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An Analysis on Farmer Rights in International Trade Under Indonesian Law

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Abstract. The aims of this research were to examine the legal protection on the farmer rights in international trade under Indonesian law. The research was important to provide various alternative solutions over the problem of inabilities of farmer to be a subject of international trade and to review whether the Indonesian Government gave legal protection to farmer rights. It was an empirical legal research, which using primary and secondary data. Primary data was collected from the respondents and informants while the secondary ones were taken from primary and secondary legal materials. The validity of data used sources triangulation method while all of data were analysed by analysis of editing style through legal interpretation. The result showed that Indonesian Government through enactment of its legislation has not been providing the legal protection to the farmer rights in international trade optimally. Moreover, this study was expected to contribute in reforming over legislation that regulates the protection of farmer rights.

Keywords: farming, farmer rights, international trade, legal protection

1. Introduction

Indonesia is one of the biggest agricultural countries in the world. Agricultural sector has been providing a major contribution in economy, particularly in increasing the national income. Contribution of agricultural sector to gross domestic product was about 20% at 2002 and from 210 million populations of Indonesia, it is about 150 million people living from agriculture crops, fisheries, livestock, crops, and forestry (Karwan A Salikin, 2003).

However, the agricultural sector also has many problems. One of them is regarding to the farmer welfare and the recognition of farmers' rights. Although farmer is a key actor in agricultural sector, but so far they have not paid adequately. In the context of free trade, the issue of readiness of Indonesian farmers being examined whether they are capable to be a subject of international trade, or just going to be neglected. Therefore, the Indonesian Government needs to provide legal protection over farming and the farmer rights as a subject of international trade.

Noting the phenomenon above, it is important to conduct research in purposing to identify the legal problems regarding to implementation of protection on farmers rights in international trade, the factors causing, the measures made by the Government in addressing that issues and also formulate regulation that is capable to provide legal protection optimally. This study initiated by describing the phenomenon of condition of farmers having less protected their rights in international trade, the method of this study, then followed by presenting the results and findings, analysis of the data, and finally draw conclusions.

2. Literature Review

The concept of farmers' rights at the beginning arose in order to provide protection to farmers in facing the increasing international intellectual property protection for new crop varieties (Aoki, 2008). This concept is a response to the tensions between regime of plant breeder who developed the concept of "property ownership" over new crop varieties with the practices of local farmers who have held the concept of "communal ownership" over new varieties and produce food for fulfilling their food staples (Winter, 2010). This new intellectual property rights regime tends to threaten the rights of traditional farmers for saving and preserving the new genetic resources through saving seed, replanting new seeds, and also exchanging seeds with other farmers in a community. (Bertacchini, 2008).

A number of conventions recognized the concept of farmers' rights but it has not been well-defined (Winter, 2010). One of definitions that could be a basis for this concept is from Food and Agriculture Organization through FAO Resolution 5/89 (hereafter FAO Res 5/89). Based on FAO Res 5/89, farmers' rights refers to: "...rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centers of origin/diversity. These rights are vested in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to all farmers, and supporting the continuation of their contributions".

Recognition of farmers' rights, both internationally and nationally, is needed in preservation, creation, and development of genetic resources, which in the long term is expected to create food security (More et al, 2005). Food security is a crucial issue. Food security can be understood on different levels, ranging from the household level to the international level (Jordan, 2002). Ensuring food security at household level means ensuring that every person must have sufficient income to buy food for themselves and their families. At the international level, as described in the Plan Action of the World Food Summit, food security can be achieved if "... all people, at all time, have physical and economic access to sufficient, safe, and nutritious food to meet their dietary needs and food preference for an active and health life (Jordan, 2002).

Food security depends on many factors, one of them is agricultural production factor. Therefore, it is plausible that one of the most effective ways to ensure food security is having control over the process of agricultural production (Oguamanam, 2007). The process of agricultural production is a series of activities combining the factors of agricultural production to produce agricultural products (Soekartawi, 1986). The success of agricultural production is starting from farming activities. Farming activities is a series of activities undertaken by farmers in allocating resources effectively and efficiently to obtain maximum yields and ultimately get benefit greatly (Soekartawi, 1986). These main elements are called production factors, which includes factors of: land, labour, capital, and management (Soekarwi, 1986). In order to improve food security through increased food availability at the national level, country has two options: accelerate domestic agricultural production or increase agricultural imports. Trade liberalization through removal of subsidies of farmers in developed countries is expected to increase food prices due to the elimination of subsidies lead farmers to reduce their production. The increase of food price is a signal for producers to enhance production, which in turn, it can increase food production in countries with adequate resources.

Legal protection of farmer rights in dealing with an international trade should be provided in order to protect farmers from the influx of agricultural products imported from other countries that have less cost than the products from their own country.

3. Methodology

It is a legal research, at the level of empirical stage after doing research on the level of pre empirical stage (Pounch, 2000). This study examined the enactment of legislation governing to the legal protection of farmers' rights in international trade. The data were primary and secondary ones. Primary data was obtained directly from the respondents and informants through interview. Respondents in this case were farmers and stake holders, namely agricultural cooperatives and officials government. The secondary

data were collected from legal materials through content identification. Secondary data obtained from regulations governing to the farmer rights and also from articles published in reputable journals. In order to ensure the validity of data, this study imposed sources triangulation and source criticism method. Technique of data analysis used analysis of editing techniques style (Crabtree, 1995).

4. Discussion

The policies of Indonesian agricultural development were set out in the National Medium Term Development Plan 2015-2019 are: to increase production capacity through enhance productivity and expansion of agricultural land; improve competitiveness and value added of agricultural commodities; increase production and diversification of agricultural resources; management and use of biodiversity; and strengthen the capacity of climate change mitigation and adaptation. Here, farmers have become a central actor in the implementation of agricultural development. Farmers become the main actors of agricultural development, however, most of them worked on a small scale, and even many did not their own land.

In fact, the farmer's life from year to year is not getting better but instead grew worse, even marginalized. This is due to many factors. Climate change is causing farmers to crop failure, and ultimately led to the food crisis is one contributing factor. Furthermore, the global economic conditions led to the weakening of the exchange rate so that production prices and production costs become more expensive. The economic crisis was getting low exports. Increasing number of people exceeds the capacity of the available agricultural land, distribution factors and high urbanization rate factor cause young people tend to leave rural areas and agriculture. All of those factors are causing farmers getting harder position.

Meanwhile, Law Number 7 of 2014 (hereafter called Trade Act) stated that the food trade is any activities or series of activities to sale and / or purchase of food, including an offer to sell food and other activities relating to the alienation of food for earning rewards. One of the activities within food trade is export of food, which is an activity of food issued from the customs area of the Republic of Indonesia. Article 34 of Trade Act stated that food export could be conducted by taking into account the needs of food consumption in the country and the national interest. Export of staple food can only be done after fulfillment of staple food consumption and national food reserves.

Moreover, food imports can only be done if domestic food production or national food reserves are insufficient or cannot be produced domestically. Government has obligations to make sure that all policies and regulations of imported food has no negative impact on the sustainability of farming, even these policies could increase the production of agriculture. Government or regional government is obliged to develop to those who do the marketing of food.

Considering the enormous roles of farmers in agricultural development on one hand and the farmer's life which have not been getting better on the other side, causing the Indonesian government should create a regulation to protect them as an actor of international trading system. In 2013, the Indonesian Government enacts Law Number 19 of 2013 regarding to Protection and Empowerment of Farmers (hereafter Farmer Act). Based on Article 2 Farmer Act, protection and empowerment of farmers is based on several principles, they are: (1) principle of sovereignty; (2) principle of self-reliance; (3) principle of utilization; (4) the principle of solidarity; (5) principle of integration; (6) principle of openness; (7) principle of efficiency-justice; and (8) principles of sustainability.

Some strategies for farmer protection have been done through improvement of infrastructure and means of agricultural production; providing business certainty; setting the price of agricultural commodities; elimination of the practice of high-cost economy; providing compensation for crop failure due to extraordinary events; creating early warning systems to overcome the impact of climate change; as well as provide agricultural insurance. Furthermore, Government is pursuing a strategy to empower farmers through several strategies, namely: providing education and training; doing counselling and mentoring; developing systems and means of marketing of agricultural products; consolidating and

guarantying the agricultural land area; providing financing and capital facilities; providing easy access to science, technology, and information; as well as strengthening an institutional farmer

Regarding to the agricultural commodity prices, the Government is obliged to create conditions so that the agricultural commodity price is profitable for farmers through the establishment of: (1) tariff agricultural commodities; (2) the entry point of agricultural commodities from abroad in the customs area; (3) well-administrative requirements and quality standards; (4) market structure impartial agricultural products; and (5) food price stabilization policies.

One of the legal protections of farmer rights is insurance. The aims of agricultural insurance are to protect farmers from: the loss of crop failure due to natural disasters, attack plant pests; outbreaks of contagious animal diseases; the impact of climate change; as well as other risk types regulated by the government. The other farmer right is related to the granting of access to finance and capital facilities. In this regard, Government has several obligations to provide financing facilities and capital in order to expand the ownership of agricultural land by farmers; relief capital for farmers; the provision of interest rate subsidy and guarantee fee; utilization of funds as well as the social responsibility program funds partnerships and community development of the enterprise.

In carrying out the protection and empowerment of farmers, the government assigned the State Owned Enterprises in banking and local government commissioned the Regional Owned Enterprises of banking to serve the financial needs of farming and business entities belonging to farmers in accordance with the provisions of the legislation. To carry out the assignment, State Owned Enterprises and Regional Owned Enterprises in banking sector formed a special unit of agriculture. Financial service by special units of agriculture implemented with a simple procedure and easy requirements.

The weak legal protection to farming and farmers rights caused farmers began to left their farm, as well as the younger generation does not interested anymore in becoming farmers or doing farming. In 2013, Bureau of Statistic released data that the number of farming families is 31.17 million, and only 12% of they are under 35 years old, the rest is the old farmer. That number fell by 5 million over 10 years when compared with the number of farm families in 2003, or an average decrease of 1.75% per annum (Bureau of Statistic, 2013). The important factors that cause decline of interest in being farmer are: land access and ownership, income, and family circumstances (Directorate for Strategic Studies and Policy IPB, 2016). In the latest developments, 3 million young farmers have moved from agriculture to non-agriculture, so farmers over the age of 45 years dominated the number of farmers to 60%. This is a challenge because of the increasing number of people in need of food and the achievement of national food security.

From research conducted to 120 respondents, consisting of the youth in the area of agriculture, student of faculty of agriculture, and faculty of economy obtained results that 86 respondents were not interested to become a farmer with a variety of reasons. Their reasons are that they have other obsession, not to be a farmer; or they are not interested to be a farmer; or that they do not have field. Meanwhile, 34 respondents still expressed an interest to be a farmer because he wanted to innovate in agriculture; no other job; they think that farmer produces something useful; and also because of their talents or interests. Although it is too early to generalizing, but the data may give an idea of the impact of legislation that has not really favouring farmers and farming.

5. Conclusion

The agricultural sector has been proven to provide a major contribution to the national economy, especially in spurring an increase national income. As one of the pillars of the economy, the agriculture sector is expected to increase the national income because Indonesia is an agricultural country that most people are farmers. Indonesia has a great potential in agriculture. Therefore, to provide protection and empowerment of farmer is a task that must be done by the state because farmers are the main actors in agricultural development, particularly with respect to international food trade.

Indonesia has imposed regulation on the protection and empowerment of farmers. However, this regulation has not been optimal because its implementation is not favoring the farmers. Therefore,

it is necessary to reform of agriculture legislation. If this legal reform is not taken immediately, the lives of farmers would be worse off, competitiveness in the international market will be lower, which in turn Indonesian farmers can not become the subject of international trade, but it will be the object or victim of the negative side of globalization.

This research is a preliminary study which is expected to provide ideas for further study, such as study on comparative agricultural law, harmonization of agricultural law, study on forming a model law in the fields of agriculture, study that examines the lack of interest of young people to become farmers or farming which oriented to international trade.

Declaration of conflicting interest

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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