

Politics Of Law Of The Protection Of Plant Variety (Pvt) And Its Implications For Food Security In Indonesia: A Maqashid Al-Shari'ah Perspective

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Abstract: The birth of the Law on Plant Variety Protection (PVP) is a consequence of Indonesia in its participation as a signatory country for the GATT/WTO agreement, which one of the series of agreements contains Trade-Related Aspects of Intellectual Property Rights (TRIPs). This agreement implies that after ratification, Indonesia must harmonize legislation in the field of intellectual property rights with the approval of TRIPs, including in the field of Plant Variety Protection. Philosophically there are several provisions in the PVP Law that need to be observed. One of them is the focus of this law that prioritizes economic interests and breeder rights rather than farmer rights. By using qualitative research and philosophical approach, this study concludes: First, in the perspective of politics of law, the protection of plant varieties in Indonesia has not been based on an ideal basis of Indonesian politics of law. Ideally, the stipulation of law in Indonesia must prioritize an ideological and normative basis that originates from Pancasila and the UUD 1945 as central values and are essential to Indonesian politics of law. Second, Plant Variety Protection in Indonesia is still oriented to food security, not to the limit of food sovereignty. The orientation of the Law on PVP should lead to efforts to liberate this country from the element of dependence on other countries by leading to food sovereignty. Third, in the perspective of Maqashid Sharia, the protection of Plant Varieties in Indonesia has not yet described efforts to create benefit for the Indonesian nation as a whole. The nature of Maqashid sharia is a benefit that rests on the interests of society in general.

Keywords : Law on PVP, politics of law, food sovereignty, maqashid sharia

1. INTRODUCTION

INDONESIA does have a very potential area to develop business in the agricultural sector, so that Indonesia is known as an Agricultural country (Sadjad, 2007). The development of the agricultural sector is an integral part of national development which has a central meaning. This agriculture has a relationship with food availability. As basic needs and human rights, food has a meaning and a very important role for the survival of a nation's life. Availability of food that is smaller than its needs can create economic instability (Freastoni & Sirajuddin, 2010). The agricultural sector plays a role in national development by relying on the use of existing natural resources. However, when other sectors showed a significant growth spurt, the agriculture sector experienced a decline (Satari, 1999). The agricultural sector has a strategic role in the structure of national economic development (Sudaryanto & Rusastra, 2006). Agriculture is a sector that has a significant role for the Indonesian economy. The agricultural sector absorbs 35.9% of the total workforce in Indonesia and accounts for 14.7% of Indonesia's GNP (BPS, 2012). These facts strengthen agriculture as a mega sector that is vital for the Indonesian economy. Fertile land is also a very potential capital to make Indonesian agriculture a source of income for its people and also support the nation's economy. The area of agricultural land in Indonesia in 2014 reached 8,114,829 hectares (BPS, 2014). However, this potential cannot increase productivity maximally when there is no attention to the supporting facilities.

One important factor that determines the level of productivity of agricultural crops is seed (Seed is one of the basic inputs in crop production activities. Seed is the plant part that is used for reproduction, both generative (true seed) and vegetative parts. The seed factor is recognized as playing an important role in agriculture. Japanese farmers invented the saying 'tane Han Saku' which means 'seeds are half the success'. The saying "if you throw the seed in the ocean will become island" created by American farmers shows the importance of the role of seeds in agriculture (Ilyas, 2012). Seeds along with other means of production such as fertilizer, water, light, climate determine the level of crop yield. Although there are sufficient other means of production available, but if low quality seeds are used, the yield will be low. Seed of superior quality varieties is a determinant of the limits on productivity of an agricultural business. Today the reality shows that the use of high-quality superior varieties of seeds in the agricultural sector. Seed of superior quality varieties for many commodities, even still importing, and consuming large enough foreign exchange. In addition to spending foreign exchange, seed imports will only benefit seed exporting countries. Thus, it needs to be questioned to what extent the effectiveness of the protection of plant varieties in Indonesia. In reality, Indonesia is one of the countries that signed an agreement to form a World Trade Organization (WTO) and an agreement on trade aspects related to Intellectual Property Rights (Agreement on Trade Related Aspects of Intellectual Property Rights). Indonesia has ratified it through Law No. 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. After the ratification of the WTO/TRIPs Agreement, the fields of IPR that have been regulated in the law after the TRIPs Agreement. To comply with the provisions of TRIPs, Indonesia must harmonize legislation in the field of IPR, including Law No.29/2000 on Plant Variety Protection. Under existing provisions, TRIPs require member countries to protect plant varieties by one of the methods, namely patents, effective sui generis systems or

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by a combination of patents and sui generis systems (Krisnawati & Saleh, 2004). Patent protection for plant varieties has indeed led to pros and cons between developed and developing countries. The debate occurred because of differences in interests and abilities possessed by each country. Developed countries support a patent system for plant varieties with the consideration that patents are needed to support research and inventions. Besides that, developed countries generally have the ability of capital, technology, knowledge, and adequate legal provisions (Weiswasser et al., 2001). Disagreement of developing countries is based, inter alia, that plant varieties are living things so they should not be granted patents. In reality, the third world community does not have the concept of ownership rights over living things. There is no law specifically regulating the granting of exclusive ownership rights for traditional plant breeders to create new varieties of plants. Protection of Plant Variety (PVT) is also related to biodiversity or biodiversity (biological diversity) in Indonesia and must be preserved and need protection, especially from the hands of irresponsible evil who will make business land in this field (Mulyadi, 2017). The high biodiversity is natural wealth that can provide versatile benefits, and has vital and strategic benefits, as the basic capital of national development (Proceedings of the National Seminar on Research, Education and Application of Mathematics and Natural Sciences, 2009). The high biodiversity is natural wealth that can provide versatile benefits, and has vital and strategic benefits, as the basic capital of national development (Proceedings of the National Seminar on Research, Education and Application of Mathematics and Natural Sciences, 2009). In the concept of Islamic law, materially, the protection of plant varieties has an agreement with two concepts, namely the concept of rights (*nadzariyat al-huquq*) and the concept of ownership (*nadzariyat al-milkiyyah*) (al-Zarqa', n.d). Sustainability and sustainability are both related to the role of government to maintain and protect it. In the perspective of Islamic law, a leader must be oriented to benefit; *tasharuful imam ala al-ra'iyah manutun bi al-maslahah*. The concept of this benefit in the terminology *istinbath* from Islamic law is known as *maslahah mursalah* which is the core of the *al-sharia maqashid*. This study attempts to describe the role of politics of law of Plant Variety Protection (PVT) and its implications for food security in Indonesia in the *Maqashid al-Syari'ah* Perspective.

2 MAQĀSHID AL-SYARĪ'AH AND EFFORTS TO CREATE BENEFIT

Maqāshid al-syarī'ah is the understanding of *ruh tasyri'* (the formation of Islamic law) as in the time of the companions of the Prophet Muhammad s.a.w. as a method of extracting Islamic law at that time. Judging from the review of language (etymology), *maqāshid al-syarī'ah* consists of two words namely *maqāshid* and *al-syarī'ah*. *Maqāshid* is the plural form of *maqšūd* which is derived from the word *qāshada* which means to intend or mean. *Maqāshid* means things that are desired and intended (Manzūr, n.d). While the word *syarī'ah* literally means the path to the source of water and can also be interpreted as walking towards the source of life (Munawwir, 1997). In the Qur'an, Allah mentions some *shar'ah* words, among them are in Sura Al Jasiyah: 18. From the above verse it can be understood that *shari'ah* is the same as religion, but in its development there is a reduction in the meaning of *shari'ah*, for example

aqidah is not included in the meaning of *sharia*. Some scholars think that *al-maqāshid* is the same as *al-mašāliḥ* (*maslahat*) like Abdul Mālik al-Juwainī (d. 478 H/1185 AD). Al-Juwainī was among the first to begin to develop *al-maqāshid* theory, where he used the terms *al-maqāshid* and *al-mašāliḥ al-'āmmah* (public *maslahat*) with the same meaning (al-Juwainī, 1400 AH). Then al-Ghazali (d. 505 H/1111 M) further elaborated al-Juwaini's work by classifying *al-maqāshid* (al-Ghazālī, 1413 AH) and put it under the category *al-mašāliḥ al-mursalah* (loose benefit) meaning *maslahat* which are not mentioned in the verses of the Qur'an or the Hadith. Fakhruddin in al-Razi (d. 606 H/1209 AD) and al-Amidi (d. 631 H/1234 AD) followed al-Ghazali in using the term, whereas Najmuddin al-Ṭufi (d. 716 H/1316 AD) define *al-mašāliḥ* as the cause that leads to *al-Shari'* (the maker of the *Shari'a*) (al-Tufi, 1419 AH). Finally, al-Qarafi defines *al-mašāliḥ* as a part of Islamic law, which is based on *Shari'a*, cannot be considered *al-maqāshid* unless it is attached to a legitimate target, which can achieve benefit or prevent *mafsadat* (al-Qarafi, 1994). This expression means that whatever belongs to *al-maqāshid*, is to express the benefit of humans that bring benefit and prevent *mafsadat* (Ghofur & Susilo, 2017). The ultimate goal of God to establish His laws is to realize the benefit of human life both in this world and the hereafter. Establishment of law in Islam is to create benefit in order to maintain the objectives of the *Shari'a*. In other words, the laws are prescribed to realize goodness while avoiding badness or attracting benefits and rejecting harm. In *muamalah*, the rules relating to the welfare of fellow human beings, such as the transfer of property rights through the sale and purchase intermediaries, grants and other transactions. To avoid the threat to the existence of souls and assets, it is prescribed that *kisas*, *diyat*, *ḥad* and the obligation to replace the property of others that are damaged or destroyed. The obligation to maintain the *maqāshid al-syarī'ah* is grouped into two, in a positive way (*jalb al-mašālahah wa daf 'al-mafsadah*) as in matters relating to worship, customs and *muamalah*; and with preventive protection (*al-akhz bi akhaff al-ḍarain*) as in matters relating to *jinayah* (Mas'ud, 1995). The purpose of welfare is nothing but the establishment of world life for the attainment of the afterlife. Thus, all things that only contain the benefit of the world without the benefit of the hereafter, or do not support the realization of the hereafter existence, it is not the welfare which is the goal of the *Shari'a*. Therefore, in realizing benefit must be free from worldly passions because this benefit is not measured according to desire alone. The benefit that is realized by humans is for the good of humanity itself, which refers to aspects of *ḍarūriyyah*, *ḥājjiyyah* and *taḥsīniyyah* all of which must be based on the law of God. Benefit is indeed for the benefit of humans, but in a way governed by God, not based on human arbitrariness. That is why the obligation to carry out the actual law for the benefit of humans is considered quite heavy, even though in ways that are fair and reasonable. The difficulty of carrying out the law is also because the created abuses do not accommodate personal desires and lustful pleasures, because the consideration of these two interests will not cause any problems, on the other hand, harm. In this case, benefit is for human happiness in the world and in the hereafter, then it must be determined by God, not by 'secular' law or the pragmatic needs of human life (Hallaq, 2000). Thus it can be understood that the purpose of Allah prescribes laws is to ensure the maintenance of human needs, from things that are primary, secondary or tertiary in the framework of achieving

the benefit of mankind. The benefit of mankind is not enough to be limited to worldly goodness, but even more important is goodness that is ukhrawi.

3 THE DYNAMICS OF REGULATING PLANT VARIETY PROTECTION IN A GLOBAL AND NATIONAL CONTEXT

The development of international trade and the existence of a free trade movement have led to a growing need for Intellectual Property Rights (IPRs), which are no longer reciprocal but are globally intergovernmental. At the end of the 19th century, the development of IPR regulations began to cross national borders. The milestone begins with the establishment of the Paris Convention for the Protection of Industrial Property (abbreviated as the Paris Convention) or the Paris Convention which is an international treaty on the protection of industrial property rights which was held on March 20, 1883 in Paris. Subsequently, in 1886 a convention for protection in the field of copyright known as the International Convention for the Protection of Literary and Artistic Work was signed at Bern, better known as the Bern Convention. Next, to manage both conventions, through the Stockholm Conference in 1967 a special convention was established for the establishment of a world organization for intellectual property rights known as the World Intellectual Property Organization (WIPO) and Indonesia became a member together with the ratification of the Paris Convention (Purba et al., 2005). Meanwhile in 1947 GATT (General Agreement on Tariff and Trade) was formed. The purpose of the establishment of GATT is, among others, as a forum that discusses and regulates international trade and employment issues. Based on its preamble, the purpose of this agreement is "a substantial reduction of tariffs and other trade barriers and the elimination of preferences, based on the principle of reciprocity and mutual benefit." This agreement was negotiated during the United Nations Trade and Employment Conference and was the result of the failure of international negotiations to create an International Trade Organization (ITO). The GATT was signed by 23 countries in Geneva, Switzerland, on 30 October 1947 and entered into force on January 1, 1948. The 8th Uruguay Round (Uruguay Round) has brought participating countries to agreements that have an effect on international trade. At that meeting a multilateral agreement was agreed upon which was called the WTO Agreement. The participating countries signed the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations in 1994 in Marrakech, Morocco. By signing this Final Act, the signatory countries agree to sign the WTO Agreement (World Trade Organization Agreement) and its attachments. Provisions on Intellectual Property Rights (IPR) can be found in the attachment of the WTO Agreement, namely Annex 1C entitled Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). The TRIPs Agreement entered into force in 1995. The transition period applies to developing countries which are obliged to impose no later than four years thereafter or in 2000, while underdeveloped countries are given no later than the beginning of 2006. The IPR provisions contained in this TRIPs cannot be separated from the insistence of large countries such as the United States and several other developed countries. The topic of protection of intellectual property rights (IPR) emerged as a new issue in the international trade system (Purba et al., 2005). The entry of

the protection of Intellectual Property Rights into the world trade system which at that time was called the General Agreement on Tariffs and Trade (GATT) could not be separated from the role of the United States who proposed the Proposal for Negotiations on Trade-Related Aspects of Intellectual Property Rights. In addition, the European Community also proposes Proposals of Guidelines and Objectives. The country that first revealed the birth of TRIPs was the United States, in anticipation of judging that WIPO (World Intellectual Property Organization) under the auspices of the UN, was unable to protect their intellectual property rights in the international market which resulted in their trade balance becoming negative (Sunarmi, 2003; see also. Martini et al., 2017). Birth of Law No. 29 of 2000 concerning the Protection of Plant Varieties (PVT) is a consequence of Indonesia for its participation as a country that signed the GATT/WTO agreement in 1994, one of the series of agreements containing the TRIPs agreement. This agreement indicates that after ratification, Indonesia must harmonize the laws and regulations in the field of intellectual property rights with the approval of TRIPs. Basically, the scope of intellectual property rights regulated in TRIPs does not specifically mention PVP as a form of protection. However, the formation of PVP is a manifestation of one of the protection systems provided by TRIPs.

4 GOVERNMENT POLICIES RELATED TO THE PROTECTION OF PLANT VARIETIES IN INDONESIA.

Plant varieties are a supporting factor for the success of the development of the agricultural sector. In Indonesia, the agricultural sector is one sector that can be developed as a means to be actively involved in international trade, bearing in mind that agricultural products are raw materials for exports that are urgently needed in various foreign countries. This will be realized if all components of society unite in a formidable agriculture capable of competence with other countries' agricultural outputs in terms of both quality and price. Conversely, if there is no intention and desire to develop good agriculture, Indonesia will become a market for agricultural products of other countries. Protection of Plant Varieties (PVT) or the rights of plant breeders are intellectual property rights granted to plant breeders or PVP holders to exercise exclusive control over propagation material (including seeds, cuttings, seedlings, or culture tissue) and material harvested (cut flowers fruit, leaf pieces) of a new plant variety to be used within a predetermined time period. This right is a reward for the efforts made by breeders in assembling the glorified cultivars, as well as to protect consumers (planting material growers or product users) from counterfeiting of products produced from these cultivars. Definition of Plant Variety Protection according to the PVP Law Law no. 29 of 2000 Article 1 paragraph (1) is "special protection granted by the state, which in this case is represented by the Government and implemented by the Office of Plant Variety Protection, for varieties of plants produced by plant breeders through plant breeder activities." In the plant variety protection system, protection will only be given to the application for protection of varieties that can prove that the proposed variety meets the requirements: new is not yet known (novelty), has special features and marks (distinct), uniform (uniform) and shows stability on location and the next generation (stability). Thus existing superior varieties, local superior varieties, local strains, land races, are not included in the object of Plant

Variety Protection. The object of protection of the PVP Law is mainly new superior varieties resulting from breeding research, both conventionally (crossing, mutation, polyploidy), as well as by biotechnology. The four requirements, namely novelty, distinct, uniform and stability, are then known as BUSS which in their operational explanations are as follows:

- New is never traded in Indonesia, or has been traded but not more than 1 year, or has been traded abroad with the provisions of annual crops of no more than four years, and annual plants of no more than six years.
- Unique is that the variety can be clearly distinguished from other varieties whose existence has been generally known at the time of receipt of a PVP rights request.
- Uniforms are the main or important characteristics of these varieties which are proven to be uniform even though they vary as a result of different planting methods and environments.
- Stable is that the characteristics do not change after being planted repeatedly, or for those propagated through a special propagation cycle, do not change at the end of each cycle (Interviews with Mr. Winarno, Mrs. Asri and Mrs. Rulany from the Central Office for Plant Variety and Licensing Protection at the Ministry of Agriculture, 28 September 2018).

The urgency of this PVP, among others, is first that the Republic of Indonesia is an agrarian country, so that advanced, efficient and resilient agriculture has an important role in achieving national development goals. Second, that in order to develop advanced, efficient and resilient agriculture, it needs to be supported and supported by the availability of superior varieties. Third, that germplasm resources, which are the main ingredients of plant breeding, need to be preserved and utilized as well as possible in order to assemble and obtain superior varieties of plants without harming any parties involved in order to encourage the growth of the seed industry. Fourth, that in order to further increase the interest and participation of individuals and legal entities to carry out plant breeding activities in the framework of producing new superior varieties, plant breeders or holders of Plant Variety Protection rights need to be given certain rights and adequate legal protection of these rights (see the consideration of Law no. 29 of 2000 concerning Protection of Plant Varieties). Some motivations from the enactment of this PVP Law. First, to carry out international obligations as a consequence of Indonesia's membership in the world trade organization (WTO). As a result of this membership, the countries must adjust the national laws that they make and may not conflict with the laws or rules that have been made by the world trade organization. One of the obligations that must be obeyed by Indonesia relating to intellectual property rights (IPR) requires member countries to provide protection for new plant varieties; Secondly, to develop new discoveries in agriculture and make the best use of Indonesia's rich biological resources to assemble superior varieties to support economic development; Third, to encourage activities that produce superior plant varieties by giving awards to those (business entities or people) engaged in plant breeding. And, fourth, to encourage and provide business opportunities in development in agriculture, provide a legal basis for efforts to create new superior varieties and the development of the seed industry. The legal basis for the Protection of Plant Varieties, in addition to Law No. 29 of 2000

concerning PVP, namely among others, Law No. 4 of 2006 concerning Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (Agreement on Plant Genetic Resources for Food and Agriculture); UU no. 5 of 1994 concerning Ratification of the United Nations Convention on Biological Diversity (United Nations Convention on Biological Diversity). In this convention an agreement has been outlined regarding the need for regulation of germplasm rights (genetic resources/SDG), farmers' rights, biological security, intellectual rights and so forth; UU no. 12 of 1992 concerning Plant Cultivation Systems. There are seven implementing regulations governing the protection of plant varieties, as follows: 1) Government Regulation of the Republic of Indonesia Number 13 of 2004 concerning Naming, Registration and Use of Origin Varieties for the Production of Essential Derivative Varieties; 2) PP No.14/2004 concerning Requirements and Procedures for PVP Transfer and Use of Protected Varieties by the Government. This Government Regulation further regulates the provisions of Article 40-55 of Law No. 29 of 2000 concerning procedures for transferring plant varieties protected by the government; 3) Decree of the Minister of Agriculture No. 442/Kpts/HK.310/7/2004 concerning Requirements and Procedures for Application and Granting of Plant Variety Protection Right to Agriculture Decree further regulating article 11-20 of Law No. 29 of 2000; 4) Decree of the Minister of Agriculture No. 443/Kpts/KU.330/7/2004 concerning Management Costs for Plant Variety Protection Rights. This Decree of the Minister of Agriculture is a provision that further regulates the provisions of Article 63 paragraph (1) of Law No. 29 of 2000 concerning PVP management costs; 5) Minister of Agriculture Decree No. 444/Kpts/OT.160/7/2004 concerning the Establishment of Plant Variety Protection Commission. This Decree of the Minister of Agriculture is a provision governing further the provisions of Article 65 paragraph (2) of Law No. 29 of 2000 concerning the establishment of a Plant Variety Protection Commission; 6) Decree of the Minister of Agriculture No. 445/Kpts/OT.140/7/2004 concerning the Organizational Structure and Work Procedure of the Commission for Appeal of Plant Variety Protection. This decision is a follow-up to the provisions of Article 36 paragraph (4) of Law No. 29 of 2000; 7) Permentan No. 121 of 2013 concerning the Terms and Procedures for the Application and Granting of PVP Rights.

5 PROTECTION OF PLANT VARIETIES IN THE PERSPECTIVE OF POLITICS OF LAW IN INDONESIA.

International developments related to international arrangements and agreements have influenced the development of national law, including the interrelationship between the development of international law and national law of each country, the creation of a transnational arena in the practice of law derived from forces and logic working in the economic field (Rahardjo, 1996.). The implications of economic globalization for the law cannot be avoided, because the globalization of the law follows the globalization of the economy, various substances of law are influenced by international treaties that spread across national borders (cross-border). Countries in the world that are involved with economic globalization and free trade, both developed and developing countries and even underdeveloped countries must standardize the law in their economic activities. But the question is whether Indonesia must ratify all the agreements in

the international world. Birth of Law No. 29 of 2000 concerning the Protection of Plant Varieties (PVP) is a consequence of Indonesia for its participation as a country signing the 1994 GATT/WTO agreement, one of which includes TRIPs. This agreement indicates that after ratification, Indonesia must harmonize the laws and regulations in the field of Intellectual Property Rights (IPR) with the approval of TRIPs. The formation of this PVP is a manifestation of one of the protection systems provided by TRIPs, in accordance with article 27 paragraph 3 letter b TRIPs which reads as follows: "... However parties shall provide for the protection of Plant varieties either by patent or by an effective sui generis or by any combination thereof. This provision requires member countries to protect plant varieties using one method, namely: patents, effective sui generis systems. As the implementation of TRIPs about PVP as outlined in Law no. 29 of 2000 concerning PVP, if it is turned on with the understanding of sui generis, against the background of plant varieties has its own characteristics so that it cannot be included in patent regulations. This sui generis is a *lex specialis* of patent provisions (Nuraini, 2007). In this Act it is emphasized that with PVP it is expected to encourage the creativity of plant breeding, so as to produce inventions (discoveries) of various superior varieties needed by the community. According to Prof. Shobir, Law No. 29 of 2000 concerning the Protection of Plant Varieties is basically the manifestation of the TRIPs Agreement which mandates the regulation of plant varieties sui generis protection for each country, so that vertically this Law is derived from the TRIPs Agreement (Interview with Prof. Sobir, Professor of the Faculty. Bogor Agricultural University, on September 28, 2018 at the Bogor Campus of IPB). As a responsive law, the PVP Law must pay attention to the factors of fundamental norms in the Pancasila and the 1945 Constitution, in addition to paying attention to social changes, historical experiences, developing concepts and doctrines, geographical, demographic and international factors. According to Satjipto Rahardjo, to carry out a legal order three components of activities are needed, namely the creation of legal norms, the implementation of these norms, and the resolution of disputes arising in an atmosphere of an orderly law (Rahardjo, 1979). Pancasila as the fundamental norm of the State forms the legal norms of its subordinates in stages. The legal norms that are formed below are based on and come from higher legal norms, which in turn does not have a conflict between higher and lower legal norms, and vice versa. This shows that the ideal of law becomes a guide (*leitstern*) which on the one hand is a legal ideal (*rechtsidee*) in the life of the Indonesian nation and on the other hand as a system of fundamental norms of the country whose written rules are contained in the constitution or the Basic Law (Rosadi & Desmon, 2012). In the view of Mochtar Kusumaatmadja and B. Arief Sidharta, in Pancasila there are principles which reflect the determination and aspirations of the Indonesian people which consist of: the Godhead, Humanity, the Unity and Unity, the Principle of democracy and the Principle of social justice (Kusumaatmadja & Sidharta, 2000). UU no. 12 of 2011 concerning the Formation of Legislation in article 2 emphasizes that "Pancasila is the source of all sources of state law". Next in article 3 it is stated clearly that "the 1945 Constitution is the basis in legislation". Thus, making Pancasila as a guide and filtering tool for the national legal polity is a must for the future of Indonesia, as aspired in the Preamble to the 1945 Constitution, which is to protect all the

people of Indonesia and all of Indonesia's blood spills and to advance public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice (Rosadi & Desmon, 2012). If the Indonesian people do not make Pancasila as a guide and a filtering tool for national politics of law, it is probable that the interests of the Indonesian people will be far removed, while other nations will more easily master Indonesia with the law. According to Sunaryati Hartono, if we place the law as a bridge that will lead us to the ideals that we aspire to, then we must first know what kind of society aspired by the people of Indonesia, then we will seek a legal system which can realize the ideals intended mind, and what politics of law can create the desired national legal system (Hartono, 1986).

6 URGENCY OF PROTECTION OF PLANT VARIETIES IN PERSPECTIVES ON FOOD SECURITY AND FOOD SOVEREIGNTY IN INDONESIA

The success of agricultural development is very much determined, among others, by the superiority of the varieties of plants used, which have the potential for certain crops in accordance with the characteristics of these plant varieties. Success in agriculture is very dependent on three main aspects namely plant breeding, plant physiology and plant ecology. These three aspects are a group of crop science (crop science) that plays a direct role in agriculture and the results will be seen directly through agricultural products. The ability to produce plant varieties that can be used as superior seeds is very necessary, because plant varieties are a factor that determines the quality of agricultural products. The benefits derived from the use of superior varieties include plant varieties used that have been high-tech, relatively inexpensive, and do not pollute the environment. Through the use of superior plant varieties, it is expected that the production process will be more efficient, more productive and produce high quality food (Supancana, 2011). Supancana as Team leader of the Final Report of the Legal Study Team on the Protection of Local Plant Varieties in National and International Law, September 2011. This team was formed based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: PHN-28.LT.02.01 of 2011 dated March 1, 2011 concerning Legal Study of Protection of Local Plant Varieties in National and International Law. Sunaryati Hartono stated that science and technology in the food sector have advanced rapidly, so that the problem is not only focused on food products that can be used as potential commodities for increasing the income of the community and the State, but also on the source of food production itself can be engineered such as the creation of plant varieties which can produce superior products (Hartono, 1977). According to Prof. Sobir, one of the lecturers at the Faculty of Agriculture, Bogor Agricultural University, stressed that the need for plant breeding efforts is a necessity. Because, in reality agricultural land is decreasing, while the need for food is increasing given the world population is increasingly increasing (Interview with Prof. Sobir, Professor of the Faculty. Bogor Agricultural University, on September 28, 2018 at the Bogor Campus of IPB). The ability to produce plant varieties that can be used as superior seeds is very necessary, because plant varieties are a factor that determines the quality of agricultural products. The benefits derived from the use of superior varieties include plant varieties used that

have been high-tech, relatively inexpensive, and do not pollute the environment. Through the use of superior plant varieties, it is expected that the production process will be more efficient, more productive and produce high quality food. Efforts to increase productivity are greatly influenced by success in improving the genetic potential of plant varieties. Activities that can produce superior plant varieties need to be encouraged through providing incentives for people or business entities engaged in plant breeding that produce new varieties so as to be able to provide greater added value for users. One of the awards is to provide legal protection for intellectual property in producing plant varieties, including in enjoying economic benefits and other breeder's rights (Supancana, 2011). Herein lies the importance of protecting plant varieties against food security. Because, one alternative to overcome the problem of lack of products and reduced harvesting land is when available varieties and superior seeds that can increase productivity. The availability of superior varieties and seeds will be fulfilled if there is a spirit of breeders or producers to breed varieties. The protection of these plant varieties is certainly a conducive effort to contribute significantly to the achievement of national food security. The concept of food security has changed from time to time. Initially the concept of food security only emphasized the availability of food (food supply). But over time, this concept has expanded not only in terms of food availability, but also emphasizes the importance of access, distribution, quality and safety aspects. Food security is considered as the capitalization of the world food system which marginalizes small farmers. Now, many food trade is only controlled by a few multinational companies. The United Nations through the FAO introduced the term "food security" with the hope of having food supplies at any time, all can access it freely with adequate, culturally acceptable quantities and quality of nutrients, but in reality the concept does not consider a country's ability at all. to produce and distribute the main food fairly to its people, besides ignoring the fact that there is an increasingly widespread and abundant export of cheap and highly subsidized agricultural products to underdeveloped countries, this practice is allowed to be even encouraged in the name of free trade which is supported fully developed countries. The concept of food security ultimately only benefits the most powerful countries and companies involved in food and agribusiness trade and investment. This neoliberal trade policy emphasizes that importing cheap food is not best for poor countries to achieve food security rather than producing their own food (Saefulloh, 76). These neoliberal policies are very damaging to food sovereignty because they are more concerned with international trade than the people's right to food. The concept of food security increases the dependence of the people of a poor and developing country on imports, including in the case of seeds and plant varieties. Food security is only concerned that food is "available" in logistic warehouses or in markets. But where does the food come from, whether it is an issue, whether it is imported or local. In contrast to food sovereignty which means that the availability of food is available, self-produced, and strong in marketing. In fact, the food produced can dominate overseas markets. So that the ultimate goal is sovereignty over one's own food sources, so that if there is chaos abroad then the logistics reserves are still strong because the food yield is more than enough to meet people's needs. The plant breeding process has an important role in maintaining the availability of food for the community. This is because the need

for food is increasing, with plant breeding can be found superior varieties that can produce fast food in large quantities. Considering the importance of the existence of plant breeders, the Indonesian government issued a variety of instruments governing plant breeders, namely Act Number 12 of 1992 concerning Plant Cultivation Systems and Act Number 29 of 2000 concerning Plant Variety Protection and Act Number 4 of 2006 concerning Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (Agreement on Plant Genetic Resources for Food and Agriculture). The paradigm of agricultural development in the context of national resilience is more emphasized on sustainable agriculture that is environmentally sound and focuses more on diversity of food sources. Normatively, to be able to realize food security, the main source of food must be self-produced up to the household level. Consequently, agricultural production must always be increased. Various efforts should be made including food security and food sovereignty policies based on local resources (Imanullah, 2013). Plant breeding to produce superior seeds has an important role in creating national food security in Indonesia. Therefore, the granting and protection of PVP rights to plant breeders is very appropriate to be given. But it must pay attention to aspects of food sovereignty based on local resources. Because, by saving local varieties means saving Indonesia (Scientific oration delivered by Prof. Emil Salim in the Seminar on the Development and Utilization of Indonesian Local Varieties entitled "Save Local Varieties, Save Indonesia" held by the Ministry of Agriculture in Auditorium Building F Ministry of Agriculture Jakarta on October 24, 2018). Food security and food security in Indonesia to grow and develop requires political decisions or partiality from the state. Therefore, government leaders must be able to formulate a policy of structural transformation that is better, especially policy steps that are able to balance the improvement of food economic performance, the welfare goals of farmers and the wider community. To that end, recommendations need to be considered in order to improve national food security by improving domestic food politics to strengthen Indonesia's position in the global and regional food trade map. However, in reality what is contained in the PVP Law local plant varieties cannot be PVPed, what can be done is just to register them. If there is no protection against local plant varieties, the local plant varieties will increasingly be cornered and then disappear (Interview with Ms. Asri, PPVTPP staff at the Ministry of Agriculture on 28 September 2018).

7 PROTECTION OF PLANT VARIETIES IN THE PERSPECTIVE OF MAQĀSHID SYARĪAH IN INDONESIA.

MaHFUD MD likens that if the law is rail and politics is compared to a locomotive, it is often seen that the locomotive exits the rail that should be traversed. The principle which is simply a motto that states that politics and law must work together and strengthen each other through the phrase "law without power is a delusion, rule without law is tyranny" becomes a mere utopia. This happens because in practice law is often a reflection of the will of the holders of political power, so that not a few people see that the law is the same as power (MaHFUD MD, Politik Hukum, hlm. 20-21.). Politics of law is a strategy that is applied to determine the law and apply it to the life of the state, nation and society. Politics of law is related to the policies of the authorities in giving birth to the law. The

politics of law of a country is usually stated in the constitution or constitution which is carried out through two aspects, namely in the form of law and certain legal patterns (Juni, 2012). Whereas the political objectives of the law outlined are: (1) guaranteeing justice in society; (2) creating peace of life by maintaining legal certainty; (3) deal with concrete interests in shared life concretely (Anshori, 2009). As an agrarian country that is committed to developing an advanced, efficient and resilient agricultural sector where superior varieties need to be promoted, the Republic of Indonesia feels it is necessary to make laws and regulations that provide legal protection for plant breeders by drafting Law Number 29 of 2000 concerning Protection of PVP Plant Varieties). Plant breeders' rights are intellectual property rights granted to plant breeders or PVP holders to exercise exclusive control over propagation material (including seeds, cuttings, seedlings or culture tissue) and harvested material (cut flowers, fruit, leaf pieces) from a new plant variety for use within a predetermined period of time. In the PVP Law Law Number 29 Year 2000 Article 1 paragraph (1) states the definition of Plant Variety Protection, namely "special protection granted by the state, in this case represented by the Government and carried out by the Office of Plant Variety Protection, for plant varieties produced by plant breeders through plant breeder activities ". Theoretically, the stipulation of a law (UU) must be based on the considerations which basically relate to the five basic foundations for the enactment of the norms contained in the law for the legal subjects governed by the Act. Because, for every good legal norm always requires the existence of five bases of validity. These five foundations are philosophical, sociological, political, juridical and administrative. The first four are absolute, while the last one is facultative (Asshiddiqie, 2010). The four foundations emphasize the importance of legal provisions relating to the benefit of society/humans. Fulfillment of food needs for citizens is identical to human rights, as stipulated in Law Number 18 of 2012 concerning Food, which states that food is the most important basic human need, and fulfillment is the basic right of every Indonesian people. The Food Law does not only talk about food security, but also clarifies and reinforces the importance of achieving food security by realizing food sovereignty, food self-sufficiency and food safety. Food security achievement can be simply observed from food security. the availability of sufficient food, both in quantity and quality, safe, diverse, nutritious, equitable, and affordable so that people can live healthy, active and productive sustainably (Sugiarto, 2018). The problem of food security is a multidimensional problem. Although there is no specific way to measure food security, the complexity of food security can be simplified by focusing on three different but interrelated dimensions, namely food availability, food access by households, and utilization by individuals. This is like the three main pillars that support food security, namely food availability, food access, and food utilization based on the concepts of FAO (Food and Agriculture Organization) and WHO (World Health Organization) (Gantini, 2015). Fulfillment of food needs which are the most basic human needs in the context of maqāshid al-syarī'ah, are included in the domain of ḍarūriyyah (primary). Maqāshid al-syarī'ah or the purpose of the prescription of the law is divided into three parts, namely ūarūriyyah (primary), ḥājīyyah (secondary) and taḥsīniyyah (accessories). Maqāshid ḍarūriyyah is something that must exist for the realization of the benefit of religion and the world, it is something that is absolutely there for the survival of

humanity. The initial aim of the Shari'ah is to establish these five basic maqāshids and maintain their continuity. If this does not exist, it will cause damage and even loss of life and life, in other words will fall into the abyss of humiliation and loss. Included in this ḍarūriyyah group are five namely: guarding religion, guarding souls, guarding offspring, guarding property and guarding reason (Al-Syātibī, n.d), which was later named al-kullīyyat al-khamsah. This fifth ḍarūriyyah hierarchy is ijtihādī, not naqlī. This means that it was arranged based on the understanding of the 'scholars of texts taken by means of istiqrā'. In compiling the five, Al-Syātibī seems inconsistent, but he always positions al-dīn (religion) and al-nafs (soul) above the other three (al-'aql, an-nasl, al-mal) (Al-Syātibī, n.d). Taking care of the soul is very important, and to protect it, among others, by the fulfillment of food. Food is a means for the maintenance of the soul because if someone is not met his food needs then his life can be threatened. Food becomes the main ingredient that is needed by humans as a source of energy and helps the growth of all organs of the body and brain in order to be able to move well. Healthy food is food that contains balanced nutrition and contains substances that are needed by the body. These healthy foods should have a lot of nutrients and these contents include carbohydrates, minerals, protein, vitamins and unsaturated fats in small amounts. This has relevance to the concept of the problem which is the core of maqāshid al-sharī'ah in Islamic law. The central idea and the ultimate goal of maqāshid al-sharī'ah is maṣlahah. As stated by that "maqāshid al-sharī'ah are the goals set by sharia to be achieved for the benefit of humanity" (al-Raysunu, n.d). In Al-Syatibi's view, maqāshid al-sharī'ah is related to two spectrums; that is, relating to the intention of God as the maker of sharia, the second relates to the purpose of the mukallaf. The purpose of Shari '(Allah) is the benefit of His servant in two places namely the world and the hereafter, while the purpose of the mukallaf (man) is when His servant is encouraged to live in the benefit of this world and the hereafter, namely by avoiding the damages exist in the world. Furthermore, Al-Syatibi explained that this Sharia aims to realize the benefit of humans in the world and the hereafter" (Al-Syatibi, n.d). Fulfillment of food needs which are the most basic human needs in the context of maqāshid al-syarī'ah, are included in the domain of ḍarūriyyah (primary). As explained by Al-Syatibi that maqāshid al-syarī'ah or the purpose of the prescription of the law is divided into three parts, namely ḍarūriyyah (primary), ḥājīyyah (secondary) and taḥsīniyyah (accessory). Maqāshid ḍarūriyyah is something that must exist for the realization of the benefit of religion and the world, it is something that is absolutely there for the survival of humanity. If this does not exist, it will cause damage and even loss of life and life, in other words will fall into the abyss of humiliation and loss. Included in this ḍarūriyyah group are five namely: guarding religion, guarding souls, guarding offspring, guarding property and guarding reason (Al-Syātibī, n.d). Taking care of the soul is very important, and to protect it, among others, by the fulfillment of food. Food is a means for the maintenance of the soul because if someone is not met his food needs then his life can be threatened. Food becomes the main ingredient that is needed by humans as a source of energy and helps the growth of all organs of the body and brain so that they can move well. Healthy food is food that contains balanced nutrition and contains substances that are needed by the body. These healthy foods should have a lot of nutritional content and these include carbohydrates, minerals, proteins, vitamins

and unsaturated fats in small amounts. In this context, according to Al-Syatibi, all obligations are created by God in order to realize human benefit. There is no single law that has no purpose. This view is reinforced by Abu Zahrah who states that the ultimate goal of Islamic law is human benefit and no law is prescribed but in it there is benefit (Zahrah, n.d). Thus, in the Islamic view, the goal of benefit is none other than the establishment of world life for the attainment of the afterlife. Thus, all things that only contain the benefit of the world without the benefit of the hereafter, or do not support the realization of the hereafter existence, it is not the welfare which is the goal of the Shari'a. Therefore, in realizing benefit must be free from worldly passions because this benefit is not measured according to desire alone. The benefit that is realized by humans is for the good of humanity itself, which refers to aspects of *darūriyyah*, *hājiyyah* and *taḥsīniyyah* all of which must be based on the law of God. Benefit is indeed for the benefit of humans, but in a way governed by God, not based on human arbitrariness. That is why the obligation to carry out the actual law for the benefit of humans is considered quite heavy, even though in ways that are fair and reasonable. The difficulty of carrying out the law is also because the abolition that is formed is not to accommodate personal desires and pleasures of lust, because the consideration of these two interests will not cause any problems, on the contrary harm (Hallaq, 2000). Ideally, the law is structured to answer and respond to various legal problems that occur in the community rather than vice versa. The law is demanded to always experience renewal in accordance with its context so that it becomes a problem solver of existing problems (Manan & Magnar, 1993). If this is not the case, the existence of the law will actually cause disharmony in the social fabric of people's lives (Azizy, 2006; Amarini, 2019). In this context, the *maqashid al-shari'ah* approach which has the basis of Islamic religious values becomes important to be revealed. Therefore, understanding of *maqashid al-shariah* is absolutely necessary (Maulidi, 2015), as a basis for analysis of the philosophical goals of the PVP Law and the Food Law. Satjipto Rahardjo, one of the initiators and initiators of Indonesia's progressive jurists, once delivered a sharp critique of positivistic-normative ways of thinking. According to him, this paradigm actually restrains the law itself to find substantive justice. Because, in his view, the idea of a progressive legal paradigm in principle attempts to understand and find law based on legal purposes (*maqashid sharia*) to achieve legal goals (Maulidi, 2015). In addition, the progressive legal paradigm is also an effort to revitalize legal values that live in a society based on local wisdom. In the context of *al-Maqashid al-shariah*, protection of Intellectual Property Rights cannot be separated from 5 (five) protections, namely protection of religion (*al-din*), reason (*al-aql*), soul (*al-nafs*), family (*al-nasl*), honor (*al-irdh*) and property (*mall*) which are based on justice, expediency and certainty. Likewise, the provisions of the articles in both Acts must be able to reflect the philosophical objectives of the law which are in harmony with the *sharia maqashid*, at least those related to the main points of the provisions. Politics of law as a legal agenda has the task of realizing a common goal. Politics of law always has a primary mission to lay the foundation for community service and common interests (Tanya, 2011). Law as a tool to achieve these goals must also function and always be grounded in four principles of the ideal law (*rechtsidee*), namely: first, protect all elements of the nation (nation) for the

sake of integrity (integration); second, to realize social justice in the economic and social fields; third, realizing people's sovereignty (democracy) and the rule of law (nomocracy); and fourth, creating tolerance on the basis of humanity and civilization in religious life. These four legal ideals have always been a general principle that guides the realization of the ideals and goals of the State, because the legal ideal is a normative and constitutive belief framework (Cita hukum itu bersifat normatif karena berfungsi sebagai pangkal dan prasyarat ideal yang mendasari setiap hukum positif, dan bersifat konstitutif karena mengarahkan hukum pada tujuan yang hendak dicapai oleh Negara (Mahfud MD, 2010: 18)). Based on the objectives, basis and ideals of the Indonesian law, the politics of law and the entire development of its institutions should not be diverted from the proper straight line. Based on the ideals of the people to be achieved crystallized in the goals of the State, the basis of the State, and the ideals of the law, then what is needed is a national legal system that can be used as a platform or platform and political legal framework for national law. The ideal normative values, it should also be attached to article by article in Law No. 29 of 2000 about PVP. Therefore, it is necessary to examine several articles that are less relevant to the philosophical objectives of the law in the Act. Are the articles in the Act that have been running for 18 years still relevant or not? Are the articles in it describing the attainment of justice (*al-Adl*) and the benefit aspects (*maslahah*) in the context of achieving happiness (*falah*) of the Indonesian people as the basis of *maqashid al-shariah*. Ideally, the articles related to the PVP Law should be able to describe the wisdoms behind rulings (the secrets behind legal provisions) in the frame of the principles of morality, universality, social justice, humanity (human dignity), human rights (human rights). Therefore an integrative and multiperspective approach is needed. For the next step, the law conceptualized as *ius constituendum* is prioritized more than the law as *ius constitutum*. As explained above that to be able to obtain Plant Variety Protection (PVT) a variety must: new, unique, uniform, stable and named. The novelty and uniqueness of a variety is determined at the time of application for acceptance of PVP rights. Thus it can be seen that GMO varieties developed through genetic engineering can also be protected in this PVP as long as the registrant gives a full explanation of the variety. This means, this law facilitates the development of modern biotechnology that produces new varieties through genetic engineering. On the other hand, the PVP Law does not explicitly specify whether varieties developed using technology terminators can also be protected in PVP. Even though genetic engineering can endanger the interests of many people. Meanwhile, this law does not provide protection for traditional varieties that have been developed by farmers, because it is very difficult for farmers with traditional varieties to meet the uniform and stable criteria as required by the PVP Law. Satjipto Rahardjo stressed that law as part of the social sciences must synergize integrally-interconnecting with other disciplines to produce a legal format that is in accordance with the legal objectives themselves, namely achieving upholding substantive justice (Rahardjo, 2004). The law should be progressive, where the law departs from the assumption that the law is an institution that aims to lead people to a just, prosperous and happy life (Rahardjo, 2009). This assumption asserts that the law serves the interests of humans, because the law was formed to achieve human benefit. Similarly, Islamic law (*sharia*), where the existence of

sharia in principle to achieve the benefit of human life both in the world and the hereafter (Audah, 2008). If so, the law must be oriented towards priority legal objectives (maqashid al-shari'ah).

8 CONCLUSION

From the explanation above, three conclusions can be drawn. First, in the perspective of politics of law, the protection of plant varieties in Indonesia has not yet been based on the ideal political basis of Indonesian law. Because, in its ratification, the stipulation of regulations related to the protection of plant varieties is more a consequence of Indonesia for its participation as a country signing the 1994 GATT/WTO agreement, which one of these agreements contained TRIPs. This agreement indicates that after ratification, Indonesia must harmonize the laws and regulations in the field of Intellectual Property Rights (IPR) with the approval of TRIPs. In fact, politically the law of law enforcement in Indonesia, including Laws related to PVP must prioritize the ideological and normative basis which is based on the Pancasila and the 1945 Constitution as the central values and essential politics of Indonesian law. The Pancasila emphasized the importance of the value of social justice for all Indonesian people, especially in the fifth precept. This means that the interests of the Indonesian people take precedence over the issue of protection of plant varieties compared to the interests of breeders who can be controlled by the owners of capital. Likewise the 1945 Constitution, in its Preamble and its articles, emphasizes aspects of the protection of all elements of nation and national integration. Second, the Protection of Plant Varieties in Indonesia is closely related to food security in the sense that it is still based on merely observing that food "exists" in logistic warehouses or markets, but it does not matter the origin of the food; whether imported or local, as well as the problem of man-planted seeds, has not emphasized the aspect of food sovereignty. Food sovereignty (food sovereignty) which means that the availability of food is available, self-produced, and strong in marketing whose ultimate goal is sovereignty over its own food sources, so that if there is chaos abroad then logistical reserves are still strong because food yields are more than adequate to meet people's needs. Because of this Law on PVP, it should be able to free this country from the elements of dependence with other countries and prioritize aspects of food sovereignty with the concept of protection of plant varieties based on food sovereignty. Regulations related to PVP have not yet maximally pursued an environmentally sustainable agricultural program that focuses more on the diversity of local food sources, as a form of efforts towards essential food sovereignty. Third, from the perspective of sharia maqashid, the protection of Plant Varieties in Indonesia has not yet described efforts to create benefits for the Indonesian people as a whole. In the perspective of Maqashid Sharia there are five basic human needs that must be met (al-dharuriyyah al-khams), namely hifdz al-din (protecting religious aspects), hifdz al-nafs (protecting aspects of the soul), hifdz al-nasl wal irdh (protecting aspects of heredity and honor), hifdz al-aql (guarding aspects of the mind) and hifdz al-mal (protecting aspects of property). Protection of plant varieties is at least related to the aspects of property and honor. However the State and the government must be able to juxtapose the maqashid al-shariah with the need for protection of plant varieties based on the benefit of the nation as a whole. For

every good legal norms, there are always five conditions to take into account. These five foundations are philosophical, sociological, political, juridical and administrative. The first four are absolute, while the last one is facultative. The four foundations emphasize the importance of legal provisions relating to the benefit of society/humans.

REFERENCES

- [1] al-Ghazālī, Abu Hamid, *al-Mustaṣfā fī 'Ilm al-Uṣūl*, ed. Muhammad Abdul Salam Abdul Ṣafi, Beirut: Dar al-Kutub al-'Ilmiyyah, 1413 H..
- [2] al-Juwainī, Abdul Mālīk, *Ghiyāṣ al-Umam fī Ittiyāṭ al-Zulām*, ed. 'Abdul Aẓīm al-Dīb, Qatar: Wizārah al-Syu'ūn al-Diniyyah, 1400 H.,.
- [3] al-Qarafi, Shihabuddin, *al-Ḍakirah*, Beirut: Dar al-'Arab, vol. 5, 1994..
- [4] al-Raysunu, Ahmad, *Nadzariyah al-Maqashid Inda Imam Al-Syatibi*, beirut: Al-Ma'had Alili al-Fikr al-Islami, Al-Muassasah al-Jami'iyyah li al-Dirasat wa al-Nasr wa al-Tauzi', tanpa tahun.
- [5] Al-Syatibi, Al-Muwafaqat fi Ushul al-Syariah al-Islamiyah, Beirut Dar al-Ma'rifah, tanpa tahun
- [6] al-Tufi, Najmuddin, *al-Ta'yin fi Syarh al-Arba'in*, Beirut: al-Rayyan, 1419 H.,.
- [7] al-Zarqa, Musthafa Ahmad, *Al-Madkhal al-Fiqh al-Amm*, Beirut: Dar Al-Fikri, tanpa tahun, juz 3.
- [8] Amarini, I. (2019). Implementation of judicial activism in judge's decision. *Jurnal Hukum dan Peradilan*, 8(1), 21-38.
- [9] Anshori, Abdul Ghofur, *Filsafat Hukum, Sejarah, Aliran, dan Pemaknaan*, Yogyakarta: Gajah Mada University Press, 2009.
- [10] Asshiddiqie, Jimly, *Perihal Undang-undang*, Jakarta: Rajawali Pers, 2010.
- [11] Audah, Jasser, *Maqashid Shariah as Philosophy of Islamic Law*, London: IIIT, 2008.
- [12] Azizy, A. Qodri, *Menggagas Ilmu Hukum Indonesia*, dalam Ahmad Gunawan BS dan Mu'amar Ramadhan (ed) et.al, *Menggagas Hukum Progresif Indonesia*, Yogyakarta: Pustaka Pelajar, 2006.
- [13] Freastoni, Afwit dan Sirajuddin, "Politik Hukum Perlindungan Lahan Pertanian dan Hak Asasi Petani Sebagai Instrumen Mewujudkan Ketahanan Pangan Berkelanjutan di Indonesia, *Jurnal Konstitusi*, diterbitkan oleh PUSKASI FH Universitas Widyagama Malang. Vol. III, No. 2, November 2010.
- [14] Gantini, Tuti, 2015. "Kearifan Lokal dalam Metode Pengukuran Ketahanan Pangan (Local Wisdom of Measurement Food Security Method), dalam *Majalah Ilmiah Unikom*, 13 No. 2.
- [15] Hallaq, Wael B., *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, New York: Cambridge University Press, 2000.
- [16] Hallaq, Wael B., *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, New York: Cambridge University Press, 2000.
- [17] Hartono, C.F.G. Sunaryati, "Aspek Globalisasi Internasional dan Regional Yang Berkaitan dan Berpengaruh Pada Masalah Pangan dan Pertanian di Indonesia", *Majalah Hukum Nasional*, Volume 2, BPHN, Jakarta, Tahun 1977.
- [18] Hartono, Sunaryati, "Perspektif Politik Hukum Nasional" dalam Artidjo Alkostar dan M. Sholeh Amin (ed), *Pembangunan Hukum dalam Perspektif politik Hukum Nasional*, jakarta: Rajawali, 1986.
- [19] Ibnu Manzūr, *Lisān al-'Arab*, Jilid I, Kairo: Dar al-Maā'arif, tanpa tahun.
- [20] Imanullah, Moch Najib, "Politik Hukum Ketahanan Pangan

- Nasional (Sinkronisasi Politik Hukum Undang-undang Hak PVT dan Undang-undang Pangan)', *Jurnal Yustisia*, 2(1), 2013.
- [21] Juni, Erfan Helmi, *Filsafat Hukum*, Bandung: Pustaka Setia, 2012.
- [22] Krisnawati, Andriana dan Gazalba Saleh, *perlindungan Hukum Varietas Baru Tanaman Dalam Perspektif Hak Paten dan Hak Pemulia*, Jakarta: PT RajaGrafindo Persada, 2004.
- [23] Kusumaatmadja, Mochtar dan Arief B. Sidharta, *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama ruang Lingkup Berlakunya Ilmu Hukum*, Bandung: Alumni, 2000
- [24] Manan, Bagir dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, Bandung: Alumni, 1993, hlm. 8
- [25] Mas'ud, Muhammad Khalid, *Filsafat Hukum Islam dan Perubahan Sosial*, Surabaya, Al-Ikhlash, 1995.
- [26] Maulidi, "Paradigma Progresif dan Maqashid Syariah: Manhaj Baru Menemukan Hukum Responsif" *Asy-Syir'ah Jurnal ilmu Syariah dan Hukum*, Vol. 49, No. 2 Desember 2015.
- [27] Ghofur, A., & Susilo (2017). *Maslaha as the philosophical, political and legal basis on the Islamic banking legislation in Indonesia*. *Global Journal Al Thaqafah*, 7(1), 7-17.
- [28] Munawwir, Ahmad Warson, *Kamus al-Munawwir*, Surabaya: Pustaka Progresif, 1997.
- [29] Nuraini, Nina, *Perlindungan Hak Milik Intelektual Varietas Tanaman (Guna Peningkatn Daya Saing Agribisnis)*, Bandung: Alfabeta, 2007.
- [30] *Prosiding Seminar Nasional Penelitian, Pendidikan dan Penerapan MIPA, Fakultas MIPA, Universitas Negeri Yogyakarta*, 16 Mei 2009.
- [31] Purba, Afrillyanna, SH, MH dkk, *TRIPs-WTO dan Hukum HKI Indonesia; Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia*, Jakarta: PT Rineka Cipta, 2005.
- [32] *Pusat Kajian Anggaran Badan Keahlian DPR RI (Dr. Asep A. Saefulloh, M.Si-Penanggung Jawab), Tantangan Ketahanan Pangan Indonesia*, Jakarta: Pusat Kajian Anggaran Badan Keahlian DPR RI.
- [33] Rahardjo, Satjipto, *Hukum dan Perubahan Sosial*, Bandung: Alumni, 1979.
- [34] Rahardjo, Satjipto, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*, Yogyakarta: Genta Publishing, 2009.
- [35] Rahardjo, Satjipto, *Ilmu Hukum; Pencarian, Pembebasan dan Pencerahan*, Yogyakarta: Muhammadiyah Press University, 2004.
- [36] Rahardjo, Satjipto, *Pembangunan Hukum Di Indonesia Dalam Konteks Global, Makalah Pada Pertemuan Dosen Pengajar Sosiologi Hukum Se Jawa Tengah dan Daerah Istimewa Yogyakarta*, Universitas Muhammadiyah Solo (UMS), Surakarta, Tanggal 5-6 Agustus 1996.
- [37] Rosadi, Otong dan Andi Desmon, *Studi Politik Hukum; Suatu Optik Ilmu Hukum*, Yogyakarta: Thafa Media, 2012.
- [38] Sadjad, S. O., *Kampanye Memberagamkan Pangan dalam Konteks Agro-politik Negara Agraris Indonesia*, Bogor: IPB Press, 2007.
- [39] Salim, Emil. "Save Local Varieties, Save Indonesia." in the *Seminar on the Development and Utilization of Indonesian Local arietas entitled held by the Ministry of Agriculture in Auditorium Building F Ministry of Agriculture Jakarta on October 24, 2018*.
- [40] Satari, G., *Agricultural Development in the Third Millennium: Although Growing Low, the Agriculture Sector Able to Survive*, *Papers in Scientific Orations at Lustrum III Faculty of Agriculture, Padjadjaran University, Bandung*, 1 September 1999.
- [41] Satriyas Ilyas, *Ilmu dan teknologi Benih; Teori dan Hasil-hasil Penelitian*, Bogor: IPB Press, 2012
- [42] Sudaryanto, Tahlim, and I. Wayan Rusastra. "Kebijakan strategis usaha pertanian dalam rangka peningkatan produksi dan pengentasan kemiskinan." *Jurnal Litbang Pertanian* 25(4), 2006.
- [43] Sugiarto, Eddy Cahyono, " *Urgensi Ketahanan Pangan*" dalam <http://setkab.go.id/urgensi-ketahanan-pangan>
- [44] Sunarmi, SH." *Peranan TRIPs (Trade Related Aspects Of Intellectual Property Rights) Terhadap Hak Atas Kekayaan Intelektual Di Indonesia*". Universitas Sumatera Utara
- [45] Supancana, *Final report of the Legal Study Team on Protection of Local Plant Varieties in National and International Law*, September 2011. Ministry of Law and Human Rights of the Republic of Indonesia
- [46] Martini, D., Haq, H., & Sutrisno, B. (2017). *Perlindungan hukum terhadap pengetahuan obat-obatan tradisional dalam rezim Hak Kekayaan Intelektual (HKI) Indonesia (Studi pada Masyarakat Tradisional Sasak)*. *Jurnal Hukum dan Peradilan*, 6(1), 67-90.
- [47] Tanya, L. Bernard, 2011, *Politik Hukum Agenda Kepentingan Bersama*, Yogyakarta: Genta Publishing. Mahfud MD, Moh., 2010, *Politik Hukum di Indonesia*, edisi revisi, Jakarta: Rajawali Pers.
- [48] Tedy Mulyadi, "Upaya Pelestarian Keanekaragaman Hayati" dalam <http://www.sridianti.com/upaya-pelestarian-keanekaragaman-hayati.html>
- [49] Law no. 29 of 2000 concerning Protection of Plant Varieties
- [50] Interview with Mrs. Rulany from the Central Office for the Protection of Plant Varieties and Agricultural Licensing at the Ministry of Agriculture, 28 September 2018.
- [51] Interview with Mr. Winarno from the Central Office for the Protection of Plant Varieties and Agricultural Licensing at the Ministry of Agriculture, 28 September 2018.
- [52] Interview with Ms. Asri, PPVTPP staff at the Ministry of Agriculture on 28 September 2018
- [53] Interview with Prof. Sobir, Professor of the Faculty. Bogor Agricultural University, on September 28, 2018 at the Bogor Campus of IPB.
- [54] Weiswasser, Elizabeth S., Kimberly K. Egan and Kurt G. Calia, "Genetically Modified Foods Raise New Legal Issue", *The National Journal*, Vol. 22, No. 44, 2001.