The Utilization of Intellectual Property Rights (IPR) of Plant Variety through Partnership to Improve Small Micro Agribusiness Competitiveness in Strengthening the National Economy

Nina Nurani  
Bussiness and Management Faculty, Widyaatama University, Indonesia

Abstract
This research is aimed to study the protection of IPR of plant variety for the inventors through the PVT law, which is more appropriate, rather than the Right of Patent Law. Studying the utilization of IPR of plant variety through business partnership Franchising and Inti Plasma may improve the competitiveness of small micro agribusiness. The method used in this research is normative comparative and historic legal. Based on the research results, the PVT Law is more appropriate to protect the plant variety inventors compared to the Patent Law. The IPR of plant variety is performed through the business partnership Franchising and Inti Plasma. The Indonesian inventors have not been optimally used by PVT Law, particularly the national private inventors. The Small Micro Business, arrangement of partnership has not yet provide strong arrangement to protect the micro businesses to give rise to the “Fair businesses as the effort in strengthening national economy. A concrete step that must be taken is completion of PVT Law, to renew the partnership arrangement of Franchising and Inti Plasma as the production of The Act”.

Keywords: IPR, plant variety, partnership, small micro agribusiness, competitiveness, strengthening the national economy

1. Introduction
The collapse of modern industry due to economic crisis touches the thoughts of the people to reform the old paradigm into new paradigm by applying the society based economic system, the system based on the people economics; the small and medium business.¹

Agriculture sector is the pillar of people’s economy. The leading sector aims at improving people economic and comparative advantage. The agricultural products are the main needs for Indonesia. The state has comparative advantage, particularly the abundant natural resources and its human resources, less skillfull they are though.

Agricultural development plays an important role for the strong basic of the people’s economic as well as the sub sector of food plant that plays significant and strategic roles in the national and regional development. This is shown in the development and the growth of food resistance, bruto domestic product (PDB), job opportunities, sources of income, and the national and regional economics. These are the trigger for the growth of upstream and downstream industries. The food plant contributes significantly to the people economic.²

The agricultural development based on the people economic serves as buffer on various economic shocks. The agricultural sector with a great involment of human resources grows positively during the crisis. This then can be made as the capital to improve the people’s economic resistance in the process of economic development. Therefore, the new paradigm in agricultural development uses the approach of

²bid In 2003, the PDB reaches Rp 94.8 trillion, equals to 40.8% of the PDB in agricultural products or 5.3% of the national PDB. In 2004, the food plant PDB reaches Rp.124,5 trillion, equals to 60.5% of the PDB in agricultural products or 7.42% of the national PDB
agribusiness system. Various agribusinesses are performed by the small and middle business agents. Small agribusiness sector, particularly primary production sub-system, has proven to be the most resistable one in the economic crisis. Therefore, the small agribusiness is potential in strengthening the national economy.

Bungaran Saragih says that the only option for industrialization that makes Indonesia able to compete and that makes the people benefit much of it is the industrialization through the agribusiness development in which the agroindustry is the sphere. Nowadays, agribusiness is considered as the business in the field of agriculture and trade management. Agribusiness is the whole activity comprising manufacturing, distributing, agricultural production, and the process and distribution of the agricultural products.

Agribusiness is a preeminent sector, is the most effective and efficient way of empowering people economic, is the pillar of economy for most people. The development of national economy gives priority to the development of agribusiness, an obligatory requirement for the empowerment of people economic life and the national economic empowerment additionally.

The development of society-based agribusiness is expected to be able to overcome the global challenges, not only regulate the decentralization and autonomization but also improve the role and potential of small and middle agribusiness in order to enhance the competitive outcome. However, in the agribusiness system, this development faces great obstacle for the limited small agriculture business. This small agriculture business is still sub-system or semi-subsystem in nature by way of traditional cultivating, limited space, limited knowledge of business orientation. This does not make the agriculture business as the real business, but way of life from generation to generation instead.

The improved using of modern technology in the village has changed the farmer’s orientation to business. Nevertheless, the limited and less benefit trending such as the continuously understate agriculture business and lower education delay the process of improving the competitiveness.

Small agriculture business needs to be improved to enhance the income and working opportunities for the farmers so that they can be competitive, down to earth, continuous, and decentralized. Therefore, the government must pay attention to the following policies: (1) they must stand for the farmer’s prosperity without obstructing the development of the big agriculture business that has mutual benefit and understanding system, (2) extend the access to technology and market so the farmers can well decide the commodity through research, (3) continuously guarantee the proper income and ensure the potential risk to be overcome by way of environmental friendly approach, (4) the domestic and international competition should be carried out by improving the commercial agribusiness by selling the excellent products, market development and standardized through partnership.

In connection with domestic and international market, in order to fulfil

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3 Sri Widodo, 2003. Role Agribusiness Middle and Small Business Strengthening The National Economy. Liberty, Jogjakarta opcit, pp 2. This system consists of sub-system; primary production on agricultural (on-farm), upstream off-farm (upstream deals with input), off-farm upstream (downstream deals with products), and supporting consisting of research (latest technology provider).

4 ibid

5 ibid.

domestic customer needs and to anticipate the dynamic change of internationally strategic environment, the development of small agriculture business must be able to enhance the competitiveness of the product. In fact, though, the agriculture product from Indonesia has not yet been competitive enough with that of the other countries. Therefore, conducive climate needs to be created by the farmers to improve Indonesia agribusinesses. At the same time, they may contribute significantly in providing primary commodity, improve foreign exchange through export by reducing import.

As an agribusiness country, Indonesia has a big opportunity to be the biggest agribusiness country and the biggest producer for several important agribusiness commodities. However, this benefit has not guaranteed the successful in international business. Through the liberal in international trade, the great competition occurs in international agribusiness product; therefore, the competitive advantage becomes the determining factor in winning the competition.

This competitive advantage is faced to consumer preferences on agribusiness products that have been fundamentally changed the market behavior in evaluating the good consumed and produced for customers and producers. Consumers demand detailed and comprehensive attribute; not only kines, comfortability, and price, but also quality, nutrition composition, consumption safety, and humanity life environment. Many facts show that agribusiness commodities that do not fulfill those attributes have difficulties in reaching the international market, some, the consumer even reject them. The West claims that palm oil is high in cholesterol and that tropical timber may damage the environment.

This brings an important implication in developing and improving agribusiness competitiveness. The consumer’s demand must be explored and made as a value system in producing excellent commodities. In this condition variety is one of the most determining factors for the quality and quantity of the agribusiness products.

At this moment, the number of findings of excellent variety is low because the making is subject to the research from government institution, hardly private institution involved in it. This is due to the inductive atmosphere leading to innovation. In fact, the wanted excellent variety is expected to be able to enhance the efficiency of processing and producing better quality to meet the consumer preference and demand now and in the future.

Highlighting the points above, the main ground working (agribusiness) then is to enhance conducive atmosphere for the effort of making excellent plant variety, so that the produced agribusiness products meet the consumer preferences. This will give bigger opportunities for the successfullness in gaining the market for Indonesia’s commodities, as had been shown by Thailand.

Indonesia is actually the greatest competitor for Thailand since its agriculture products are not left behind. Indonesia in fact

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11 ibid


13 ibid

14 ibid


16 Ahmad Baihaki, Undang-undang No. 29 Tahun 2000, op. cit.

has advantage such as the varied commodities, as long it is supported by the proper infrastructure; research fund, law protection, and the involvement of seed private industry.

The main reason of this private industry to produce competitive, excellent variety is that there is no assurance for profit. Whereas other party will make use this finding without being conflicted with any law consequences. This condition can be changed by giving law protection as a reward for the findings of competitive, excellent variety in the form of IPR law18.

This is appropriate with the concept of prosperous country that law development is mainly focused on the creation of appropriate law in providing protection19. The IPR is the exclusive right for plant variety and may contribute to the improvement of agribusiness competition.

The arrangement of IPR for inventors is in the Patent Law No. 14 Year 2001. The law does not fully accommodate “the needs” of plant variety20. This is why the patent protection has not been fully used by the Indonesian inventors. Based on Directorate General for Patent of Department of Law and Human Rights, to this day there is only 7 national inventors who assign their plant variety products. This admission can actually give exclusive law protection for the inventor.

As the implementation of TRIPs, the protection of plant variety is not only in the Paten law but also in PVT Law No. 29 Year 2000 as a sui generis system, considering that plant variety has its own uniqueness of “character stability” which is very important, farmer exemption and traditional knowledge has not been covered by the patent requirements.

The comprehensive and appropriate IPR arrangement for inventors is expected to be able to open the opportunities for the growth of seed private industry that can produce excellent variety. This is the key for the successful of competitiveness in agribusiness21. Additionally, several commodities of agriculture products strengthen the national economy.

Nevertheless, this expectation is not yet to come through PVT Law has been applied 10 years ago and its arrangement in PP has been established since 2004 together22, even more, the PVT Central Office had been prepared for the admission of plant variety. However, this has not been made use by the national inventor. Since its first opening to March 2010, the PVT Central Office Jakarta has received 47 inventors with 347 varieties and there is only 8 private national inventors. Another are 34 government inventors and 5 foreign inventors23. There are 204 local varieties which are communal/collective in nature coming from 111 regencies. This is the barrier for the improvement of competitiveness in small micro agribusiness which makes use the technology for the plant variety24.

Another important thing about IPR plant variety is that it is a strategic medium for the inventors to make partnership in agribusiness with the small micro agribusinesses. This can be performed through Franchise agreement and Inti plasma. This agreement is an effort of improving the business climate to be conducive in order to extend the business as wide as possible; at the same time it can also improve the position and role in creating economic growth, disentarlization and improved income, job opportunities, and prosperity25.

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19 Article 7 (c), (d) Patent Law of No. 14 Year 2001
20 Ibid
22 Information of PVT Central Office : until Maret year 2010
23 ibid
24 ibid
25 Law of No.20 Year 2008 about the Small and Middle Micro Business
One of the efforts of utilizing IPR plant variety, in order the farmer to be able IPR to provide excellent seed to reach the highest production that meets the consumer preferences especially in “Perkebunan Rakyat”, the Directorate General of Plantation of Constructing Production makes an agreement of “Franchising in seed partnership”. However, this utilizing is still in the level of Center/Government Research Institution since not many of private industries involved. This condition is one of the influencing factors that delay the partnership of Franchising, as well as the competitiveness in small micro agribusinesses.

Nowadays, the other obstacles in establishing this partnership and its goal are the in appropriate arrangement for the partnership agreement that may lead to the conducive business climate for the small micro one. Though there are the Small and Middle Micro Business Law of No. 20 Year 2008 about the Small and Middle Micro Business and the PP No. 42 Year 2007 about Franchise, but they do not explicitly arrange the rights and obligation for each party involved, particularly in providing protection for the small micro business with limited benefits. Base on the thinking above, Researcher is aimed at study the protection of IPR of plant variety for the inventors through the PVT law, which is more appropriate, rather than the Right of Patent Law. Studying the utilization of IPR of plant variety through business partnership Franchising and Inti Plasma may improve the competitiveness of small micro agribusinesses.

2. Theoretical Background

The prosperity of society is an effort of realizing the national goal, oriented to the democratic and fairness principles. This is clearly stated in Article 33 Article (1) Amendment of 1945 Constitution that the economy is built upon the kinship principle. It is expected that there will be a balance among the big, middle, and small agribusiness partnership and that all party involved can compete elannishly, construct each other in developing the efficient national economy27. The Article 33 Article (3) and Article (4) Amendment of 1945 Constitution describes that the potential in Indonesia can mostly be used for the prosperity of the people of Indonesia. The economy runs under the basis of democratic, togetherness, efficient, fair, continuous, environmentally sighted, and autonomous28. Therefore, the biological variety is the potential that serves as the medium to assemble excellent plant variety to be used for the people’s prosperity. This can be implemented in agriculture sector supported with the law improvement in assuring the fairness, orderliness, law assurance, consequent, and indiscriminative29.

The role of law in the development process according to Mochtar Kusumaatmadja30 in Theory of Law Development is that the law assures that the happening changes are orderly occurring31. The law is the medium of society reforming; that is to say that the norm or rule may serve as regulator, or is the developmental medium; that is to say that it can lead the human activity to the wanted goal objected by the development or the reformation itself. Sunaryati Hartono says that the art of law improvement comprises four following

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27 Article 33 point (1) Amendment of 1945 Constitution
28 Pasal 33 ayat (3), (4) Amendment of 1945 Constitution
31 Opcit
things: (a) to complete, (b) to change to a betterment, (c) to create the non-existing, and (d) to erase what is in the older system.

In order to put the development in its proportion, it requires law assurance that can be implemented in the form of providing proper sets of law to meet the needs of improved and prosperous society32 or to meet the international market. Similarly, the plant variety needs for protection through a proper IPR plant variety33.

According to Bagir Manan, in order to meet the proper IPR arrangement there are three important elements required in the constitution with its legal validity, commonly acceptable in society and is valid in the long term, they are34: legal, sociological, and philosophical35 so that the the Law is useful36.

This thing requires great participation from the government through the concept of “modern welfare state” so that the efforts perform will not meet the barriers of unfairness37. Padmo Wahyono states that in this concept, the state not only serves as the guarantor for the people but also provides the rights and obligation in social, economy, and culture sectors38. In relation to that, Marbun says that in “modern welfare state” the government must participate actively in any society’s activities so that the welfare is provided for every people39.

The main principal of IPR is that one who creates and innovates something from his intellectual must gain the right of possession in the form of scientific right that is based on the law of nature40. Grotius argues that this law of nature created through its rational activity is a positive law that regulates the way of respecting the right of human properties41 such as IPR42.

The ground theories for IPR protection are: the theory of right possession, contract theory, and several supporting theories. The supporting are43: (1) Reward Theory; any inventions in technology that can be applied in industry deserves a reward, acknowledgement, and protection over the new innovative inventions, (2) Recovery Theory, that the inventor is given the exclusive right to exploit the HAKI which he had spent his time, thoughts, and energy, (3) Incentive Theory; the inventors need to be given incentive to stimulate his creativity in creating new works in technology, (4) Public Benefit Theory44; that IPR is the tool to gain and improve the economic.

The achievement of this exclusive right emerges economic benefit over the findings, will impel the growth of innovation, will stimulate one/company to invest their capital in the research, and will contribute on the competitiveness of small micro agribusinesses that45 strengthens the national economic. Robert M. Sherwood in Public

33 Article 1 point (3) PVT Law
35 ibid
36 Law of No. 14 Year 1970, Revision of Law of 14 Year 1985 about Mahkamah Agung in Nina, op.cit
44 Ibid
45 Achmad Baihaki, op.cit.
Benefit Theory\textsuperscript{46} says that the inventor of plant variety must be awarded and protected by law and that he must be encouraged in his research for the sake of the growth of industry and economic development.

As the philosophical ground of the exclusive right, in the form of monopoly, as stated by Jeremi Philips and Allison Firth in \textit{“The Absolute Monopoly of the Market”} say that the owner of IPR has the right to prohibit any individuals for not using the rights in the market, as had been regulated in the law protecting it.

The ability to possess an object to become one’s property, including IPR to be converted, can be performed through the contract. The Civil Code says that any contracts made legally are valid as constitution for those who made it\textsuperscript{47}. The principles in Civil Code are the law of regulating, the freedom of making contract, \textit{pacta sunt servanda}, and consensual in contract\textsuperscript{48}.

3. Research Method

Normative Legal; explores, researches, and investigates the object through its law principles in Patent law of No. 14 Year 2001 about Patent, PVT Law of No. 29 Year 2000 about Patent, PP of No. 4 Year 1997 about Partnership, Minister Decree of No. 442/Kpts/HK.34/10/7/2004 about the Condition and Ways of Protecting and Awarding the PVT Rights or the application of TRIPS agreement and International Conventions; UPOV convention which relates to the PVT arrangement and its relation to the effort of improving the competitiveness and strengthening the national economy.

Historic Legal is aimed at figuring out the rationale and historical background of the IPR plant variety arrangement. And comparative Law, is the law comparison to compare the national and international law instruments in the field of plant variety, to understand the differences and similarities in order to obtain the picture of the development of IPR arrangement that is related to the plant variety in Indonesia.

4. IPR of Plant Variety according to Law of No. 29 year 2000 about the PVT related to Law of No. 14 Tahun 2001 about the Patent to Improve the Competitiveness of Small Micro Agribusiness

IPR of plant variety does not specifically regulated in TRIPS. PVT as one of many forms of IPR protection. Plant variety is specified in Article 27 Article (3) in b TRIPS.\textsuperscript{49} The requirement obligates the member countries to protect plant variety using one of the methods: patent, effective sui-generis system, or the combination of both.\textsuperscript{50} Related to sui-generis in Indonesia, regarding IPR plant variety is specified in PVT Law No. 29 Year 2000. This and plant variety background have their own uniqueness that they can not be included into Patent regulation. The unique is the nature of character\textsuperscript{51} stability which is very important for the plant variety but beyond the requirements of the Patent. Other than the possession of novelty requirements and inventiveness for the findings in technical terms, new PVT plant variety must possess DUS: “Distinct”, “Uniformity”, and “Stability” of the character.\textsuperscript{52}

Even so, the sui-generis system in PVT has the same thing in common to the patent requirements. In other words, sui-generis system in the PVT rights contained in PVT requirements is the lex-specialist of patent requirements, whereas the patent requirement itself is lex-generalis. As a basic requirement, several requirements in Patent

\textsuperscript{46} Robert M. Sherwood, opcit, pp 37.

\textsuperscript{47} Article 1338, point (1) Civil Code.


\textsuperscript{49} Part of Five about Patent. Article 27 article (3) point b TRIPS

\textsuperscript{50} ibid

\textsuperscript{51} Article 2 point (5) UU PVT

\textsuperscript{52} Achmad Baihaki, \textit{Support by effort and ...}, \textit{op.cit
Law should also be noted in the PVT Law. For example, both the patent rights and the PVT rights are the rights given by the state by way of licensing. The awarding of exclusive rights will encourage the inventor to innovate and will stimulate one company to invest the capital for the research so that it may contribute to the improved agriculture. This exclusive rights has also consequences; the rights to prohibit other people who intend to plagiarize or exploit the works or innovations, unless with the inventor permission. This means that no one is allowed to perform any commercial things to the protected plant variety without the permission of the owner. This then meet the theory “The Absolute Monopoly of the Market”

However, this monopoly is not absolute; PVT Law in the context IPR Law in Indonesia limits the monopoly by the social function, in accordance with the Pancasila philosophy that regulates the balance principle between the individual/inventor interest and the society interest. The implementation is seen in PVT Law, the exception for exclusive right is the use of plant that is protected. This is called as “farmer’s exemption”. This article is the acknowledgment of farmer’s privilege right that can not be found in the Patent requirements.

As an executor of prioritizing and empowering small business through society-based economic system, the “farmer’s privilege” is the ground to enhance the farmer’s skill in order to produce the excellent commodities, to improve the export production of agriculture commodities, and to meet the consumer’s demands.

Nowadays, the agriculture system mostly involves the small businesses still the lowest level from the national economic system. It is reflected from the low agriculture product, the high number of poor farmers, and the low additional value of food and agriculture commodities shared by the farmers. In the future the small micro agribusiness gets more important and has the following benefits: it requires less invested capital, it moves more flexible because no administration barriers, the dynamic changes of consumer demand over the commodities produced by the small micro businesses.

Since 2000, the PVT Law in Indonesia has given opportunities for inventors to gain protection for their findings. Unfortunately this has not been optimally used by the private inventor in Indonesia. Until March 2010, the PVT Central Office Jakarta has received only 6 private national inventors. Another are 55 government inventors and 5 foreign inventors. This barrier is due to several factors: (1) the PVT Law is new, so it needs to be socialized intensively, (2) the inventor culture is not ‘business oriented’, (3) they are proud enough to be awarded sociologically, (4) IPR is regarded to have low economic benefits by the inventors.

The protection of plant variety through IPR will benefit all party involved. The researcher who found the variety will receive “royalty” for his economic rights, “incentive” for the inventor as “reward” for his sacrifice in energy, money, time, and research to create new special technology (reward theory). Similarly, the employer will have the rights to commercialize the product.

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53 Article 1 pont (1) Paten Law ear 2001 and Article 1 pont (2) Law of PVT.
54 Achmad Baihaki, Support by effort and., op.cit.
55 Description at PVT law of No. 29 Year 2000 about PVT.
56 Article 10 PVT Law of No. 29 Year 2000 about PVT.
60 ibid.
by using the license and that the farmers will have the assurance for the excellent variety.\footnote{ibid}

Excellent variety is the ground for agriculture production. The inventions of various plant varieties with all its excellent nature are the significant pillars to support the establishment. Consequently, this will contribute to the agricultural development\footnote{Sugiono Moeljopawiro, 2004 Head PVT central office, Agricultural department, in Speech “Breeder’s need Protection” in Service formal open PVT Right Registratricion, Jakarta, 25 Nopember. In ibid.} particularly the improvement in competitiveness in small micro agribusiness that strengthens the national economy.

5. The Utilization of IPR of Plant Variety according Law of No. 29 Year 2000 about PVT through Partnership Agreement to Improve the Competitiveness of Small Micro Agribusiness

To support the improvement of competitiveness of small micro agribusiness, the utilization of IPR plant variety in PVT Law of No. 29 Year 2000 is a more appropriate form of sui-generis system compared with the Paten Law of No. 14 Year 2001. Nowadays in Indonesia, the form of IPR protection for plant variety is the combination of both patent requirements and PVT Law. PVT Law applies for plant variety products whereas Patent Law applies for the process of plant variety. This brings differences of the location for administration between the two inventions. For that relating to ‘product’, the admission is addressed to PVT office in Agriculture Department of Indonesia, whereas for the ‘process’ of patent is addressed to Patent Office in Dijen HAKI DEPEKEH & HAM RI. The “combination system of protection” is hard to give assurance for there is no clearance and firmness regarding the protection of plant variety for the inventors so that the efficient and effective admission procedure can not be achieved.

Therefore, PVT Law needs to be completed, not only includes the protection for the “product” of plant variety, but also covers the “process” of the formation of plant variety. This has been implemented in Netherlands which adopts the “single protection” for both the process and the product in one law, “Seeds and Planting Material Act 1999.”

Facing the globalization era, in which the competition is tough, as a developing country Indonesia has to be able to improve the competitiveness of small micro agribusiness to agroindustry with the support of potential resources.\footnote{ibid} To meet the demand of qualified agriculture product, the more appropriate and comprehensive IPR plant variety must stand by it. This will lead to conducive atmosphere to innovate and create new varieties and that the investors will not be hesitating to invest their capital for the research and for the development of excellent varieties. The assurance of the supply for the excellent seed for the customers as held by the IPR protection through the partnership agreement. This is one of many strategic efforts in improving the competitiveness of the small micro agribusiness.

Highlighting the condition, the government must struggle to complete the arrangement of law of IPR plant variety as listed in PVT Law of No.29 Year 2000. Sunaryati Hartono in Theory of Law Development says that the art of law development comprises the accomplishment of law betterment\footnote{Sunaryati Hartono, 1991, Improve History Indonesia Naional law enter National Law System, paper, in ibid.}. In the similar theory, Mocthar Kusumaatmadja argues that\footnote{Mocthar Kusumaatmadja, op.cit} law is the medium of reforming the society; the norms and rules of law serve as the regulator or medium of development leading to the specified goal by the development itself.

The accomplishment of IPR arrangement in the form of PVT Law must
meet the proper law criteria. It must contain three important elements in its legal validity; globally acceptable in the long term, they are: legal, sociological, and philosophical so that the Law is useful. The legal element in PVT Law is binding in nature; the exclusive rights, not only protect the plant variety but also the process in order to properly assure the law protection. The philosophical element that must be listed in PVT Law is that the society dream of. Pancasila contains the farmer’s exemption, the farmer privilege rights, that should be adopted in the PVT Law. The sociological element, the existing value, growing in Indonesia society who is mutual assistance in nature, must consider the poor farmer, as the most residents in Indonesia. These farmers play an important role in contributing to the development of agribusiness competitiveness.

PVT law as proper IPR plant variety is a strategic medium for the improvement of small micro agribusiness competitiveness. This is performed through the partnership agreement in the basis of mutually growing and needing. The small and big micro businesses will reach the target in the continuous mission of development. This strong, competitive, and autonomous small micro business will lead to the developed businesses. It can be carried out by making use the IPR plant variety through the ‘Franchise” and “ln plasma” partnership agreement.

a. The Utilization of IPR of Plant Variety according to Law of No. 29 Year 2001 through Partnership Agreement of Seed Franchising to Improve the Competitiveness of Small Micro Agribusiness

The free trading coming to Indonesia economic market demands the improvement of competitiveness. Therefore the prospective agricultural commodities must pay attention to: not only the offered price that is lower than the competitor or lower production cost (comparative advantage) in the target market, but also the offered commodities must meet the customer preferences.

The emerging barriers in improving the competitiveness of small micro agribusiness in relation to the quality of agribusiness commodity are the technology and the human resources, farmer’s governance; which is relatively simple, over the technology, and the farmer’s limited capability in mastering the technology for making the excellent seed leads to low quality products.

The facilitator in the way to improve competitiveness of agribusiness small business in order to cope with plant varieties technological constrains, for micro business business, an appropriate step, is through seed partnership franchise strategy. This strategy will open full participation of the small and medium business in partnerships with big private business so that will create atmosphere of harmony, mutual and beneficial cooperation, as required by the Franchise Law. It will be the foundation of national economic development that will strengthen the position of small business entreprenuers; so that they will become tough and independent medium business business, enhancing the role of micro business entreprenuers in the formation of national products, and will improve and equalize income that eventually turn themselves into the backbone that strengthen national economic structure.

At present, seeding strategy development that has been conducted by Plantation Agency is to maximize the use of new plants varieties of rubber, palm oil, pepper, vanilla, cotton, sugarcane and coffee is implemented through seed franchise partnership agreement. The agreement is in accordance with the conditions as required by Article 1320 Civil Code (KUHPerdata) in

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68 ibid  
69 Opec. Article 19 PVT Law  
70 Implementation of franchise seed. Agricultural Departemen.
this case agreement between producer of plant varieties i.e. Research Centers (Pusat Penelitian/Balai Penelitian) as the franchiser and farmer or farmer association as franchisee. The agreement is the result of a “consensus” i.e. the existence of willingness from both parties to be bound mutually.

The agreement is realized in clauses that was orchestrated very neatly so that it beneficially fair to both parties based on “essential freedom of contract” regulated by Article 1338 Civil Code (KUH Perdata) namely standard contract. Nevertheless, as the content of agreement is prepared by franchiser party, it seems possible that it will be more beneficial to the franchiser. On the contrary, as the franchisee need the contract, they eventually sign it. According to the law references, this kind of standardized contract is called coercion insist (dwang contrak) or “take it” or “leave it” contract. The franchisee i.e. the farmer or farmers association is small entrepreneur and in relation to the agreement they are the weak party. On the other hand, dominating position of the franchiser give them chances to mistreat their position. Therefore, the franchise agreement should be regulated in an Act supervised by government, in order that it would not harm the small business entrepreneurs.

To create the conducive business atmosphere for the small business entrepreneur the arrangement of franchise agreement has been affirmed in Law of No.20 Year 2008 about Micro, Small, Medium Enterprise and in PP of No. 42 Year 2007 about Franchising. Though, both regulation have not clearly and strictly control the rights and obligations to the franchiser and the franchisee, especially in protecting the small business.

Some regulations in PP of No. 42 Year 2007 about Franchising, potentially can be the barriers for the agribusiness micro business, such as first, Article 8 PP of No. 42 Year 2007 about Franchising that requires franchiser to give training, operational guidance, management, marketing, research and development to the franchisee continuously that in the end it is feared that only medium and large business can participate in franchising. Second, PP of No. 42 Year 2007 about Franchising has not accommodate the rules that prevent unhealthy business competition by the reason that franchise agreement was excluded from Law of No. 5 Year 1999 about “Prevention of Monopoly Practice and Unfair Business Competition”.

Third, Article 3 PP of No. 42 Year 2007 regarding Franchising, provides tight requirements that will hardly accomplished by micro business enterprise, such as having exceptional characteristic of business, proven to be profitable, has Standar Operational Procedure that can be easily understood and applied.

It is now the time for the franchise agreement to use a stronger foundation regulation, to protect the weak, that the franchise business will encourage the grow of fair business. PP or Government Regulation is not enough, a higher regulation such as an “Act” is needed. The aims of creation of franchise Law is to generate “fair” business competition.

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72 ibid
73 Mariam Darus Badrulzaman, Consumer protection...... opcit.
74 Mariam Darus Badrulzaman, Contract Variation, ibid, hlm 54.
75 ibid
76 ibid
77 ibid
78 Amir Karamoy, as the founder of Franchising and Licensing Association of Indonesia (WALI) asks the government to create strong legislation to regulate the franchise in order to encourage a healthy business.
Other obstacles in the application of seed franchise agreement that is conducted by Plantation Agency in optimizing the use of new plant varieties of rubber, palm oil, pepper, vanilla, cotton, sugarcane and coffee. Now, the plant varieties of palm oil commodity is in progress. Though, it does not have IPR of plant varieties either registered through PVT law or Patent law. Conversely, the registered plant varieties IPR will bring legal consequences for the franchiser to obtain exclusive right so that the franchiser economically benefited in the form of royalty from someone or any business entity that uses the right based on authorized agreement. In turn, the reward will generate passions to seek further innovations. Now, registered plant varieties IPR is a requirement in the implementation of franchising agreement stated at Article 3 point f PP of No. 42 Year 2007 about Franchising.

Furthermore, until today any seed franchise agreement only based on an MoU between the two parties, not implementing the licence agreement through registered plant varieties IPR. By implementing the licence agreement through registered plant varieties IPR, however, franchiser has a strong position to obtain law protection. The absence of licence as the result of not registering the plant varieties or do not register plant varieties IPR will result on the weak protection given to plant varieties inventor because the monopoly right i.e. the exclusive right do not own by the inventor. In case of his or her invention were hijacked, imitated, or is exploited by other people, the inventor would not have the right to take any legal action. As a result, inventor will not have any passion to innovate or create new plant varieties. In addition, it will slow down the development of seeding industry that eventually weaken the competitiveness of agribusiness micro business.

Currently, seed franchiser only from Government Research Center in the area of plantation, experiment result from private seeding industry has not yet growth. This is due to some challenges such as: there are less plant varieties inventors has “business centre” oriented; inventors does not appreciate the existent of plant varieties as the result of intellectual process that can become the right or patent asset, if it is registered, the inventor will have exclusive right to use it economically; inventors do not able to promote their inventions, and government political will is still limited in facilitating this kind of agreement.

At present, the Neatherland government is one of the country that gives great attention to the development of seeding industry. It is shown from the financial aids given at the stage of New, Unique, Uniform, Stable research and development support, as well as transferring the knowledge to other country (this activity is partly supported by the Neatherland). For that reason, government of RI is supposed to push private sectors though conducive regulation and by giving incentives in order that they will produce numbers of new varieties, qualified and valued commercially.

So, the role of national private seeding industry will determine the development of seed franchise agreement as one of endeavor to improve competitiveness of agribusiness small business. Efforts are needed to motivate private seeding industry to contribute to the invention of new technology to produce superior varieties of seeds that meet the

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80 Commodities of palm oil which has been subjected to seed franchise and has been registered in the PVT office but have not received PVT rights are at provinces of Sumatera Utara, Jambi. Data from the Ministry of Agriculture’s office until March 2010
82 ibid
83 ibid result of interview at different occasion, 28 Jul 2005.
consumers preferences. It need to improve competitiveness such as through adequate IPR protections for the plant varieties inventor. It is the exclusive right of the inventor to exploit his or her varieties. This right is given by the country and protected by the law.

The exclusive rights resulted from IPR protection after registering the varieties, will enable the inventor to exploit his or her varieties for prosperity. This will motivate the growth of private companies investing their capitals in the research programs, so as to produce reliable varieties technology as prospective to enable micro business entrepreurneur. This will contribute to the enhancement of competitiveness of agribusiness small enterprise, if realized through the implementaion of partnership agreement.

This can be a way for the government to realize people prosperity, by giving special protection in compliance with modern welfare state concept to stimulate endeavor and to avoid injustice. According to the theory of modern welfare state, in addition to it function as the people’s safety and order provider, the country also obliges to protect social rights, economy and people culture. Therefore, the government should be more actively involve in people’s activity so that it will guarantee the welfare of each individual.

Through the seed franchise partnership agreement involving private sectors the provision of exclusive right protection in the form of IPR of plant varieties must be accomplished through the formal registration, because generally the private businessman, in addition to their attention to economic and business development, tend to seek law assurance in the form of protection provided by government.

Actually, the contribution of private sectors in seed engineering are still low as the fact shows that seeding industry in Indonesia still in the phase of reproduction of superior seeds produced by government agency that makes the competition of commodity still at a low level.

Despite the fact that the PVT law has been enacted since the year of 2000 along with its operational facilities such as the Head Office of PVT Depan, the data from the Jakarta PVT Head Office of Agricultural Ministry showed that until March 2010, from 347 registered varieties by 47 PVT right applicants, there were only 8 applicants came from national private inventors. The rest of the applicants are 34 inventors from government agencies and 5 foreign inventors.

This is due to the fact that, among others, before PVT Law of No. 29 Year 2000 was born, Patent Law was being enacted along with its weakness that it is more suitably applied to inanimate or manufactural products that do not take into account the character of stability. Therefore, PVT law along with its technical operational procedures need to be disseminated beforehand so that the inventors will have time to prepare all necessary requirements before registering their inventions. The implementation of plant varieties

IPR as a mean to improve competitiveness of agribusiness small business through franchise partnership agreement is right strategy. Guaranteed supplies of superior quality seeds at customer level by the varieties producers will economically beneficial to varieties producers as “reward”. So, seed franchise agreement

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87 Jeane Nelsje, op. cit, hlm. 32. In Nina Nurani, ibid
88 Padmo Wahyono, *Law Development In Indonesia*, Ind-Hill-Co, Jakarta, pp 32-33. in ibid
90 According to data at Kantor Pusat PVT since PVT opened until March 2010 enclosed.
can penetrate wider market, empower small business enterprise in the field of seeding by supplying superior quality seeds, can be advantages for agribusiness competitiveness. Also it can be one of motivator economic development in strengthening people economy.

For Indonesia, both government and private sectors share the same important roles in the advancement of seedings industry proportionally if the development of agriculture is targeting modernization through agribusinesss approach. This is due to the commercialization process, and seeds are the focal point of farming that can be the trigger as shown by their characteristics that will change as seed become a product of technology through seeding industry.

In line with the strategy implemented by Plantation Agency to optimize the protection of plants varieties, it is appropriate seed franchise agreement strategy used to enhance other agribusiness commodities both food and horticulture commodity with bright market prospects and has strategic potential in improving competitiveness of agribusiness small business. For that reason, in optimizing the protection of plants varieties through seed franchise partnership agreement, in addition to the need of adequate IPR regulation through Law of No. 29 Year 2000 about PV, with its refinements, also the need of regulation on franchise agreement in the form legal product i.e. "Act" so that it has strong foundation to protect small business business.

b. The Utilization of IPR of Plant Varieties According to Law of No.29 Year 2000 through Inti Plasma Partnership Agreement Improving Competitiveness of Micro Small Agribusinesss Strengthen National Economy

Developing farming based on agribusinesss is the most suitable approach in strengthening national economy.92 Farming is very important sector to the national economy. Agribusinesss and agro-industry activity will become one of a leading sektor,93 to strengthen national economy. As the leading sector,94 farming aimed to realize people prosperity at the most, and as comparative advantage, especially the enormous natural resources. The farming sector is the heart of live and the crops are the major need of Indonesian population. Most of farming sector and agribusiness categorize as small business that contributes to the national economy by providing employment opportunities, contribute to Gross National Product, and contribute to national income.95

Agribusinesss, small business are the strategic power of national economic, with its great number and spread to the vast most rural of villages. As one of motivator of economic development and tend to sustain the economic turmoil, the role of small business enterprise is “the backbone” national economy.

In line with that, the empowerment of small business enterprise by facilitating an economically efficient business environment, fair competition,96 by means of business networks, such as through inti plasma business partnership agreement, especially for commodity with potential contribution of superior varieties need to be supported by adequate legal protection that enable values of justice and democratic order.

Inti plasma agreement is regulated under partnership business activity97 stated in Law of No. 20 Year 2008 about Small and Middle Micro Business along with the

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91 Achmad Baehaki, "Aplication Process..op.cit
92 Sri Widodo, op.cit. pp.42
93 Banguran Saragih, Paradigm, op.cit. pp. 41.
95 Ibid.
96 Peraturan Presiden RI of No. 7 Year 2005...op.cit, pp.214-216.
97 Article 26 of No. 20 Year 2008 About UMKM.
general principles of agreement that freedom is the main idea in implementing the contract. In implementing the relational partnership into plasma, both parties i.e. inti, the larger enterprise and plasma, smaller enterprise has equal legal position. The larger enterprise is prohibited to own and or control small enterprise as its partner. And fulfillment of contract is in accordance with principles of pacta sunt servanda declared in the freedom of doing contract.

Therefore, the protection from the country is needed. In the theory of modern welfare state the state needs to protect people rights in order to have fair business and to avoid injustice. In addition to its role as provider of people security and order the country is obliged to assure the right of social, economy and people culture. The government should be involved in population activity to assure prosperity to all populates.

In a developing country like Indonesia, enhancement of micro business business competitiveness needs protection from government because this sector will be defenseless without it. At the same time Government obligates to secure people’s economic rights, i.e. prosperity of the whole citizen. It is by these reasons the enhancement of competitiveness of agribusiness micro enterprise, productivity improvement and training product value added are directed towards prosperity improvement of farmers.

The improvement program is directed into farmer’s accessibility towards productive resources such as technological aspects of plants varieties in order to better standard quality of commodities. Currently, challenges faced by agribusiness micro enterprise in developing their competitiveness are technology, research and superior seeds facility such as plants varieties. This has to do with the legal aspects such as in agreement between parties where the micro enterprise is in the position of the powerless party compare to the stronger party i.e. bigger business. Some of limitations such as in mastering technology, especially plants varieties technology resulted in low productivity, quality and continuity that eventually weaken its competitiveness.

Therefore, inti plasma partnership agreement is one of endeavor to overcome the problem, in which bigger business take the role of provider, quality assurance, technology transformation, and designing market for distribution and creating market, as well as to be bound with its plasma i.e. micro business business with the aim of expanding the enterprise. So, the bigger business take the role as a company that is capable of actively designing the whole agriculture small microenterprise as their partner and totally involve in enhancing the micro enterprise.

Agribusiness inti plasma partnership agreement, similar to franchise agreement, refers to Civil Code (KUH Perdata) Article 1338 Article (1) as “Principles of contract freedom” that includes freedom to decide contents, types, forms, objects, and to create agreement has to meet the terms as a valid agreement stated in Article 1320 Civil Code (KUH Perdata). It is an agreement between large and medium business as inti to do mentoring.

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98 Pasal 35 No. 20 Tahun 2008 about Small and Middle Micro Business.
99 Friedman, Theory and Prinicipal of law, opcit
100 Jenie Nelsje, op.cit, pp. 32. ini ibid Nina Nurani
101 Padmno Wahyono, Law Improvement op.cit., pp 32-33

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103 Peraturan Presiden RI of No. 7 Year 2005, opcit, pp 27.
104 Sri Widodo, opcit
105 Article1333 KUH Civil Code that agreement is a legal act whereby the parties mutually bind themselves to one or more persons.
107 ibid
108 ibid
and developing micro enterprise as its plasma by observing the principles of mutual needs, strength, and benefit.

Inti plasma partnership agreement aimed to grow and expand the ability of micro enterprise in order to be tough enterprise, independent, and develop into medium enterprise. The next is to improve micro enterprise in the formation of national products, as well as to enhance and justice income in order to realize themselves as the backbone that strengthen the structure of national economy.\textsuperscript{109}

The realization of Inti Plasma partnership agreement is conducted between PT. Benih Inti Subur Intani (BISI)\textsuperscript{110} which specialize it self into production hybride corn seeds varieties of CPI-2, BISI-1,BISI-2. In order to improve its competitiveness, PT. BISI use plant varieties potential through its Research and Development Department that has main duty to produce new superior varieties with better ability in production, resistant to pest and diseases, production age and its taste can be adjusted to customer preferences. On the other hand, Production Department is responsible to produce excellence seeds at adequate quantity and on time including seeds parent, commercial seeds that meet the condition of originality and healthy of seeds and standardized size.

In producing seeds raw materials, PT. BISI as inti party, and farmer association as its plasma. Both parties are in mutual need and benefit. Each party has responsibility to conduct obligations and rights.\textsuperscript{111} The implementation of partnership resulted satisfactorily as shown by on going improvement of activity both in volume and in the form of business distribution.\textsuperscript{112}

Inti plasma partnership agreement can be an effort to empower micro enterprise in eliminating barrier of plant varieties technology so that supply of raw material can be assured in quantity, quality, and the needed standard.\textsuperscript{113} In addition to that it develops commodities, excellent production materials and able to compete in national, regional, and internasional market.

The success of the above agreement attracts other large and medium business to participate as new investment to build new partnership, both national and foreign investors to improve competitiveness of agriscience micro enterprise by developing new economic centers and at the same time it become an effort to equalize income, prevent social inequality.\textsuperscript{114} and strengthen national economy.

Government support is needed to maintain such success as the theory of “Welfare State”, that government have to be actively involve people’s activity so as to assure the prosperity of the population. To realize it government need to take solid action by issuing partnership regulation that truly in the side of and support small micro business.\textsuperscript{115} Government role as innovating agent and directing the economic development is more dominant, by keeping focus on the community member interest and legal roles in supporting the economic development according to Mochtar Kusumaatmadja,\textsuperscript{116} on his Theory of Law Development ensure that changes occure in orderly manner.

Law regulation can function as mean

\textsuperscript{109} Article 5 Law of No. 20 Year 2008 Tentang Small and Middle Micro Business.
\textsuperscript{110} Jaffar Hafshah, Partnership Business. op. Cit. pp.94.
\textsuperscript{111} ibid hlm 95-96. In the year 1994 - 1996 Number of cropping area participating in the partnership increase respectively corn 69% and vegetables 111,8%. Until present partnership spread over 290 village in 50 sub-district and 10 regency. Value of purchases of products also increased from Rp 3,8 Milyar in 1994 to 350 % become Rp 13,5 milyar in the year 1996. This shows indication of the success of this partnership.
\textsuperscript{112} ibid
\textsuperscript{113} ibid, pp 69-70.
\textsuperscript{114} Ibid.
\textsuperscript{115} Sri Widodo, Op cit, pp 49.
\textsuperscript{116} Mochtar Kusumaatmadja, Society Law, op.cit, hlm 4.
of control or facility of development that
direct human activity towards destination
aimed by the development or reformation.
Sunaryati Hartono stated that value of the
law development include\textsuperscript{117} to perfect finalize
and to change in order to be better. According
to Bagir Manan, to finalize and change the
regulation i.e. regulation of inti plasma
partnership agreement in the form of Act
need to meet the criteria of law, there should
be three important elements of that constitute
legal validity, accepted by the community as
fair and has long term effect. The three
important elements are\textsuperscript{118} legal, sociological,
and philosophical\textsuperscript{119} that will make the Law
useful.

Legal elements stated in the Inti Plasma Law has bind characteristic in form
of rules that take weak side by the reason that
position of inti enterprise is stronger and
dominant compare to the plasma enterprise.
In order to be sufficient the regulation need to
provide democratic law assurance and justice
with the aim of protecting plasma farmers is
also a supporting factor to achieve the goal of
people prosperity as aimed by the
government.\textsuperscript{120}

Philosophical basis that has to be
affirmed in PVT Law that is foundation of
dreamed by the plasma farmers has \textit{rechtside}
philosophy i.e. Panenela. These values contain democracy characteristics, justice
that should be accommodated in the Inti Plasma
law. The implementation of these value would
be shown in fair regulation.

Sociological elements have to do with
current values in the community, facts among
Indonesian characterized by cooperation.
Therefore, it is necessary to consider small
farmers as plasma who are representing
bigger part of Indonesia community who face
production obstruction caused by limited
technology such as plant varieties technology.

At the present, inti plasma partnership
agreement is affirmed by Law of No. 20 Year
2008 about Small and Middle Micro Business that prohibit doing unfairness
toward micro business, i.e. it is prohib to own
and to dominate micro enterprise as its
partner\textsuperscript{121} so that it prevent unhealthy
competition.\textsuperscript{122} However, the current
regulation still does not manage in detail the
protection of micro enterprise (plasma).

The current problems in implementing
the inti plasma agreement based on the above
regulation are; farmer (party as the plasma has
not comprehend his or her rights and
obligations, on the other hand the large
teenprise as partner as inti has not fully give
attention in order to fulfill its obligations as
hoped by the farmer party.

Empowerment of small farmers
(plasma) through government role by
perfecting and changing the law of Inti
plasma partnership in the form of Law, is an
integral part of national efforts, has status,
potential and to function to improve
agribusiness competitiveness, achieving
national development goal to strengthen
national economy.\textsuperscript{123} Micro enterprise can
function as good economic actor if only the
obstacles such as production barrier,
technology especially related to plant
varieties technology can be overcome.\textsuperscript{124}
Agreement from both parties determine the
progress of the enterprise business such as
shown the success of small farming business.
As the small capital business grows, the large
capital business grow bigger\textsuperscript{125} strengthen
national economy.

Therefore, in order small enterprise to

\textsuperscript{117} Sunaryati Hartono, \textit{op cit}
\textsuperscript{118} Bagir Manan, \textit{Indonesian basic Law, op.cit},
\textsuperscript{119} ibid
\textsuperscript{120} Anak Agung Lesmana, \textit{Law Protectionally
Small Business, op.cit}

\textsuperscript{121} Article 35 Law of No. 20 Year 2008 about
Small and Middle Micro Business \textit{Tentang
determinate restriction for Medium enterprise or Large
enterprise owns and / or control Small business as its
business partner.}
\textsuperscript{122} ibid
\textsuperscript{123} Ronal Calpman,op.cit, pp.43.
\textsuperscript{124} ibid.
\textsuperscript{125} Kenichi Ohmae, \textit{Global Paradoks, op.cit, pp
37.
grow, it is time that the inti enterprise that function as quality assurance and plant varieties technology transferer, is given appreciation such as exclusive rights i.e. to obtain royalty as his or her economical right of the invention if it is transferred. So that the plasma party will use the invention such as superior varieties preferred by customer. The appreciation is in the form of adequate IPR protection, granted only after the inti party as inventor register his or her invention. The IPR protection is through Law of No. 29 Year 2000 about PVT. It is hoped that it will overcome previos challenges, so that it can improve competitiveness of agribusiness micro enterprise and strengthen national economy. At present, the Inti party that has optimized the use of IPR protection of new plant varieties are from foreign private inventor. The national private sector are seldom involved. PT. Bisi Internasional is one example of national private sector that has obtained 30 certificate of right of PVT for various commodity of farming superior varieties.\textsuperscript{126}

6. Conclusion and Recommendation
   a. Conclusion
      1) IPR for plant varieties inventor through PVT Law is more appropriate compared to Patent Law, it is a strategic way for micro business to improve its competitiveness of agribusiness business through partnership agreement. Currently, IPR of plant varieties has not optimally motivated national private inventor to obtain protection for his or her invention. Some of the barriers are due to the fact that some regulations under PVT Law has not comprehensively protected inventor, in contrast some of national private inventors has not completely realize the existence of plant varieties as an exclusive rights that provides economy rights once it is registered.

   2) Seed franchise partnership agreement and inti plasma through the use of plant varieties of IPR is the accurate strategy to improve competitiveness of agribusiness small micro business for the reason that small micro enterprise is the largest number and has limited technology of plant varieties. Hence, the advancement of large enterprise is determined by the success of small micro business. The more small capital business developed the better will large capital business be advanced. In order to strengthen national economy, supporting conducive regulation is needed. At present, although PP of No. 42 Year 2007 about Franchising and Law of No. 29 Year 2008 about Small and Middle Micro Business has been produced, yet these regulation have not strongly provide “fair” business protection for small micro business that weaken national economy.

   b. Recommendation
      1) It is recommended that the government to proactively empower small micro business through partnership agreement by optimize the use of registered IPR of plant varieties. A strategic effort would be to perfect and to disseminate intensively Law of No.29 Year2000 about PVT along with its technical operational percedures

      2) The government needs to take tangible actions by enacted a more conducive regulations of Franchise agreement and Inti Plasma that strongly protect small micro business, as endeavors to improve agribusiness competitiveness in the form of “Act“ therefore enable “fair“ business.

\textsuperscript{126} Simponas III Deptan 10-11 Desember 2008,op.cit.
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