

# LEGISLATIVE POLICY ANALYSIS OF LEGAL PROTECTION FOR FARMERS IN THE EFFECTIVENESS OF TRADITIONAL FARMER CULTIVATION

**Rahayu Hartini, Bayu Dwiwiddy Jatmiko**

*Universitas Muhammadiyah Malang, Indonesia*

rahayuhartini@yahoo.co.id, bayu.dj15@yahoo.com

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## Abstract

*Countries should be able to meet their basic needs, in terms of the realization of food sovereignty in the country. Indonesia is constitutionally obliged to pay attention to legislative policy which guarantees legal protection for farmers in support of the food sovereignty. This study aims to determine how the state regulates in providing legal protection for farmers, policies on soil and agricultural land sufficient for farmers in Indonesia. This research was conducted with normative juridical approach to assess legislative policies governing land use for agriculture and agricultural land area. By using primary legal materials in the form of various statutory provisions governing the allotment of land for agriculture. Techniques of collecting legal material through either manual literature search library and digital library as well as a descriptive analysis through the approach of legislation The results and is discussed: 1). Legal protection for farmers under the laws in Indonesia, in general: legislative policy of legal protection for farmers are not supported by legislation that is comprehensive, systemic and holistic, making it less guarantee legal certainty and justice for Farmers and business communities in the field of Agriculture; specifically: the provision of legal protection for traditional farmers do in the strategy to empower farmers, in the form of counseling and assistance in order to carry out: a. procedures for cultivation, post-harvest, processing, and marketing of the good; b. feasibility analysis; and c. partnership with business communities. 2). Policy on soil and agricultural land sufficient for farmers in Indonesia have to add a consolidation program in the series overall value of agricultural production by boosting agricultural land area policy does not favor the entrepreneurs.*

**Keywords:** *legal protection, cultivation, traditional farmers.*

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## INTRODUCTION

The phenomenon of food crisis that occurred in recent years illustrates the decline in agricultural productivity, besides due to the uneven distribution of food is also due to hoarding of food by the private sector. Therefore the state is obliged to pay more attention to genuine agrarian reform that ensures access to and control over resources agrarian farmers, supported by industry and commerce that supports agriculture to achieve food sovereignty. This food issues to strengthen since it does uniformity of staple food communities, communities that are customary and hereditary actually own a variety of foodstuffs principally directed to consume rice as staple food source. The state should be able to meet their own basic needs, so that the meaning staple food for Indonesia as an agricultural country is very important (Bayu Dwiwiddy Jatmiko and Ratri Novita Erdianti, 2014).

During this time Farmers have a significant contribution in the development of Agriculture and rural economic development. Agricultural farmers as development actors need to be given protection and empowerment to support the food needs which is the fundamental right of everyone to achieve food sovereignty, food sovereignty and food security in a sustainable manner. In organizing the development of Agriculture, Farmers has a central role and make a major contribution (Satriya Nugraha, 2016).

Legislative policy conceptions that serve as a starting point in this research is pointed out by the Barda Nawawi Arief, namely policy legislation (1986, p.109-110). One meaning is in the context of legislation which is the jurisdiction of the legislature. For the Indonesian state is obliged to formulate legislative policy in the form of state legislation that guarantees legal protection for farmers in favor of food sovereignty, including for traditional farmers. Policy Legislative confirmed that Indonesia is an agricultural country, can be traced in part according to the provisions of Article 33 Paragraph (3) of the Constitution of 1945 states "earth and water and natural resources contained in it are controlled by the State and used for the greatest prosperity of the people" , in conjunction with Article 1 Paragraph (2) of Law no. 5 Year 1960 About the Basic Regulation of Agrarian, who followed up by Articles 3 and 5 of Law No. 12 of 1992 on Plant Cultivation System, and Articles 4 and 5 of Law No. 19 of 2013 on the Protection and Farmers empowerment.

Traditional farmers are farmers who are familiar with the environment (do not use pesticides), which are not yet using advanced technologies, generally using the tools of agricultural production is still modest (eg farmers who still use cow or buffalo to plow rice fields, or farmers who still use hoes) and farmers who maintain and produce seeds of local traditional ways.

Various legislative policy in the form of various regulations in the field of agriculture it is necessary to do the review. For instance, the cultivation of food handed over entirely to the private sector would cause serious problems in the control of food in the future. The authority granting land management by regents / mayors will trigger a purchase permit (Article 11 Paragraph (2) of Government Regulation No. 18 Year 2010 concerning Business Crop Cultivation.

Indonesia is difficult to master the sovereign if the people's food is another state or private. Similarly, a policy stating the cultivation of food food estate to meet the needs of industrial raw materials, is not right to consider local culture and the protection of diversity of varieties of agricultural plant (Article 2 (b) of Government Regulation No. 18 Year 2010 concerning Business Cultivation Plants. particularly with regard to legislative policy regarding Cultivation performed by Traditional Farmers.

## **METHODOLOGY**

As a normative juridical research. The assessment will be conducted using data/primary and secondary legal materials. Primary legal materials relating to the policy in the form of legislation that is the starting point of the provisions in the 1945 Constitution and the law relating to the regulation concerning the protection and empowerment of farmers. While the primary data collection is done by a search of the literature.

While the secondary data from various agencies work programs related to government policies in agriculture (Department of Agriculture, Bappeda) and food self-sufficiency program in the context of food security. Secondary data collection is done through a literature search and a digital library to generate data and information in order to achieve objectives. Analysis conducted Content analysis of various policy documents legislature in the form of legislation relating to the regulation concerning the protection and empowerment of farmers through statute approach associated with legal protection for farmers and policy on agricultural land and agricultural land that became part of the program self-sufficiency in order food security.

## RESULTS AND DISCUSSION

### *Legal Protection for Farmers According to the Legislation in Indonesia.*

The results of the third amendment to the 1945 Constitution asserts that Indonesia is a country of law (Article 1 (3)). The consequence of Indonesia as a country that upholds the law, Indonesia has heirarkis sort order legislation used as guidelines and references in the making and law enforcement. Legal product in question is the Basic Law (Constitution), Law /Government Regulation in Lieu of Law (PERPU), Government Regulation (PP) Presidential Order (PERPRES), local regulation (Perda), and the various the implementing regulations (Articles 7 and 8 of Law No. 12 of 2011 Concerning the Establishment of legislation).

Under the provisions of Article 33 Paragraph (3) of the Constitution of 1945 states "earth and water and natural resources contained in it are controlled by the State and used for the greatest prosperity of the people".

The Constitutional Court of the Republic of Indonesia (MOJ), interpreting the meaning controlled by the state Menurut Article 33 of the 1945 Constitution is the people collectively, mandates the state to create a policy (beleid) and acts of management (bestuursdaad), setting (regelendaad), management (beheersdaad) and surveillance (toezichthoudensdaad) for the purpose of the prosperity of the people. (Constitutional Court Decision No. 002 / PUU-I / 2003 regarding Judicial Review of Law Number 22 Year 2001 on Oil and Gas of the Constitution of the Republic of Indonesia Year 1945, December 21, 2004).

The maintenance function (bestuursdaad) by the state carried out by the Government with the authority to issue and revoke licenses facilities (vergunning), licenses (licentie) and concessions (Consessie). The regulating of the country (regelendaad) is done through legislative authority by the Parliament and the Government, and regulation by the government. Management functions (beheersdaad) carried out through the ownership of shares (share-holding) and / or through direct involvement in the management of State-Owned Enterprises or State Owned Legal Entity as institutional instrument, through which the State, c.q. The government, leveraging its control over the sources of wealth were to be used for the greatest prosperity of the people. Likewise, the function of oversight by the state (toezichthoudensdaad) conducted by the State, c.q. The government, in order to monitor and control that exercise of control by the state over the resources in question actually done for the welfare of the whole people.

The provisions of article 33 UUD 1945 are set out further in Article 1 Paragraph (2) of Law no. 5 Year 1960 About the Basic Regulation of Agrarian Principles, which reads "The whole earth, water and space, including the natural resources contained therein in the territory of the Republic of Indonesia as a gift of God Almighty is the earth, water and air space of the Indonesian nation and the wealth national".

This means that the earth, water and air space within the Republic of Indonesia whose independence fought by the nation as a whole, the rights also of the Indonesian nation, so it is not solely the rights of the owner only. Similarly, soils in these areas and islands are not solely the right of native people of the area or island in question only. Thus, the relationship with the notion of the Indonesian nation with the earth, water and air space Indonesia is sort of a communal rights, appointed to the top level, ie at the level of the whole territory of the State (see General Explanation of Law No. 5 of 1965 About the Basic Regulation -Pokok Agraria).

In the level Gezets Formell, first Footing is the substance of the Act as an instance of which is regulated in the Constitution, in which an event can be known legal law when it published its laws. Then the government regulation, which is the implementation guidelines of the Act, namely to certain legal events do application of the law when the existing PP and if in the area with PERDA. The application of the law can be followed up with enforcement if it has any further regulations governing their technical implementation through PERPRES / PERMEN and if in the area with the Regional Head Regulations.

Associated with legal protection for farmers, there is a lot of legislation that has been made and is applicable in Indonesia, whose setting scattered in different areas of regulation. So it can be studied in two sides of the legal protection of farmers in general and legal protection for farmers in particular.

#### Legal Protection for Farmers General.

Assessment of legislation that gives legal protection of farmers in general will be directed towards some form of regulation of the Act, which clearly trying to arrange a variety of things that can create legal protection for farmers in order to achieve food security. Some specific notes the legal protection of farmers are as follows:

#### ***According to Law No. 5 of 1960 About Agrarian.***

Legal protection for farmers can be seen on the ultimate goal of the Basic Agrarian Law are: 1). Put the basis for the preparation of the National agrarian law, which would constitute a means to bring prosperity, happiness and justice for the State and the people, especially the farmer, in order a just and prosperous society; 2) .meletakkan basics to hold unity and simplicity in land law; 3) .meletakkan basics to provide legal certainty regarding the rights to the land for the people entirely.

Legal protection for farmers can also be seen in Article 10 paragraph (1) and (2) formulated a principle which today is the basis of the changes in the structure of land is almost all over the world, namely in countries that have been/are being organized the so-called "reform" or "agrarian reform", namely, that "agricultural land should be done or are actively cultivated by the owners themselves". Legal protection for farmers is also embodied in the provisions on the minimum area of land to be possessed by the farmer, so he got a sufficient income for a decent living for themselves and their families (Article 13 in conjunction with Article 17). Also there needs to be provision regarding the maximum limit of land area that may be owned by property rights (Article 17), in order to prevent accumulation of land in the hands of certain groups only. With the need to consider the important principle (Article 7), namely that the ownership and control of land beyond the limit are not allowed, because such is detrimental to public interest.

Finally, that provision needs to be accompanied by the provision of credit, seeds and other assistance to the terms of the light, so that the owner will not be forced to work in another field, to hand over control of their land to others.

#### According to Law No. 56 of 1960 Concerning Determination of Agricultural Land.

Granting legal protection for farmers through policy-setting minimum and maximum limits possession or ownership of agricultural land. The minimum limit of agricultural land to be owned by farmers that is 2 hectares. While the setting of the maximum limit of agricultural land, is A or people in livelihood is a family together is only allowed to take control of farmland, either his own or belonged to other people or his own alongside belongs to someone else, that its area does not exceed the limit as stipulated maximum stated in article 1, paragraph 2 the determination of the maximum it is at most (ie to areas that are not solid) 15 hectares of rice fields and 20 hectares of land-dried). For areas that are very dense then the figures are respectively 5 hectares and 6 hectares. If the fields belongs together with dry soil, the limit is at most 20 hectares, both in areas of dense and non-dense.

Henry Saragih detected that in the era of Jokowi- JK government, major companies such as Cargill, Monsanto, Sygenta, Nestle and several other corporations that are members of the PIS Agro (Partnership in Sustainable Agriculture) got the concession of thousands or even hundreds of hectares of land from the government and then by the companies used for the production, including rice, corn, palm oil and cocoa ".

#### ***Act No. 7 of 1996 on Food***

Recognition of legal protection for farmers in the form of an opportunity for farmers to come to realize the national food reserves. Government organized, foster and or coordinate all efforts or activities to achieve national food reserve, which consists of government food reserves and community food reserves (Article 46 a). What is meant by "public food reserves" in this provision is a food reserve that is managed or controlled by the public, including farmers, cooperatives, traders, and the domestic industry (the explanation of Article 47b).

Thomas Lembong Trade Minister said the government is difficult to avoid in food imports in 2016 to maintain the availability and dampen rising prices in the domestic market. The move is aimed at strengthening stocks and meet domestic demand, and waiting for an increase in agricultural productivity in the next few years. Foodstuffs to be imported by 2016 include rice, beef in the form of cattle and raw sugar. Indonesia plans to import sebanyak 700-800 thousand head of cattle, while raw sugar over three million tons. As for the rice import rice from Thailand and Vietnam of approximately 1.5 million tons in 2015, there will be need for more imports outside import 1.5 million tonnes agreed in September 2015. In fact, the government is also looking for another supplier countries like Pakistan as a result of delays in the decision making of the rice importation. Currently imported rice has not reached one million tons so that they will be no shipment of rice in the first quarter of 2016 to strengthen and maintain the stock of essential items. This policy shows that the Government is not able to maximize the role of farmers to support the establishment of national food reserves.

***Act No. 12 of 1992 on Plant Cultivation System***

Legal protection for farmers seen as the country feels the need to protect national wealth, which includes also the issue of cultivation in the farm system. Where the crop cultivation system aims: a.meningkatkan and expand the diversification of crops, in order to meet the needs of food, clothing, shelter, health, domestic industries, and increase exports; b.meningkatkan income and standard of living of farmers; c.mendorong expansion and equitable distribution of business opportunities and employment.

So the government is authorized to draw up development plans in accordance with the stages of cultivation of national development plans, deciding the development of crop cultivation, regulating the production of certain crops based on the national interest, and create conditions that support community participation, with due regard to the interests of society (see general description). Society is meant here adalah farmers. Farmers are the people, who have or do not have land that livelihood essentially organize the land and/or media grow crops for cultivation. In principle, farmers free to choose the type of plant to be cultivated. However, these freedoms participate followed by the obligation to support the Government in developing the cultivation of plants in its territory (see Articles 30 and explanation).

Settings on the cultivation of a particular crop in the form of the Government's policy that limits the area that may be harvested, the time of harvest, harvesting, and so on. Cultivation of certain plants is a type of crops set by the Government based on socio-economic considerations, international agreements, and other strategic matters.

All Farmers shall participate to support the implementation of the Government in the development of cultivation on its territory. And the Government may limit the area that is harvested, the time of harvest, harvesting, and so on. What about the small farmers. Rural landless small farmers are farmers who cultivate crops and income is only enough to meet the needs of everyday life. (Articles 30 and explanation).

In fact, based on data from the Central Statistics Agency (BPS) in 2010, 90 percent of the villagers are farmers and 80 percent of them belong to the poor. When compared with the city, the poverty rate in the larger villages (The Indonesian Institute, -volume VIII, No. 06 - January 2014) (See Table 1).

Table 1. The number and percentage of poor urban and rural areas in 2011

Territory	Total population poor	Population percentage poor
City	11,04 million	9,23%
Village	18,97 million	15,72%

Source: BPS, 2013.

***Law Number 29 Year 2000 on Plant Variety.***

Protection for farmers in this area is given by the argument that Indonesia is one country in the world that has a highly diverse biological resources and is often expressed as a country with "megabiodiversity". Biodiversity is the grace of the Almighty God's gift to the nation of Indonesia, which is a source of germplasm and can be used to assemble future varieties that are critical to support economic development.

The agricultural sector in particular and national development in umumnya. Untuk satisfy various desires in the domestic and international strategic environment change anticipation, the agricultural sector should be able to improve the competitiveness of products dihasilkan. Peningkatan productivity and quality is strongly influenced by the success of the development of innovation, particularly in improving the potential genetic varieties of plants.

Therefore, an individual or a business entity engaged in the field of plant breeding should be rewarded in producing new crop varieties, unit, uniform and stable. One of the awards is to provide legal protection of intellectual property in generating plant varieties, including the economic benefits and the rights of other breeders. This is an opportunity for businesses to enhance its role in various aspects of agricultural development. This is increasingly important in view of the assembly of high yielding varieties in Indonesia is still mostly done by government research institutes.

In the near future is expected to be increasingly important part of the business world so that more varieties of plants that are superior and more varied can be generated. However, new varieties whose use is contrary to the legislation in force, public order, morality, religious norms, environmental sustainability, and health would not be protected. Such protection is also not intended to close the opportunity for small farmers harness new varieties for itself, and while still protecting local varieties for the benefit of the wider community.

Not regarded as a violation of the PVP, when the use of part of the harvest of the protected variety, to the extent not for commercial purposes. The meaning is not for commercial purposes is an individual activity, especially small farmers for its own purposes and does not include activities for the purpose of disseminating the group. It must be emphasized that the market for varieties that have had to stay awake PVP and PVP rights holder interests are not harmed.

As the author notes, that factual small farmers find it difficult if not impossible to award the Plant Variety Protection (PVP), because in addition to not understand the law, the procedures seem convoluted, difficult and expensive.

***Law Number 26 Year 2007 on Spatial Planning***

Legal protection for farmers in this Act among others by spatial planning rural areas, which are directed to (Article 48): a. empowerment of rural communities; b. local environmental quality defense and regions it supports; c. conservation of natural resources; d. preservation of local cultural heritage; e. Defense perennial land area food agriculture for food security; and f. secure balanced development of rural and urban. Urban areas is a region that has a major non-agricultural activities with the composition as a function of the area of urban settlements, concentration and distribution of government services, social services, and economic activity.

In Article 16 of the Act, it is stated that the Spatial Plan to do the review (see explanation). Review and revision in less than 5 (five) years to do in the event of changes in national policies and strategies that affect the utilization of space provincial and / or the internal dynamics of the province that does not change the policy and strategy of the national spatial utilization. This opens the opportunity for a change in land use that serves as agricultural areas into non-agricultural, including possible changes in the area of agricultural land immortal. As disampaikan by the Director of Expansion and land management DG PSP Ministry of Agriculture, Tunggal Imam Panuju, "The transformation of agricultural land in the country, mainly in Java already uncontrollable. Data BPS states every year 80 thousand hectares of farmland were lost. So the same alone with each of us woke up already lost 220 hectares of agricultural land, converted into other sectors," (Tunggal Imam Panuju, 2016).

***Law No. 41 of 2009 on the Protection of Agricultural Land Sustainable Food.***

Legal protection for farmers in the Act are carried out by determination of spatial planning and territory in which one designation is for food agricultural land. Food agricultural land is part of the earth as a gift of God Almighty which is controlled by the state and used for sebesarbesar prosperity and welfare of the people as mandated in the Constitution of the Republic of Indonesia Year 1945. Indonesia as an agricultural country needs to ensure the provision of farm land sustainable food as a source of jobs and a decent living for humanity by promoting the principles of togetherness, efficiency, justice, sustainability and environmental friendliness, and independence, and keep the balance, advancement and national economic unity. The increasing population growth and economic development and industry resulted in the degradation, conversion and fragmentation of agricultural land carrying capacity of food threatens national territory in maintaining independence, resilience, and food sovereignty. (See preamble of the 1945 Constitution).

Food sovereignty is the right of states and nations that can autonomously determine its food policy, which guarantees the right to food for its people, as well as providing the right for the people to determine the agri-food system that is in accordance with the potential of local resources. Agricultural land is the area of land used for agriculture. Determination of National Sustainable Food Agriculture Region Government Regulation on Spatial Planning (RTRW) National. Selanjutannya Spatial Plan in accordance with their respective regional areas will be regulated in a separate RTRW local legislation (see Articles 14 and 25 of Law No. 41 of 2009 and article 10 of Law No. 26 Year 2007 on Spatial Planning, in conjunction with Article 91 and Article 245 of Law Number 23 Year 2014 on Regional Government).

What about the existence of reality as presented by the Minister of the Interior Tjahjo Kumolo said that some local regulations (draft) which actually inhibits investment, business regulation and contrary to the rule of law are higher, which is associated with the six regulations, namely the Development Plan Medium term (RPJMD), regional Long term Development Plan (RPJPD), regional Budget (APBD), levies, local taxes, and the Spatial Plan (RTRW) area.

The Ministry of the Interior has canceled 3,143 local laws and regulations of the regional head. Earlier, the President even gave a deadline until July to be able to deregulate regulations Kemendagri problematic areas totaling 30,000 tersebut regulations (Tjahjo Kumolo, 2016). Would not it will allow to reduce the extent of agricultural land and food sovereignty program.

***Law No. 13 of 2010 on Horticulture***

Horticulture is all matters relating to fruits, vegetables, medicinal materials of vegetable and floriculture, including fungi, algae, and aquatic plants that serve as a vegetable, plant-based ingredients, and / or materials of aesthetics. Horticulture business is all activities to produce and / or organize services related to horticulture. Horticultural crops are plants that produce fruits, vegetables, medicinal materials of vegetable, floriculture, including fungi, algae, and aquatic plants that serve as a vegetable, plant-based ingredients, and / or materials of aesthetics. Horticulture business actors, hereinafter referred to as business operators, farmers, farmer organizations, other orangperseorangan, or companies which conduct business in horticulture, whether incorporated or not a legal entity established and domiciled in the jurisdiction of the Republic of Indonesia.

Horticulture associated with the enactment of Law No Judicial Review (JR), filed by the Association of businessmen and some individuals in particular to Article 100 of Law Horticulture governing foreign investment in horticulture maximum of 30%. Judicial review resulted IHCS and a number of organizations filed a lawsuit intervention, to be the relevant parties to reject the application for judicial review.

The Court rejected the application of the Case Number 20 / PUU-XII/2014 on the restriction of Horticulture Industry Capital. The grounds: First, the preamble 45 and 45 Constitution clearly prioritizes the protection of citizens and not everyone who is in Indonesia, so that foreign capital restrictions are not discriminatory. Secondly, As an agrarian nation and the majority of the population are farmers, then it should horticultural seed under state control and restrictions on foreign capital do to create independence (Decision of the Constitutional Court, Case Number 20 / PUU-XII/2014).

Chairman of the Committee Consideration of the Organization IHCS Gunawan, said that if restrictions on foreign capital in horticulture and renegotiate mining contracts fail not because of lack of popular support but because of indecision of government, so that after the decision of the Court, it should be the seed subsidy given to farmers plant breeders, not with mere currency to buy seed and fertilizer from the factory, so Gunawan mengataka (2016).

Visible absence of consistency, synchronization and harmonization of legislative policy in legislation that gives legal protection to farmers, impressed the settings that overlap and contradict each other. And sometimes even gives a great opportunity for the company to dominate agricultural land extensive farming. Legislative policy of legal protection for farmers can be said is not supported by legislation that is comprehensive, systemic and holistic, making it less guarantee legal certainty and justice for Farmers and business communities in the field of Agriculture.

### ***Legal Protection for farmers Special, In The Effectiveness of Traditional Crops Farmers***

Referring to the principle of *Lex specialis*, textually legislation that expressly regulates the protection and empowerment of farmers is Law No. 19 of 2013 on the protection and empowerment of farmers (Law 19/2013). Because they were limited in the assessment of the scope of Law No. 19 of 2013 on the protection and empowerment of farmers.

Studies on Law No. 19 of 2013 on the protection and empowerment of farmers, bahwaPemeran find the key in the procurement of food sourced from agriculture are farmers. They are involved directly or indirectly in tilling the land, tenants / owners of agricultural land, seeding, planting, fertilizing, maintenance, harvesting, post-harvest processing to marketing. By using all the potential they possess the slightest.

Agricultural farmers as development actors need to be given protection and empowerment to support the food needs which are basic rights Everyone has to realize food sovereignty, food sovereignty and food security in a sustainable manner (Satria Nugraha, 2013). Farmers generally tried on a small scale, the average area of farm land less than 0.5 hectares, and even some of the farmer does not own the land called Farmers Farming or tiller, and even farm laborers. Generally Farmers have a weak position in acquiring the means of production, financing Farming and market access, the likelihood of climate change, vulnerability to natural disasters and business risk, globalization and the global economic downturn, as well as the market system does not favor the Farmer (Satria Nugraha, 2013). Therefore very urgent needs clear regulations related to the protection and empowerment of farmers.

Article 4 of Law No. 19 of 2013 states on the protection and empowerment of farmers, Scope of Protection and Empowerment of Farmers include: a. planning; b. Protection of Farmers; c. Farmer Empowerment; d. financing and funding; e. supervision; and f. community participation. Furthermore, Article 5 of Law 19/2013, insists that the protection and empowerment of farmers planning must contain strategies and policies. Planning the protection and empowerment of farmers must be done in a systematic, integrated, effective, thorough, transparent, and accountable. Careful planning must be based on the carrying capacity of natural resources and the environment, spatial planning, and the development of science and technology, economic growth rates, the number of farmers, needs infrastructure and facilities; and the technical and economic feasibility and compliance with institutional and local culture.

In the strategy of protection and empowerment of farmers referred to in Article 6 adopted by the Government and local government pursuant to its authority under the policy of protection and empowerment of farmers.



Table 1. Providers and/manager of Strategy Protection and Empowerment of Farmers

No	Provision	Strategy	Policy and/or manager
1	Farmers Protection Strategy (article 7 paragraph 2) is done through:	Agricultural production infrastructures and facilities;	Government and local governments and business communities
		Business certainty;	Government and local governments
		Agricultural commodity prices;	Government
		The elimination of the practices of high cost economy;	-
		Compensation of crops failure due to an extra ordinary event;	Government and local governments
		Early warning system and the impact of climate change;and	Government and local governments
		Agricultural Insurance	Government and local governments
2	Farmer Empowerment Strategy (Article 7, paragraph 3) is done through:	Education and Training;	Government and local governments , agency and / or an accredited institution, business agent
		Extension and advisory;	Government and local governments
		System development and marketing of the mean of agriculture;	Government and local governments and business communities
		Consolidain and assurance agricultural lan area;	Government and local governments
		The provision of financing and capital facilities;	Government and local governments
		Ease of acces to science, technology , and information, and	Government and local governments
		Institusional strengthening of farmers.	Government and local governments

Source: Adapted from Law No. 19 in 2013

Legal protection for farmers in Law No. 13 In 2013, the split in the form of policies for the protection of farmers and farmer empowerment policy. Each policy has its own strategy in implementation. As it is seen in the table above by mentioning the provider and/or managers of the policy.

The strategy of protection and empowerment of farmers is done through several ways. Deliberately differentiated protection strategy with the strategy of empowering farmers and further elaborated with different emphasis on various programs related to the guarantee implementation. Program protection and empowerment of farmers also governs the provider and / or managers, in order to more clearly who is in charge associated with the authority, duties and programs that can be planned.

Planning Protection and Empowerment of Farmers compiled by the Government and Local Government in accordance with its authority by involving farmer, compiled at the national, provincial, and district / city, into a plan Protection and Empowerment of Farmers both short term, medium term and long term.

Policy Protection and Empowerment of Farmers should consider: alignment with community development projects and public participation and/or other stakeholders as partners with government and local governments.

What is meant Protection Farmers are all efforts to help the farmer in confronting difficulties in obtaining infrastructure and production facilities, business certainty, risk pricing, crop failure, high cost economy practices, and climate change (See Article 1 point (1) of Law 19/2013) , While Farmer Empowerment is all efforts to improve the ability Farmers to implement Farming better through education and training, counseling and mentoring, development of systems and means of marketing of Agriculture, consolidate and guarantee the extent of agricultural land, the ease of access to science, technology and information, Farmers and Institutional strengthening (Article 1 paragraph (2) of Law 19/2013).

Legal protection for farmers in this law is actually addressed to all farmers, without any kind of grouping of farmers, although in theory grouping types of farmers can be seen from the plant, from the farm system or of how the forestry sector. So it does not look textually their legal protection arrangements for traditional farmers. But when we examine this law then, literal meaning can be understood that the Act also provides legal protection to traditional farmers. That is implicitly contained in Article 47 and Article 148 paragraph (2) letter e. In Article 47, states that "Every person prohibited from counseling that does not correspond to extension materials in the form of specific technology that has been established by the Government or Local Government, except those derived from traditional knowledge". What is meant by "particular technology" is a technology that can potentially harm the environment, damage the health and inner peace of society, and caused economic losses to the farmer, business communities, and the communities that could be technology related to genetic engineering, seed and pest control disease (explanation of Article 47).

In Article 148 paragraph (2) letter e stating "What is meant by" the modern market "is a market with a system of self-service that sells various types of goods at retail, among others, the form of minimarket, supermarkets, department stores, hypermarkets, or wholesale-shaped wholesale. Modern market restrictions are intended to prevent unfair competition between the traditional and modern markets. Freight formulation of "traditional" in Articles above, can be defined as those who work as traditional farmers, the farmers are familiar with the environment (do not use pesticides), which are not yet using advanced technologies, generally using the tools of agricultural production is still modest (eg farmers who still use cow or buffalo to plow rice fields, or farmers who still use hoes) and farmers who maintain and produce seeds locally by traditional means.

Interestingly this Act, in providing legal protection to farmers in section 47 above, which the writer understood as traditional farmers. This law has set the criminal provisions of Article 102, which reads: "Everyone who does counseling that does not correspond to extension materials in the form of specific technology that has been established by the Government or Local Government as referred to in Article 47 shall be punished with imprisonment of 2 ( two) years and a maximum fine of Rp50,000,000.00 (fifty million rupiah). "This means that each person can only do counseling that does not correspond to extension materials in the form of specific technology that has been established by the Government or Local Government, if the source of knowledge traditional.

Expected no special treatment to traditional farmers, namely the policy of legal protection for traditional farmers in the form of Law No. 19 in 2013, carried out in the strategy to empower farmers, thereby granting the extension that is always associated with assistance to traditional farmers can do: a. procedures for cultivation, post-harvest, processing, and marketing of the good; b. feasibility analysis; and c. partnership with business communities.

## State Policy on Land Farms and Land Farms Enough for Farmers

### *Analysis of Agricultural Land Consolidation Policy.*

Agricultural land consolidation is a realignment of use and land use in accordance with the potential and the regional spatial plan for the benefit of Agriculture land. Preference will be given to ensure the land area of Agriculture for Farmers in order to achieve a decent level of living. Conducted through the control of land use and land use Agricultural Farms were abandoned (Article 46 of Law No. 19 of 2013). The purpose of consolidation of agricultural land is to be consistent with the objectives of the law is for the sake of legal certainty, the realization of justice and the achievement of expediency. According to the researchers' goals sejogyanya law must also base themselves on the "truth".

For that it is necessary known how many Indonesian farmers actually? By looking at the data presented by the Central Bureau of Statistics, as follows:

Table 2. Number of Farmers by Sector / Subsector and Sex in 2013

Sector/Subsector	Gender		Unit: soul
	Male	Female	amount
AGRICULTURAL SECTOR	24 362 157	7 343 180	31 705 337
CORPS	16 096 457	4 302 682	20 399 139
HORTIKULTURE	9 342 562	2 608 427	11 950 989
PLANTATION	11 729 886	2 386 579	14 116 465
LIVESTOCK	11 080 280	3 658 009	14 738 289
FISH CULTIVATION	1 141 125	147 740	1 288 865
FISH CATCHING	869 022	58 232	927 254
FORESTRY	6 221 033	1 027 997	7 249 030

Source: BPS

By looking at the amount of Farmers by Sector/Subsector and Gender above, would likely only describe the purpose of the legal form of the achievement of expediency. With regards to the legal form of justice and the rule of law, need to see the data on agricultural land in Indonesia, as follows:

Table 3. Area of Agricultural Land in Indonesia, 2009-2013

No.	Land Type	Tahun/Year					(Ha)	Growth
		2009	2010	2011	2012	2013 *)	2013 over 2012	(%)
<b>1.</b>	<i>Wetland</i>							
	a. Irrigated Wetland	4,905,107.00	4,893,128.00	4,924,172.00	4,417,581.92	4,819,525.00		9.10
	b. Non Irrigated Wetland	3,163,220.00	3,109,424.00	3,170,690.00	3,714,763.99	3,292,578.00		-11.37
<b>2.</b>	<i>Dry Field/ Garden</i>	11,782,332.00	11,877,777.00	11,626,219.00	11,947,956.00	11,876,881.00		-0.59
<b>3.</b>	<i>Shifting Cultivation</i>	5,428,689.00	5,334,545.00	5,697,171.00	5,262,030.00	5,272,895.00		0.21
<b>4.</b>	<i>Temporarily Unused Land</i>	14,880,526.00	14,754,249.00	14,378,586.00	14,245,408.00	14,213,815.00		-0.22

Source : BPS

From the table above estimates around 41.5 million hectares by division: Horticulture 567 thousand hectares, 19 million hectares of Food Crops and Plantation Crops 22 Million Ha. (Fikri\_Alyandra, 2016). While land managed / arranged approximately  $\pm$  26 million hectares of land are temporary and Unmanaged /  $\pm$  14 million hectares cultivated. The land will be able to absorb the labor force in the agricultural sector is very large.

Agricultural land consolidation policy is attractive, giving rise to the expectations associated with legal protection for farmers and support policies in the field of food self-sufficiency.

Consolidation Policy of agricultural land given Law 19 in 2013 in the form of lease rights, the exploitation permit, license management, or permit the use of criticism from Gunawan (Executive Director of the Indonesian Human Rights Committee For Social Justice / IHCS), (Sajogyo Institute, accessed August 11, 2016). (1) Land not at all be a basic consideration in the clause "weighing" of the Law No. 19, 2013. In fact, the soil is very basic issues faced by most farmers in Indonesia today, especially small farmers and landless peasants. (Note: This indicates a failure of the legal subsatansi very important for legislative policy in the field of protection and empowerment of farmers, because the Consolidation Policy of agricultural land without consideration of the "land" with all its aspects, it is impossible that program will be effectively implemented). (2) Law No. 19 In 2013 the State is positioned as the land owner of the land to be consolidated, so that new farmers can manage and utilize the land if it had hired or get permission from the State. It is very real conflict with the principle of "the right to control the State" in Article 33 of the 1945 Constitution Though understanding the right to control the State does not mean the property of the State, but the right of the State to formulate policies, make arrangements, maintenance, management and control, non-proprietary (Sajogyo Institute). (3) In addition to conflict with the Act of 1945, the consolidation of agricultural land under Article 56, which is then redistributed to farmers in the form of lease and license rights in article 59, in violation of the principle of land redistribution (land reform) in Law No. 5 of 1960 on Principles Agaria. Redistribution of land that should be implemented by the State to remodel the inequality of land tenure, even into space for the emergence of a new feudal practices in the country (Note: According Agusdin Pulungan of the Forum for the Community Farmers and Fishermen Indonesia (WAMTI). The government gave land concessions hundreds of thousands of hectares to private companies to plant rice in the Papua region. Not only that, land concessions granted for ecosystem restoration as part of the management changes climate regardless of whether the territory or region is already an arable land of farmers, especially those in the province of Jambi and South Sumatra. (4) Should the implementation of the land consolidation policy an important instrument for the realization

of spatial planning and regional development done in an integrated and participatory. Integrated in the sense of integrating the various interests across sectors, cross-region and cross-stakeholder (Explanation of Article 2 letter a of Law No. 26 Year 2007 on Spatial Planning), whereas the participatory implementation of the provisions of Article 65 A of Law No. 26 Year 2007 on Spatial Planning (UUPR), which requires the implementation of the spatial planning involving community participation through: a. participation in drafting the spatial plans; b. participation in the utilization of space; and c. participation in controlling the use of space (Ida Nurlinda, Journal of Law no. 2 vol. 18 April 2010: 161-174). So should put farmers in a position that is important in the preparation of the agricultural land consolidation program. (5) The administration of the land according to Article 1 PP 16 of 2004 on Land Stewardship, covering activities of tenure, land use and utilization of the tangible consolidation of the use of land through institutional arrangements related to the use of land as an integrated system for the benefit of society as fair. Stewardship of land should be done with reference to the balance of land use which contain balance changes and compatibility between pcnnggunaan and utilization of land and land availability data and prioritizing provision. Further explanation Pasa133 paragraph (3) UUPR asserts that in order stewardship of land on the space that had been planned for the construction of infrastructure and facilities for the public interest, the government (both central and local) have the right first priority to receive the transfer of land rights of the holders of land rights , If the interests of the community in terms of stewardship of land above, interpreted as the public interest, it is in the context of land acquisition for development, provision of Article 33 paragraph (3) in conjunction with Article 1 UUPR PP 16 of 2004 must be interpreted as the government's first priority right is a manifestation of the right to control the country as defined in Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 paragraph (2) BAL. In this regard, the state plays an important role for rnewujudIcan ground as elements of public goods into private goods equitably, to align and integrate land acquisition activities in the spatial plan, (Ida Nurlinda, Jakarta, 2009, p. 165.) (6) Wiradi Gunawan, an expert in agrarian Indonesia firmly declared that the Act reflects the "political war" defensive today. He also added that "consolidation" of land is often misunderstood by many people. Consolidation is not just a matter of scale, but rather the opposite of fragmentation. Collecting land farming units are located scattered that is called consolidation. Instead, Dahrul Syah of IPB opinion, regardless of the various isms in the Act, agricultural consolidation should be added to the whole value chain of production (Sajogyo Institute)

### **Analysis of Guarantee policy area of agricultural land.**

In connection with the guarantee policy of agricultural land area, it is important to point out what was promised in the 2014 presidential election campaign, Jokowi-JK firmly said it would undertake a program of 9 million ha of land distribution to the poor and small farmers who then poured in Nawacita program. (PR Sekkab RI, March 3, 2015). Until October 2016 this program has been implemented by some random areas, but has not yet published a thorough realization of data.

Guarantee policy area of agricultural land is a policy concept that might be in maknai as agricultural land redistribution program such as land reform policy under the Act No. 5 of 1960 on Principles Agaria.

The legality of the program as contained in Law No. 5 Year 1960 About the Agrarian (BAL), Law No.41 of 2009 on Land Provision Sustainable Food and results of judicial review and Empowerment Farmer Protection Act 19 of 2013, which also included the provision of 2 hectares of land for farmers (Henry Saragih Chairman of the Indonesian Farmers Union (SPI), acces January 10, 2016).

Regarding the program H. Achmad Sodiki (former member MOJ) explain the historical perspective. Land Reform Act Sukarno era, into the era of acquisition of land rights, unfortunately later to claim construction by the Suharto regime no longer genuine lenadreform agenda and peasant land just replaced with lower compensation. SBY era there is also a promise of redistribution 8 to 11 Million Hectares of land, but land reform plus eventual barely audible again, farmers deceived again (H. Achmad Sodiki, 2016).

For comparison in the era of President SBY in 2010, with reference to the Basic Agrarian Law (BAL) 5 In 1960, the government made curbing wastelands which amounts to more than 7 million ha.

President three times delivered an important speech on the agrarian, namely the year 2007, and January 15, 2010, and terakir speech at Bogor Palace, October 21, 2010. In a very limited number, the president handing out certificates of land to farmers who do symbolically in Bogor, October 21, 2010. nationally, total state-owned land whose ownership rights handed over to farmers reached 142 159 hectares were conducted simultaneously in 389 villages in 21 provinces (Syahyuti, 2016).

While in the Era of Reform, in the Jokowi-JK, the implementation of Law No. 19 in 2013 undoubtedly will be able to realize the policy of giving assurance of agricultural land area in the form of distribution of agricultural land to farmers. Perhaps even tend to give land to businessmen.

Seen in the following events: "When determining the methodology and determination of 9 million hectares of land, the government has opened a wide door for corporations to invest in Indonesia, as the President said at the World Economic Forum for East Asia in Jakarta in April 2015. This course causing major companies such as Cargill, Monsanto, Sygenta, Nestle and several other corporations that are members of the PIS Agro (Partnership in Sustainable Agriculture) got the concession of thousands or even hundreds of hectares of land from the government and then by the companies used to produce, among others rice, corn, palm oil and cocoa "(Henry Saragih).

Where it H. Achmad Sodiki as if to prove the opinion, "Why is that for companies there and ease of thousands of hectares, but for farmers countries are very stingy?" Henry Saragih Chairman of the Indonesian Farmers Union (SPI).

The fact that Henry Saragih reviewed by the Chairman of the Indonesian Farmers Union (SPI), which states that the policy of agricultural land area which favor the business, at least raises a few things, namely: (1) As a result of the inconsistency of the government in implementing programs, especially regarding land distribution nawacita 9 million ha of land, land conflicts throughout 2015 is likely to increase. Seen from the data collected by the SPI throughout the year 2015, the number of agrarian conflicts that occurred in Indonesia reaches 231 cases. (2) This figure increased by about 60% compared to the agrarian conflict that occurred in 2014 amounted to 143 cases. Conflict spread across all regions in Indonesia with a total land area of 770 341 ha of agrarian conflicts. Of the area of conflict that led to three farmers were killed, 194 farmers are victims of violence, 65 farmers criminalized and more than 2,700 heads of family farmers have been evicted from farms. (3) Farmers always be the one who always defeated, and defeated by the system if it wants to resolve the agrarian conflict that happened through the formal channels of institutional justice in this country. This then became the basis for us to force the government to speed up the establishment of agrarian conflict resolution institutions. This institution would later settle agrarian conflicts with fair conditions by using the principles of agrarian reform (Henry Saragih, 2016).

## CONCLUSION

Legal protection for farmers under the laws in Indonesia, can be assessed in general and in particular.a). in general: the legislative policy of legal protection for farmers have not been supported by legislation that is comprehensive, systemic and holistic, making it less guarantee legal certainty and justice for Farmers and business communities in the field of Agriculture;b). specifically: the provision of legal protection for traditional farmers do in the strategy to empower farmers, in the form of counseling and assistance in order to carry out:a. procedures for cultivation, post-harvest, processing, and marketing of the good;b. feasibility analysis; and, c. partnership with business communities.

Policy on soil and agricultural land sufficient for farmers in Indonesia have to add a consolidation program in the series overall value of agricultural production by boosting agricultural land area policy does not favor the business, as prone to risk.

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