ABSTRACT

The existence of TRIPs agreement particularly article 27 (3) b has significant impact on agricultural field. The strengthen protection on plant varieties will enable global privatization of plant genetic resources, that it will influence on food security. There are two major concerns on this research related to legal principle on protection of farmers’ rights over plant varieties. Firstly, there is no clear legal concept on farmers’ rights in light of Indonesia point of view. Secondly, there is no existing law related to plant varieties which accommodate recognition and protection of farmers’ rights over plant varieties. The main issues on this research are as follow: (1) Justification on protection and recognition of farmers’ rights; (2) Legal principle on farmers’ rights over plant varieties on various international convention as well as on national law; (3) the shape of Legal protection on farmers’ rights over plant varieties base on justice for near future in Indonesia. This research is a legal research which use conceptual approach, statute approach, case approach and comparative approach.

Justification on protection and recognition of farmers’ rights based on: (1) Equity principle since farmers has increasing value of plant genetic resources as main source to create new plant varieties for long time and on their own agricultural tradition. So that, farmers entitled to get recognition as well as protection for their ingenious work. (2) the Role of farmers on conservation, since the majority of traditional farmers have supported on plant varieties conservation. (3) Preservation of farmers’ practices, since the protection of farmers’ rights is important to balancing with plants breeders’.

Legal principles on farmers’ rights protection over plant varieties on various international conventions have not been implemented consistently in Indonesia. The Plant Varieties Act 2000 has applied plant breeders’ right principle, plant varieties principle and plant breeders’ exemption as well as fair access and benefit sharing. However, all those legal protection only for breeders and the recognition of farmers’ rights is still leave behind. Whereas, Plant Conservation Act 1992 as well as Farmers’ Protection and Empowerment Act 2013 are not recognize or even protect farmers’ rights.

The shape of future law on farmers’ rights protection over plant varieties on national level should accommodate justice and fairness by implementing some legal principle as states on international conventions such as: State soverignity over Genetic Resources, Fair and Access Benefit Sharing, Prior Informed Consent, Multilateral System And Material Transfer Agreement. More over, learning from best practices of India, African Countries and Malaysia, the elements of farmers’ rights should include: (1) recognition farmers’ rights is as community rights; (2) Recognition to save seeds of plant varieties and to use it for next promulgation is legal; (3) recognition to exchange, to share and to sell seeds of improving plant varieties is not contrary to the law; (4) farmers have rights to register their own plant varieties and have benefit sharing from further exploitation.

Keywords: farmers’ rights, plants breeders rights, intellectual property rights.