FORMULATION POLICY ON CRIMINAL PROVISION RELATED TO SEEDS ON FOOD SERTIFICATION ON BASED FARMERS PROTECTION

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ABSTRACT

This research focuses on the formulation policy of criminal provisions related to seed certification which is based on the basis of farmers’ protection. The bases consideration in this research is the circumstance in which the policy of seed certification supported by the regulations supports the businessmen, instead of farmers. The impact of seed certification policy that is supported by related regulations is that farmers’ right as consumers in obtaining and utilizing qualified, certified, and labeled seeds (genetically, physiologically, and physically) is neglected. Furthermore, farmers obtain and utilize seeds from businessmen that do not comply with the quality set by the regulations.

The goals of this research are as follows: (1) finding the factors of formulation policy on criminal provisions related to seed certification which is not based on farmers’ protection, (2) offering formulation policy which is related to farmer-based norms of criminal act of seed certification protection, and (3) offering formulation policy which is related to farmer-based norms of criminal penalty of seed certification protection.

The hope into reality of this research, is formulating policy on criminal provision related to seed certification on the basis of farmers’ protection of plant cultivation through that values of justice, democracy, environmental awareness, and the sustainability. It is include of farmers protection as consumers to obtain and use qualified, certified, and labeled seeds (genetically, physiologically, and physically).

(Key words: formulation policy, criminal provisions, seed certification, and farmer-based protection)

INTRODUCTION

The role of law (regulations) in society live by means of philosophical validity\(^5\) is applied when the norms of the law is in accordance with the idea of law being the highest positive value. It has sociological validity\(^6\) when the norms of the law is forced to apply by the authorities despite its resistance or acceptance by the society under the law border. Then law also takes a role in juridical validity\(^7\) when the norms of the law are set on the basis of higher level of law or set on the basis of certain agreed manners. All these kinds of law validities serve as the basis of formulating regulations with regard to plant cultivation under the effort of sustaining food supply.

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\(^5\) Soerjono Soekanto, *Kegunaan Sosiologi Bagi Kalangan Hukum*, (Bandung, Alumni, 1979), hlm. 46
\(^6\) Ibid.
\(^7\) Ibid.
The effort of sustaining food supply has experienced some conflicts within the implementation of the policy on using food material production as follows:

a. Food crops for human consumption\(^8\) such as rice, which comes from rice plant (Oryza sativa L), corns (Zea mays L), and soybeans (Glysine max (L) Merrill);

b. Food crops for animal feed\(^9\), such as corns (Zea mays L);

c. Food crops for alternative raw materials of energy\(^10\), such as corns (Zea mays L) as the raw material for bio-ethanol.

The relationship between food sustainability and the production of seeds is shown by the following: (a) plant germination as one of the components in the system of plants cultivation, (b) plants cultivation as one action in the effort of sustaining foods, and (c) keeping the food availability in an attempt to realize the food security of a society or nation. With that relationship, it comes a belief in the world of agronomy\(^11\) in that "a handful of seeds may feed the world, and seeds are the basis of all plant cultivations." In the world of agriculture\(^12\) also comes another belief that "whoever owns seeds, he owns the food, and whoever controls the food, he dominates the world".

The philosophical law validity (regulations) related to the production of seeds as one component in the system of food crops cultivation is based on the following:

a. The Preamble section of 1945 Undang Undang Dasar Negara (hence, UUD) of Republic of Indonesia 1945;

b. Act No. 12 of 1992 on Plant Cultivation System (The Act on Plant Cultivation System);

c. The Government Regulation No. 44 of 1995 on Seed Plants(The Regulation on Seed Plants).

Farmers’ protection with the production of seeds are in line with that mentioned (formulated) in the Preamble section of 1945 UUD and other less-inferior regulations at its practical implementation. Furthermore, farmers’ right were once formulated in the 1989’s fifth and 1991’s third resolution of Food and Agriculture Organization with regard to plant genetic resources as below:

“rights arising the past, present and future contributions of farmers is conserving, improving, and making available plant genetic resources, particular those in centres of origin / diversity...”

Nevertheless, farmers’ protection keep suffering from global interventions.

\(^8\) Purwono dan Heni Purnamawati, Budidaya 8 Jenis Tanaman Pangan Unggul, (Jakarta : Swadaya, 2007), hlm. 15-16
\(^9\) Ibid, hlm. 37
\(^12\) Ibid.
The global interventions to farmers’ protection related to the production of seeds system by from international institutions or organizations13, as well as General Agreement on Tariffs and Trade (GATT), which was further developed through World Trade Organization (WTO) as a result of Uruguay Round negotiations in 1994. Fortunately, the foundations set in the GATT are employed as the basis of WTO discussions. Indonesia as a WTO member through regulated in The Act No. 7 of 1994 on Ratification of the Agreement Establishing the World Trade Organization (The Act on WTO Ratification), including the provision of consumer protection in the era of global markets.

Developments related to consumer protection in the era of global markets14 include:

a. Consumers, in which they have specific rights in addition to universal ones;

b. Marketing methods of the products to the customer;

c. Reformulation of marketing concepts as strategic concepts, as well as the use of customers, competitors, policies, and government regulations as well as the strength of macro-economic, social, and widely political.

Consumer protection is also realized through product liability as formulated in Convention on the Law Applicable to Products Liability (the Hague Convention)15 as follows:

“The Convention shall apply to the liability of the following persons: (a) manufactures of a finished product or of component part; (b) producers of a natural product; (c) suppliers of a product; and (d) others persons, including repairs, and warehousemen, in the commercial chain of preparation or distribution of a product”

Similarly, product liability related to seed.

The policy development of seed production, which is aimed at seed production qualified, certified, and labeled seeds (genetically, physiologically, and physically) through some stages in seed productions16, include: (a) traditional stage, (b) early stage, (c) development stage, and (d) advanced development stage. Furthermore, the seeding system through the policy on national seed plantation17, includes (a) the policy which is directed towards farmers’ interests and (b) the policy aimed at industrial privatization with a little help from the government. The quality management system through SNI 19-9000-1992, adopted from ISO 9000, is set as a basic principle in which “a good start with a good process will result only in a good product” and “prevention is better than detection, corrective action, and its results”. Therefore, any certification process must be in accordance with the

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17Syamsoe’oed Sadjad; Faiza C Suwarno; dan Setia Hadi, Tiga Dekade Industri Benih Di Indonesia, (Jakarta : Grasindo, 2001), hlm. 13-15.
process of standardization and accreditation as in the certification in the development of quality management system and product certification.

The development of seeds through certification may have triggered various forms of deviance and criminal acts. These acts may be caused by some factors, such as (a) the development of non-commercial seed commodity to that of commercial with all its quality aspects; (b) the imbalance between the number of seeds available and the seeds needed for plant cultivation, and (c) the dependence of farmers on seed industry followed by unaffordable prices. Therefore, seeds as one component in plant cultivation system should be supported by certain law (regulations). The role of law (regulations) here is to enable (a) farmers’ protection as consumers through the utilization of quality, certified, and labeled seeds, and (b) the follow-up actions towards deviance and criminal acts related to seed plants.

The various criminal provisions related to seed certification are, among others:

a. Article 61 paragraph (1) letter b and paragraph (2) letter b and Article 14 paragraph (1) and Article 13 paragraph (2) with an explanation of the Act on Plant Cultivation System:
   1. "Whenever willfully certifying without permission";
   2. "Whenever caught doing certification without permission"

According to Article 33 paragraph (1) and Regulation on Plant Seed Production explanation, the seeds that are produced must meet quality standards through certification (field inspection, laboratory testing, and supervision of installation of the label). Then based on article 11, article 12, article 13, and article 14 Rules of Ministry of Agriculture (hence, PERMENTAN) 2006 on the Production, Certification, and Distribution of Development Seed, the seeds produced are to go through certification which includes (1) crop monitoring, (2) certification through quality management system, and (3) certification of products/seeds;

b. Articles 24 and 18 of regulation of the National Standardization:
   1. “Entrepreneurs are prohibited from producing or distributing goods or services that do not meet and or not in accordance with the National Standard of Indonesia.”
   2. "Entrepreneurs whose goods or services and products have obtained certificates or marks of Indonesia National Standard from the relevant certification agency must not produce and distribute goods or services that do not meet the National Standard of Indonesia.”

c. Article 26 and Article 19 of the Law on Industry:
   "Whoever knowingly acts in contravention of the standards-setting for raw materials and industrial products";

d. Article 62 paragraph (1) and Article 8 of the Law on Consumer Protection:
   "Entrepreneurs are prohibited from producing and/or distributing goods or services that
do not meet or do not conform to the required standards and the provisions of laws and regulations”.

However, criminal acts related to "without going through the certification required by laws and regulations" and "abuse of the certification of seeds" are greatly possible to appear which has not been or are not regulated in the law.

The problems that arise in the research on policy formulation on criminal provisions related to seed certification on the basis of farmers’ protection are formulated as follows:

a. Why has not formulation policy on criminal provisions related to seed certification been based on farmers’ protection?
b. How to make the formulation policy on criminal act norms related to seed certification based on farmers protection?
c. How to make formulation policy on criminal sanctions norms related to seed certification based on farmers protection?

The goals to be achieved in this research are as follows:

a. Finding the cause of why formulation policy criminal provisions related to seed certification have not been based on farmers protection;
b. Formulating the formulation policy on criminal act norms related to seed certification based on farmers’ protection;
c. Formulating the formulation policy on the norms of criminal sanctions related to seed certification based of farmers’ protection.

The benefits to be gained in this research are as follows:

a. In the theoretical dimension, the study is expected to be useful for the development of the science of law/criminal law, especially the formulation of criminal act and sanctions norms related to seeds certification based on farmers’ protection. Similarly, the research will be beneficial in the development of other sciences related to technology, particularly the production, certification, and distribution of seeds;
b. In the practical dimension, this research is expected to benefit the efforts of law enforcement against criminal acts related to seeds certification based on farmers protection. Similarly, the benefits may also come to the development efforts of the production, certification, and distribution of seeds.

**METHOD**

The research on the formulation policy on criminal provisions related to seed certification based on farmers’ protection belongs to the scope of normative juridical research or legal normative. It is an *Ius constitutum*, that is, a concept of a crime related to seed certification which is formulated in the existing regulations. It is also an *Ius constituendum*, that is, a concept of a crime related to seed
certification which is defined in the draft regulations related to the realization of justice, certainty, and usefulness in society, especially farmers and/or farmer groups.

Certain approaches are employed in the present research, including:

a. Conceptual approach to analyze the concepts of (1) formulation policy criminal provisions, (2) criminal act related to seed certification, (3) criminal sanctions related to seed certification, and (3) protection to farmers as seeds consumers;

b. Approach to regulation to analyze the regulations related to seed certification, which are regulated in the Act on Plant Cultivation System; Regulation of Government on National Standardization, the Act on Industry, and the Act on Consumer Protection;

c. Comparison approach to analyze various criminal provisions related to seed certification in India and the Philippines.

Law materials to be used in normative legal research, as mentioned by *Surjono Sukanto and Sri Mamudji* ¹⁸, consist of the followings.

a. Primary legal materials, which include:
   1. The 1945 UUD NRI;
   2. The Act No. 5 of 1984 on Industry;
   3. The Act No. 12 of 1992 on Cultivation System;
   4. The Act No. 8 of 1999 on Consumer Protection;
   5. Government Regulation No. 44 of 1995 on Seed Plants;
   6. Government Regulation No. 102 of 2000 on National Standardization;

Meanwhile, statutory laws of other countries are also included:

1. The Seed Act Number 54 of 1966: an Act to Regulate the Quality of Certain Seeds for Sale and for Matter Connected therewith, as amended through The Seed (Amandement) Act Number 55 of 1972;
2. Republic Act Number 7308: an Act to Promote and Develop the Seed Industry in The Philippines and Create a National Seed Industry Council and for Other;

b. Secondary legal materials, including:
   1. The Act Draft on the Protection and Empowerment of Farmers
   2. The Act Draft on Standardization and Conformity of Penelilaian
   3. The results of research;
   4. The work of experts;
   5. Journal and other articles;

c. Tertiary legal materials, which include:

1. Black's law Dictionary;
2. Indonesian Language Dictionary

Collection techniques of law materials used in this research include identification, classification and comprehensive assessment of the legal materials related to certification (certification through crop monitoring, certification through quality management system, or certification of products/seeds).

The results of the collection of law materials obtained through regulation and literature related to seeds certification are, then, analyzed critically, systematically, and comprehensively by employing the conceptual, regulation, and comparison approaches. The results of the analysis are used to answer the research problems posed earlier in this article.

DISCUSSION

The variety of criminal provisions related to seeds certification as found in Indonesia, India, and the Philippines, some things are to be considered.

a. The subject of the criminal law related to seed certification.

The meaning of the term "any person" stated in each country’s regulation is different from one to another. While in Indonesia the term is regarded towards not only persons but also firms or corporations, the same term has no explanation in the regulation of two other countries.

The term "government", as mentioned by F. Isjwara, means that it is a part of the country which takes the role of handling overall affairs of the state and society; thus, it implies something concrete with a power or authority attached to it. Moreover, the term "government" set out in article 1 paragraph 1 and 2 of Act on Local Government implies that it involves not only the central government but also the local government. The responsibility of the government as a legal subject, be it in the scope of public or private law, is related to its authority in many different ways. HD van Wijk/Willem Konijnbelt assert that the authority includes (1) the attribution, that is, the authority of the government provided by the legislative body to the organs of the government, (2) the delegation, that is, the delegation of the authority of the government from one organ to the other governing organs, and (3) mandate, that is, when other organs are enabled to use the government’s authorities under its name.

The term "legal entity" is the one that is associated with everything based on the demands of law recognized by the community as a supporter of the rights and

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19F Isjwara, Pengantar Ilmu Politik, (Jakarta : Bina Cipta, 1971), hlm. 91.
obligations. Then the term "corporation"\textsuperscript{22} refers to a legal entity or a term for \textit{rechts persoon} within the scope of civil law. Meanwhile, the term "enterprise", as mentioned \textit{Molengraaff}\textsuperscript{23}, should be the one that has elements of (a) continuous, (b) open to public (as it relates to the third party), (c) having specific quality (as it moves in the field of commerce), (d) delivering goods; (e) having entered into trade agreements, and (f) intending to make profits. The term "businessman", subject to article 1 paragraph 18 of Act on National Standardization and provisions of article 1 paragraph 3 of the Act on Consumer Protection, refers to any individual or entity, be it legally incorporated or not, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or together with agreements to carry on business in various economic fields. Moreover, the responsibility that a legal entity or corporation has should undergo certain models, as suggested by \textit{Muladi} and \textit{Dwidja Priyatno}\textsuperscript{24}, which include the followings: (1) the responsibility lies on the management as it consists of people who build the corporation; (2) the corporation acts as the founder, while the responsibility lies on the management, and (3) the responsibility lies on the corporation which also serves as the founder.

The definition of the term "company", according to the Black's Law Dictionary\textsuperscript{25}, is as follows:

"Company is a union or association of persons for carrying on a comrcial or industrial enterprise: a partnership, corporation, association, joint stock company" The definition of "firm", according to the Black's Law Dictionary\textsuperscript{26}, refers to as:

"Firm is a business entity or enterprise; unincorporated business; partnership of two or more persons".

"Firm name refers to the name or title under which company transacts its business". The definition of the term "association", which is also defined in Black's Law Dictionary\textsuperscript{27}, is:

"The act of number of persons in uniting together for some special purposed or business. It is a term of vague meaning used indicate a collection or organization of persons who have joined together for a certain or common object. Also the persons so joining; the state of being associated".

\textsuperscript{22}H Setiyono, Ibid.
\textsuperscript{23}CST Kansil (2), \textit{Hukum Perusahaan Indonesia} (Jakarta : Pradnya Paramitha, 1985), hlm. 1
\textsuperscript{24}Muladi dan Dwidja Priyatno, \textit{Pertanggungjawaban Pidana Korporasi} (Jakartan : Kencana Prenada Media Group, 2010), hlm. 83
\textsuperscript{25}Henry Campbell, Black's, Op.cit., page. 307
\textsuperscript{26}Ibid., hlm. 571
\textsuperscript{27}Ibid., hlm. 111
These terms (company, firm, and organization) are available in the regulations of India and the Philippines. The term “individual” is uniquely for Indonesia, while the term “any person” mentioned in that of India and the Philippines refers to anyone.

b. The subjective element of Act on Plant Cultivation System is shown on the use of the term "intentionally" or "negligence"; while Act on Industry only contains the term “intentionally”. Unlike the case, the Government Regulation on National Standardization and Act on Consumer Protection do not contain a specific term but an implicit "intentionally". Then, the use of these terms are compared with the Seed Act Number 54 of 1966 which has been amended through The Seed (Amandement) Act Number 55 of 1972 for India, and Seed Industry Development Act of 1992 or Republic Act Number 7308 for the Philippines, which are less explicitly-mentioned in their respective legal provision.

c. The objective elements of criminal acts are the followings:

1. Act on Plant Cultivation System, which is defined as "doing the certification without permission";
2. The Government Regulation on National Standardization, which is formulated with "ban for manufacturing and/or distributing goods or services that do not meet and/or not in accordance with the National Standard of Indonesia which has been enacted a mandatory" and "companies of which their goods or services and products have obtained certificates or marks from Indonesian National Standard product certification body are banned to produce and distribute goods or services that do not meet the National Standard of Indonesia ";
3. Act on Industry, which is formulated as "doing acts that are on the contrary with the standard settings for raw materials and/or items of industrial products";
4. Act on Consumer Protection, which is formulated as "a prohibition from producing and/or trading goods and/or services that do not comply with the required standards and the provisions of laws and regulations";

Meanwhile, the objective element of criminal offense, which is set in the Seed Act Number 54 of 1966 which has been amended through the Seed (Amandement) Act No 55 of 1972 for India, is formulated as "penalty, if any person (1) contravenes any provision of this Act or any rule made there under; or (2) prevents a Seed Inspector from taking sample under this Act; or (3) prevents a Seed Inspector from exercising any other power conferred on him by or under this Act "and "where an offense under this Act has been committed by a company". Then, the objective element of a criminal offense, which is set in the Seed Industry Development Act of 1992 or Republic Act Number 7308 for the Philippines, is formulated as "Any person, firm, or association who shall violate any provision of this Act or the implementing rules and regulations promulgated pursuant to this Act ". 
The Formulation of Policy on Criminal Provision Related to Seeds Certification Has Not Been Based on Protection of Farmers

The various factors which influence the regulations related to seed certification, among others are:

a. the substance of law in regulations related to seeds certification tends to take the sides of businessmen rather than the sides of the farmers as seeds consumer;

b. there has been a bigger tendency of law sanctions given in a form of criminal sanctions rather than in a form of administrative sanctions; while deviations and / or violations of these laws can potentially be detrimental to the farmers' rights as consumers of seeds; and

c. there have been found “some actions without going through the certification required by regulations” and "an abuse on the certification of seeds,” and these situations have, unfortunately, not been and / or are not regulated in the laws.

Law (regulations) is considered as an effort toward protection of farmers, which is done through validities of law, which include:

a. The philosophical validity, which is formulated in the Preamble of UUD NRI Tahun 1945, as one of the efforts to realize protection of farmers. Therefore, protection of farmers by recognizing and securing the farmers’ rights in obtaining and utilizing of quality, certified, and labeled seeds, is in line with the values formulated in the Preamble of UUD NRI 1945;

b. Sociological validity, which is manifested through some effort to protect farmers rights, as provided in Article 32 and Article 38 of the Plant Cultivation System Act, and Article 2 of the Government Regulation on Seed Plants, stating that seeding aims not only to guarantee adequate and sustainable fulfillment of quality seeds, but also to guarantee germplasm preservation and utilization. As to the matter, based on Article 7, Article 25, and Article 26 on the draft of the Act of Protection and Empowerment of Farmers, some things are enlisted and stated:

1. A strategy to protect farmers, through production facilities;

2. Government’s obligations related to the availability of production facilities in the right time and right (affordable) prices for farmers; provision of seeds, fertilizers, and pesticides in accordance with the quality standards; availability of local production facilities; and encouragement to farmers to provide quality production facilities for themselves or their group;

3. Government’s / Local Government’s obligations to help providing plant seeds or seedlings, fertilizer, and / or equipment and appropriate farming machines in terms of target, time, location, quality, and quantity.
c. Juridical validity, which is manifested through some effort to protect farmers, such regulated in the Act on Plant Cultivation System, Government Regulation on National Standardization, Act on Industry, and Act on Consumer Protection. However, there are many things to consider under the juridical validity in order to protect the rights of farmers. Those things are:

1. The regulations stated in Article 37 on Government Regulation on Seed Plants, which state things such as: that the Minister has the right to cancel the certificates or the results of laboratory tests, to ban the use of labels, and to stop the distribution of seeds as “bina” seeds, if it is proven that the certificates or the laboratory test results and the use of labels are not conducted properly;

2. Article 24, Article 29, Article 30, and Article 41 on the Minister of Agriculture Regulation No. 39/Permentan/OT.140/8/2006 which regulates Production, Certification, and Distribution of “Bina” Seed, which listed several important points, such as:
   i. if a crop has not met the applicable standards, seed producers can request a re-examination coaching after they improve the quality of the seeds, and if the results of re-examination still do not meet the standards, the certification must not be proceeded;
   ii. if a vegetative phase and / or generative phase examination proves that the seeds can meet the standards applied, but at the last inspection the seeds do not meet the standards, the certification can proceed if it meets the standards of the lower classes of seeds;
   iii. testing and re-labelling should be made no later than 14 (fourteen) days before the distribution time expires, and if the results of the examination referred to in verse (3) proves that the seeds meet the standards of quality, seed producers or seed dealer can put the label on the seed containers with the word "Re-Labeling";
   iv. “bina” seed certification may be canceled, if it is found out that the certification is not done on the right procedures or that the documentation supporting the certification is incorrect;

The provisions of criminal law related to seed certification have not been based on protection of farmers, which includes:

a. Philosophical dimensions, has formally fulfilled the requirement enlisted in the preamble of UUD NRI Tahun 1945; yet at the praxis level, it has not met formulation in the preamble of UUD NRI Tahun 1945 itself and other government’s regulations and values, such as justice, certainty, and usefulness for the welfare of Indonesian society, including
the welfare of farmers related to obtaining and utilizing of seeds, which, at the present moment, is not optimal;

b. Sociological dimensions, in which there has been found tendency to stand for seed producers than for the welfare of farmers, as consumers of seed, in obtaining and utilizing of seeds, such as the trend toward administrative sanctions rather criminal sanctions for the producers, which can be detrimental to farmers' rights as consumers of seeds; and

c. Juridical dimensions, penal provisions related to seeds certification can be found in the present resulations (the Act on Plant Cultivation System, Government Regulation on National Standardization, Act on Industry, and Act on Consumer Protection). However, there is not even one criminal provision regulating those who are “without going through the certification required by laws and regulations” and those who "abuse certification".

**Formulation Policy through Formulation of Criminal Action Norms Related to Seed Certification Based on Protection toward Farmers**

The effort to criminalize the act of "not going through the certification required by the regulations" and of "abusing certification" must not be conducted due to some consideration that:

a. the essence of seed certification must be considered as a standard and conformity assessment activity, which has been standardized in the field of seeding. Then, seed certification aims at obtaining qualified, certified, and acknowledged seeds through quality control processes and procedures in the field of standardized seeding;

b. seeds (qualified, certified, and labeled or quality seeds genetically, physiologically, and physically) will become one important component of plant cultivation activities as an effort to improve crop production for the welfare of farmers and society;

c. the act of “not going through the certification required by the regulations” and of "abusing certification" must be considered as an act which is contrary to laws and is prohibited by the regulations—and punishment must be given to whoever break the regulations.

The formulation policy through formulation of criminal action norms related to seed certification based on protection toward farmers covers several things as follows:

a. Philosophical validity toward formulation policy through formulation of criminal action norms related to seed certification based on protection toward farmers include:

1. The manifestation of justice, certainty before the law, and usefulness for society and nation, and as the manifestation of ideal laws in the Preamble of UUD NRI Tahun 1945;

2. The effort to improve the welfare of farmers by recognizing and warranting the rights of farmers by giving them chances to access and use information on quality seeds (genetically, physiologically, and physically good seeds) and ultimately to get and use the seeds.
b. Sociological validity toward formulation policy through formulation of criminal action
norms related to seed certification based on protection toward farmers include:
1. Criminal act related to seed certification must be seen as an action that could be
detrimental to the national development goals, as to seeding as a component in plant
cultivation, plant cultivation as an important component for food availability, and
availability of food as a basis of national food security and / or national food
sovereignty;
2. Seed plants as a system to ensure the quality of adequate and continuous seeds
availability for continuous plant cultivation;
3. Recognizing and warranting the rights of farmers to obtain and utilize quality seeds
(genetically, physiologically, and physical), certified, and labeled; as well as
information on it.

b. Juridical validity toward formulation policy through formulation of criminal action
norms related to seed certification based on protection toward farmers include:
1. Criminal acts related to seeds certification must be seen as an undesirable act and can
cause harm (material and / or spiritual) toward the society;
2. Criminal acts related to seeds certification of which have been formulated in
regulations ("certification without permission", "inappropriateness with Indonesian
National Standard", "inappropriateness with the standards of raw materials / goods as
industrial products", "inappropriateness with the required standards and the
provisions of regulations") or which have not been formulated in the regulations ("not
doing the required certification based on the regulations" and "abusing certification");
3. Criminal provisions related to seeds certified are written in some regulations, such as
in Article 61 Verse (1) part b and Verse (2) part b related to Article 14 Verse (1) and
Article 13 Verse (2) on Plant Cultivation System Act; Article 24 related to Article 18
on Government Regulation on National Standardization; Article 26 related to Article
19 on Industry Act, and Article 62 Verse (1) in related to Article 8 on Consumer
Protection Act; and
4. Criminal provisions related to seed certification written in some regulations may
cause ambiguities on the substance of laws on each article of the referred regulations.

Formulation Policy through Formulation of Criminal Sanction Norms Related to Seed
Certification Based on Protection toward Farmers

The penalization problem is always related to criminalization, as to the criminal sanctions
written on the government regulations such as:

a. Article 61 Verse (1) part b and Verse (2) part b and Article 63 of Law on Plant
Cultivation System on penalty of imprisonment, criminal confinement, and criminal
penalties as well as criminal seizure of certain goods;
b. Article 24 and 18 of the National Standardization PP with penal sanctions and / or administrative sanctions;

c. Article 26 and Article 19 of the Law on Industrial and sentenced imprisonment, imprisonment, or a fine and revocation of the industry;

d. Article 62 Verse (1) and Article 8 Verse (1) part a Law on Protection of Consumers with imprisonment penalties or criminal fines and penalties seizure of certain goods, the announcement of the verdict; payment of compensation, suspension of operations, withdrawal of goods from circulation, and revocation of business license.

Similarly, the provisions which have not been regulated related, which can be subject to criminal penalties and / or administrative sanctions, include (a) the acts of not going through the required certification based on the existing laws and regulations and (b) the acts of abusing certification.

The formulation policy through formulation of criminal sanction norms related to seed certification based on protection toward farmers include:

a. Philosophical validity toward norms on criminal sanctions under the framework of through formulation of criminal sanction norms related to seed certification based on protection toward farmers include:

1. The manifestation of justice, certainty before the law, and usefulness for society and nation, and as the manifestation of ideal laws in the Preamble of UUD NRI Tahun 1945;

2. The effort to improve the welfare of society, especially farmers by recognizing and warranting the rights of farmers. As such, the welfare of the criminals and their family should also be warranted in which their dignity should still be considered.

b. Sociological validity toward norms on criminal sanctions under the framework of through formulation of criminal sanction norms related to seed certification based on protection toward farmers include:

1. Sanction, especially criminal sanctions, essentially is a torture for the criminals themselves. However, in giving out punishment toward the criminals, the application of coaching theory\(^\text{28}\), a method in the treatment of offenders, a multilateral approach oriented to potentials, concern both individuals and society as a whole, should be considered.

2. The coaching theory as explained Sahardjo\(^\text{29}\), as explained on previous sub-section (on criminal laws), covers among others: (i) the lost people are protected and are given chances to learn how to be a good person for the society; (ii) the government does not have the rights to make people behave worse or be worse people than before they enter the jail; (iii) each person is and must be treated as a human being even

\(^{28}\text{Ibid.}\)

\(^{29}\text{Ibid., hlm. 13-15}\)
though they have (once) lost or done something wrong; and (iv) the punishment given out to the criminals are done not only for the sake of the criminals themselves, but also for the sake of the society (in this case is farmers) in order to protect the society and prevent worse crime to happen.

c. Juridical validity toward norms on criminal sanctions under the framework of through formulation of criminal sanction norms related to seed certification based on protection toward farmers include: (1) criminal sanctions are essentially a torture for the criminals, both in the form of criminal sanctions or actions; (2) there are many forms of criminal sanctions to be given out to the criminals of seed certification, such as primary criminal sanctions (to be put in jail or to pay a fine) and additional criminal sanctions (to lose some rights, to give out some things they have, to be sentenced by the judge).

CONCLUSION:

a. The values of justice, certainty, and usely for farmers society not have been implemented substantially on the existing regulations. There still a tendency for farmers’ right to be violated in the processes of obtaining and utilizing of seeds. Criminal provisions related to seeds certification can be found in the existing regulations. However, there has not been any criminal provisions related to the "acts of not going through the required certification regulations" and "abuse certification";

b. The farmers safety, as seed consumers, need to be supported by criminal provisions related to seed certification, throughout the processes of obtaining and utilizing quality seeds (genetically, physiologically, and physically good quality seeds), certified, and labeled. Therefore, the formulation of policy related to criminal norm sanctions should solve the problems of: (1) certification without permission; (2) the acts of not going through the certification required by the regulations; (3) the acts of abusing sertification; (4) certification processes which do not meet and / or not in accordance with the Indonesian National Standards of certification; (5) certification processes which do not meet the standard raw materials and / or industrial goods; and (6) certification processes which do not meet the standards and provisions of laws and regulations. An exception must be given to production and / or distribution of seeds by farmers and / or groups of farmers based on traditional knowledge and / or local wisdom under the framework of sustainable plant cultivation (the national development objectives).

c. The formulation policy on criminal sanctions norm is always in line with the formulation policy of criminal acts norms. Therefore, efforts on formulating policy on criminal sanctions related to seed certification should be related to the kinds of penal and the penal systems.
RECOMMENDATION:

a. The manifestation of justice, certainty, and use for farmers society should be done through the formulation of criminal sanctions on the Draft of Act on Plant Cultivation System covering: (1) certification without permission; (2) the acts of not going through the certification required by the regulations; (3) the acts of abusing certification; (4) certification processes which do not meet and/or not in accordance with the Indonesian National Standards of certification; (5) certification processes which do not meet the standard raw materials and/or industrial goods; and (6) certification processes which do not meet the standards and provisions of laws and regulations. An exception must be given to production and/or distribution of seeds by farmers and/or groups of farmers based on traditional knowledge and/or local wisdom under the framework of sustainable plant cultivation (the national development objectives);

b. The manifestation of criminal sanctions norms should always in line with the formulation policy of criminal acts norms on the Draft of Act on Plant Cultivation System, such as (1) imprisonment, (2) criminal confinement, and (3) criminal fines as primary punishment, while (1) revocation of certain rights, (2) seizure of certain goods, and (3) the judge's verdict as additional punishment, including withdrawal of goods (seeds) from circulation, suspension of operations, cancellation of certification, and payment of restitution. Similarly, the penalty system should be done by giving maximum sanction of penalty, alternative sanction of penalty, cumulative and facultative sanctions as optional punishment;

c. Revision to criminal regulations related to seed certification based on protection on farmers should be done through further research and development. Result of revision to criminal regulations related to seed certification based on protection on farmers will to be development in jurisprudence or criminal law utilized, legal formulation through the regulations; law enforcement, and legal protection so farmers empowerment.

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