given to this breeding, in its implementation, must also pay attention to the rights of farmers in particular and society in general.

Plant Variety Rights include property rights in the use of the intellectual property. According to the provisions of Article 570 of the Civil Code, it is stated that: "Property Rights are the right to enjoy the use of an object freely, and to act freely on the object with full sovereignty, as long as it is not guilty by a law or general regulation stipulated by a power which has the right to stipulate it, and does not interfere with the rights of others; all of this thereby reduces the possibility of revocation of rights in the public interest based on statutory provisions and by payment of compensation."

Legal certainty can also be understood as legal protection. In this case, the disputing parties can avoid arbitrary judgment. The essence of legal certainty is related to court decisions on disputes between breeders and disputing parties. A court decision that has been issued basically must be able to be a reference in finding a solution in the same case. Therefore, proper understanding and application of the law to the provisions is a condition that must be fulfilled.

Based on Article 3 of the Plant Variety Protection Law, not all new varieties can be given PVP. Varieties whose use is contrary to the prevailing laws and regulations, morality, religious norms, health, public order, and environmental sustainability will not be granted PVP rights and will not receive legal protection. In addition, new PVP rights will be granted to rights voters or plant breeders if the plant variety is by the provisions of Article 2 paragraph (1); the varieties that can be given PVP include varieties from plant species data types that are unique, new, uniformly stable, and given name. As a new plant variety, it can be recognized if it meets the following technical requirements:

- a) New: at the time of receipt of the application by the PVP office of the Ministry of Agriculture, the variety has never been traded in Indonesia or has been traded for no more than one year or abroad for no more than four years for annual crops and six years for annual crops.
- b) Unique: at the time of registration, it can be clearly distinguished between the variety applied for protection and other varieties that already exist. Uniqueness is based on morphological characters.
- c) Uniform: a variety is considered uniform if the distinct characters in each unit are pretty uniform with each other and conspicuous when compared to the distinctive characters in other varieties.
- d) Stable: a variety is considered stable if its distinguishing character does not change after repeated propagation.
- e) Named: the variety that can be given a name later becomes the name of the variety concerned.

In Article 1 paragraph (3) of the PVP Law, "Plant Varieties are a group of plants of a type or species characterized by plant shape, growth of leaves, flowers, fruits, seeds, and expression of genotype characteristics or combinations of genotypes that can distinguish them from other types of plants. Alternatively, the same species by at least one defining characteristic and there is no change when propagated." From this definition, of course, it can be understood that the plant varieties produced must be different from other (unique) plant varieties and can be characterized by differences in physical form to differences in the characteristics of the plant itself. The regulation related to PVP rights is a development of the legal aspect that wants to create new rights, to strengthen that the type of protection for ideas is in the form of a new concept of rights.

Applications for the protection of plant varieties are made to obtain legal protection, where the state will later grant PVP rights to plant breeders to exploit and benefit from their work. This is because Law No.29 of 2000 adheres to the First to file system, i. e., whoever first applies for registration of Intellectual Property Rights gets legal protection, not the first to invent, who first discovers the technology. So legal protection of plant varieties is obtained if plant breeders apply for protection of plant variety rights. For that, legal awareness of plant breeders is critical if plant varieties produced by plant breeders want to get legal certainty.

Protection of plant varieties is a provision in IPR that is still relatively new in the history of its protection as an immaterial material right granted to individuals by the state.

In another country, namely America, although it is not mentioned explicitly in the country's regulations, there have been known regulations regarding the protection of plant varieties. The regulation came into effect in 1930 along with the publication of The United States Patent Act 1930. Furthermore, in Europe, laws relating to protecting plant varieties and their products have been known since the 16th century.

The provisions in Law Number 12 of 1992 do not regulate the protection of the rights of plant breeders, so plant breeders do not know the benefits that will be obtained if the varieties found are reproduced or sold and what are the sanctions for those who sell or use the varieties found without the consent of the breeder for commercial purposes. Based on the provisions in Law Number 12 of 1992, breeders only receive awards from the government for discovering new varieties.

Other statutory provisions that support the protection of plant breeders are Government Regulation Number 20 of 2005 concerning Transfer of Intellectual Property Technology and the Results of Research and Development Activities by Higher Education and Research and Development Institutions, in Article 5 paragraph (1), Article 6 to Article 11 and Article 38 paragraph (2b) are to provide legal certainty for the provision of legal protection to plant breeders to obtain royalties. Another provision that provides the basis for protection for plant breeding is Law Number 12 of 1992 concerning Plant Cultivation Systems, which essentially contains arrangements for awarding technological inventions in the field of plant cultivation, new types and varieties for individuals and legal entities.

Plant Varieties whose application has been received will receive legal protection of plant variety rights. Phillipus M. Hadjon stated that there are two kinds of legal protection, namely:

- 1) Preventive legal protection. In preventive legal protection, people can submit objections or opinions before a government decision gets a definitive form, preventing disputes. The certificate of protection for plant varieties is a form of preventive protection. With the PVP certificate, the right holder can defend his rights to anyone and prohibit others from using his rights without the right owner's permission. PVP certificate as proof that the plant variety belongs to the plant breeder/right holder.
- 2) Repressive legal protection. Repressive legal protection is contained in Law No.29 of 2000 concerning the Protection of Plant Varieties, namely:
  - a) Article 71 states that anyone who intentionally performs any of the activities as referred to in Article 6 paragraph (3) without the approval of the PVP rights holder shall be punished with a maximum imprisonment of seven years and a maximum fine of Rp.2, 500, 000, 000.00 (two billion five hundred million rupiahs).
  - b) Article 72 states that whoever deliberately does not fulfill the obligations referred to in Article 1 paragraph (1) and Article 23 shall be punished with imprisonment for a maximum of five years and a fine

of a maximum of Rp.1.000.000.000, 00 (one billion rupiah).

- c) Article 73 states that anyone who intentionally violates the provisions of Article 10 paragraph (1) for commercial purposes shall be punished with a maximum imprisonment of five years and a maximum fine of Rp.1.000.000.000, 00 (one billion rupiah).
- d) Article 74 states that whoever intentionally does not fulfill the obligations as referred to in Article 30 paragraph (3) shall be punished with imprisonment for a maximum of five years and a fine of a maximum of 1, 000, 000, 000.00 (one billion rupiahs).

Registration of plant variety rights is absolute if plant breeders want to get legal certainty, considering that what is protected is the economic right and moral right of the inventor/creator. With the certificate of plant variety rights, plant breeders get legal guarantees in the protection of plant varieties produced and can defend them against anyone. To obtain legal certainty, plant breeders must actively protect plant varieties they find will be protected by preventive and repressive legal protection within the stipulated period by Law No.29 of 2000 concerning Protection of Plant Varieties.

### 3.2 Analysis of the Aspects of Justice on the violation of PVP Rights Review of Decision Number 447/Pid. Sus/2019/Pn. Gpr

Reports from the company PT Agri Makmur Pertiwi related to the marketing of sweet corn seeds experiencing a decline or decrease in sales turnover by 10 to 20%. Therefore, a search was carried out for indications of competitors from the black market that were not labeled, but the seeds traded were the same as those owned by PT Agri Makmur Pertiwi. This causes the products of Talenta, Paragon, and Exotix brands to be unable to leave the store. Representatives of PT Agri Makmur Pertiwi are trying to buy Talenta corn seeds (white without packaging) from Mr. Mintoro alias AbahAboh, the owner of the Al Amin Meubel shop, whose address is Sumberagung Village, Plosoklaten District. Then Purity test is carried out by observing plant morphology to determine the purity of the seeds carried out by Mr. Ignatius Julijantoro as the person in charge of the quality assurance laboratory of PT Agri Makmur Pertiwi; The results of the test conducted by Mr. Ignatius Julijantoro that the seeds circulating on the black market are Talenta seeds by taking a minimum sample of 100 seeds, planting them on land with observations including the base of the stem, leaf shape, leaf color, flower shape, and corn cob shape, are the same characteristics possessed by Talenta; That the laboratory test results show that the product is the same as the original Talenta product.

There was a report from the company PT Agri Makmur Pertiwi regarding the marketing of sweet corn seeds experiencing a decline or decrease in sales turnover of 10 to 20%, so an investigation was carried out for indications of competitors from the black market. Purchased white corn seeds from the defendant Mr. Mintoro alias AbahAboh as the owner of the Al Amin Meubel shop, located at Sumberagung Village, Plosoklaten District.

Based on the laboratory test, the results of the inspection of the protection of plant varieties, and the results of the DNA test from the Laboratory of Brawijaya University, Malang, it can be explained that the sweet corn seeds of PT Agri Makmur Pertiwi Talenta and white sweet corn circulating in the market are the same. Talenta products from PT Agri Makmur Pertiwi have obtained independent certification from Government. Farmers who do not partner with PT Agri Makmur Pertiwi are not allowed to distribute it. If the farmers partner with PT Agri Makmur Pertiwi, they only cooperate in production and if they distribute, they must obtain certification from PT Agri Makmur Pertiwi to distribute Talenta themselves. There is no permission from PT Agri Makmur Pertiwi as the holder of PVP rights for sweet corn varieties Talenta with PVP Rights Certificate Number 00213/PVT/S/2013 dated August 13, 2013 issued by the Ministry of Agriculture of the Republic of Indonesia; That the special rights granted to PVP rights holders, one of which is the right to sell or trade, if there are parties who carry out activities to sell or trade plant varieties that have been protected by PVP, they must have the permission of the PVP rights holder, namely PT Agri Makmur Pertiwi in accordance with the provisions in Article 6 of Law Number 29 of 2000 concerning PVP, the defendant is sentenced to imprisonment for 2 (two) years and 8 (eight) months and a fine of Rp.5, 000, 000.00 (Five million rupiah).

Then looking at another similar case, the defendant Serodji was proven to have traded hybrid corn seeds of the Bisi 228 variety brand Cap Kapal Terbang, manufacturer PT. BISI INTERNATIONAL, Tbk 5 kg plastic packaging using facilities such as a house to store goods, the defendant knew that the corn seeds were written as government assistance seeds were not for sale and had not received an appointment from the government or producers in trading the corn seeds. Then sentenced the defendant to imprisonment for 10 (ten) months and a fine of Rp.5, 000, 000 - (five million rupiah) provided that if the fine was not paid, it was replaced with imprisonment for 1 (one) month.

The theory used in this decision analysis is the theory of legal objectives and the theory of justice of Aristotle. Gustav Radbruch, said that there are three legal objectives, namely: Benefit, Certainty, Justice. In carrying out these three legal objectives, the principle of priority must be used. Justice may take precedence and sacrifice the benefits for the wider community. Gustav Radbruch said that there is a scale of priorities that must be implemented, where the priority is always justice, then benefit, and finally legal certainty. The law performs its function as a means of conserving human interests in society. The purpose of law has a goal to be achieved which divides rights and obligations between every individual in society. Law also gives authority and regulates how to solve legal problems and maintain legal certainty.

The judge's decision is correct and appropriate when viewed from the side of applicable legal certainty, namely referring to Law Number 29 of 2000 concerning PVP, but several things need to be noted in this case; this case can be prosecuted civilly because it has fulfilled the existing elements. In article 67, paragraph 2 can be subject to a penalty of compensation as much as what has been sold by the defendant, but the company states that it has suffered a

loss of 10 - 20% as a result of that action. Therefore, the company decided to prosecute.

The defendant was threatened with criminal charges where the incriminating point was because the company felt that it was a loss, but the company was at a loss not because of the defendant's actions but because there were other players or other people. From the aspect of legal benefits, it can give an idea to the public how important it is to know about the rights to protect plant varieties and that cases like this are still prosecuted and sentenced. Then from the aspect of legal justice (because there are no mitigating witnesses in the trial) and humanity (not having been involved in the law before, admitting his actions and being the backbone of the family). The Criminal Code (KUHP) currently in force in Indonesia does not yet recognize the so-called sentencing guidelines. Thus, in deciding a case, the judge has the freedom to choose the type of crime (strafsoort) he wants, in connection with the alternative system of threats in the Act. The judge can also choose the severity of the crime (strafmaat) to be imposed because the law determines only the maximum and minimum punishment. In this regard, what often causes problems in practice is the judge's freedom in determining the severity of the punishment given. This is because the law only determines the maximum and minimum criminal limits. The author believes that the punishment in the decision is heavier than (compare the case of Ahmad Saerodji Number 262/Pid. Sus/2019/PN Gpr in the Serodji case but only sentenced to 10 months in prison).

#### **4. Conclusion**

Based on the results of this discussion, conclusions can be drawn, including:

The decision made by the judges in case Number: 447/Pid. Sus/2019/PN. Gpr by deciding that the defendant has legally and convincingly violated Article 71 of the Law of the Republic of Indonesia Number 29 of 2000 concerning Protection of Plant Varieties and Law Number 8 of 1981 concerning criminal procedural law. The judge, in deciding the case by looking at the evidence obtained in the trial, logically the law was indeed proven to have committed a criminal act of protecting plant varieties against PT Agri Makmur Pertiwi as the holder of the right to protect plant varieties. However, in the analysis, the author considers that the decision made by the panel of judges does not look at the element of mitigation as a whole, namely, the element of the defendant is the backbone of the family which must support his wife and children where if we refer to the theory of justice that has been explained in the previous chapter if indeed the panel The judge saw that the defendant should not have been sentenced to 2 years and eight months as had been warned by the panel of judges. Because if we look at the same case, the decision in a similar case, the judge only imposed a prison sentence of 8 months on the decision number 262/Pid/Sus/2019/PN/Gpr. Of course, in this case, these elements could make the panel of judges decide on a lighter sentence for the defendant.

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