



Indonesian Human Rights Committee
for Social Justice (I H C S)

STOP SEED COMMERCIALISATION!

PEOPLE'S BEFORE PROFIT!!!

OUR SEED OUR SOVEREIGNTY!!!

Never Ending Struggle Prologue

Around this time we practiced breeding technique and keep the seeds under insecure security feeling. The unholy alliance of government and seed corporation enabled apparatus claimed our works and sell it to corporation.

We also only small player on this dirty business. The corporation easily stamped our local seeds and claimed that it belongs to their private capital. This dirty business should stop.

Under the name of Profit the state has already named us second-class citizens.

We don't want to live as second class citizen anymore. We have always been discriminated against but we are legal citizens of this country .We had to breed our local seeds in hiding since if government know this we don't get any support from government.

This winning at the constitutional court give us back our Dignity. Recognition and openness to continue our creativity is the dignity for farmers and breeders

(Joharipin, breeders from Indramayu , Kertasemaya)

In the lobby of constitutional court right after this decision came out Gunawan from IHCS, coordinator of the legal aid for this case stated, "since the beginning we can see the banality of pork barreling between government and corporation. This cultivation act law that put local breeders as same as big entrepreneurs player is clear evident of market logic in our constitution. that after 1995 adopted WTO clause."

The Court granted in part to the judicial review of Law No. 12 of 1992 on Cultivation System, "said Gunawan, chief executive of Indonesian Human Rights



Indonesian Human Rights Committee
for Social Justice (I H C S)

Committee for Social Justice (IHCS) According to him, the Court ruled that Article 9, 12, and 60 of Law Cultivation System is unconstitutional.

The claimants include a number of organizations that defend the rights of farmers, plant breeders, and farmers (Coalition for Seed Advocacy).

Representatives from Civil Society include a non government organization name FIELD that were at the time running the farmer field school.

“We will continue our struggle by socializing this court decision “ said Adit from FIELD.

Our Seeds Our Dignity and Sovereignty

Indonesia is a rich in biodiversity. In order to sustain this biodiversity, the government should pass and enforce laws designed to protect biodiversity. Such measures should also protect the farmers’ pattern of life and local wisdom.

Amidst the global food crisis, collapsing ecosystem, and climate chaos, new technology is being promoted by international institutions, governments, and corporations as a means to increase food production and save the earth. An idea for improving agricultural development technology seems like a ‘brilliant’ idea, but at the moment the government has stepped aside and let corporations to play a bigger role and even become a key player in agriculture sector. Rather than resist or modify the structure that has led to increased poverty and inequality, the government is instead working hand-in-hand with the corporations. Through this process, farmers are being marginalized and their rights ignored.

These policies have already resulted in changing farming from subsistence to commercial with the so-called kontrak usaha tani or contract farming. Contract farming is now the face of rural areas where global agricultural markets now play a key role in farmer’s lives.

In 1992, two years before the initiation of WTO in Uruguay, the Law regarding Cultivation System was passed, which was later stated that the Law posed political regulation that constrained peasants’ rights and creativity regarding the need of seed. The impact felt by farmers due to these new regulations on agriculture and agricultural investment leads to the incapability of the farmers to fulfill or achieve access toward their fundamental agrarian sources, such as soil and seeds.



Indonesian Human Rights Committee
for Social Justice (I H C S)

TRIPs (The Treaty on Trade Related Intellectual Property Rights) regulates intellectual property rights of the member countries of the WTO. Therefore, Indonesia is obliged to provide protection toward this intellectual property, including protection toward varieties of plants.

In Article 27.3 (b) it is clearly stated that the State members may also exclude from patentability: b. plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.

On that basis, the Indonesian government has issued numerous policies governing germination / seeds and its trade, amongst them: Act No. 29 of 2000 on Plant Variety Protection (PVP), Act No. 12 of 1992 on Plant Cultivation System.

Regarding the production and trade of seeds, Indonesian government issued an act on protection of varieties of plants. In the preamble, PVP Act shows that it is designed to confirm the results of the International Convention for the benefit of investment and free trade in germination / seeds sector. In its implementation, Act No. 29/2000 concerning PVP severely limits the creativity of farmers and seed breeders as well as gives way to company's monopoly of seed distribution.

Based on the PVP Act, the seeds which are protected by the PVP are not allowed anymore to be owned by other parties, including small farmers to produce, use some of the crop seed to be bred, sell and trade it, except under permission or approval of the holders of the PVP, which are dominated by large companies, such as: PT. BISI (currently occupied by Charoen Pokpand group, Thailand), PT. Syngenta (Switzerland-based company), PT. DuPont (Pioneer, based in the United States and Switzerland), PT. Monsanto (Deka, based in the United States), PT. SANG HYANG SRI (SHS), PT. EAST WEST (multinational corporation based on capital consortium in Asia). Such provisions are also applied upon seed's inheritance.

Besides provisions regarding the requirements to be met by seed-breeder farmers, Act No. 29/2000 also regulates the criminal sanction. If farmers or seed-breeders violate the provisions of article 6 above, they will be sanctioned with imprisonment of up to seven years and a maximum fine of 2.5 billion (two billion five hundred million) rupiahs (include what this means in U.S. dollars).



Indonesian Human Rights Committee
for Social Justice (I H C S)

The principal substance of Act No. 12 of 1992 is to set a regulation on the plant cultivation system. The purposes of the Plant Cultivation System Act are: a) to improve and expand the diversification of crops, in order to meet the needs of food, clothing, housing, health, domestic industries, and increase exports; b) to improve the levels of income and living standards of farmers; c) to encourage the expansion and distribution of business opportunities and employment (Act No. 12/1992 on Plant Cultivation System).

Government Regulation No. 44 of 1995 is the implementing rules of Act No. 12/1992. The main content of this Government Regulation sets about the testing and release of varieties of plants and also the procurement and distribution of officially released seeds.

Ministerial Regulation No. 39/Permentan/OT.140/8/2006 governs the production, certification and distribution of seeds. This regulation implements the rules of Act No. 29/2000 and Law No. 12/1992. In relation to seed production, this Minister of Agriculture Regulation is responsible for determining the type, amount and timing of seed production and circulation. The number of seeds that must be available is determined nationally.

Based on this Minister of Agriculture Regulation No. 39/Permentan/OT.140/8/2006, the right to give permission and sign up for officially released seed production is the Regent or Mayor through the official in charge of local agriculture.

In addition to soil, the need of seed is a basic need for farmers to achieve production. Modern agricultural system that relies on manufacturing technology package leads farmers into dependence upon industrial seeds. The life of farmers, who used to depend on local seeds, is now forced to change into a provider of various types of production equipment, including seeds.

The ability of farmers in mastering the means of production and their own technology is slowly disappearing, replaced by technology or inputs from outside that are expensive. On the other hand, selling prices of the produced products are not appreciated fairly.

The skill or knowledge of seed breeding has always been the domain of farmers. This skill and creativity should be appreciated by the government and receive adequate legal protection.



Indonesian Human Rights Committee
for Social Justice (I H C S)

The 1945 Constitution recognizes the collective rights of special groups (vulnerable groups), in this regard is including small farmers, who belong to vulnerable groups.

Every citizen shall have the protection of their basic rights, including small farmers. From the observation conducted in East Java, farmers have had their own knowledge in crossing the seeds. But unfortunately, this knowledge of seed creation cannot be implemented because the company claimed already holds a patent for seeds.

Approximately 14 farmers from Kediri and Nganjuk even was imprisoned because seed companies accused the farmers of stealing. This has been the case since 2005.

Corporate Power

Seed investors still felt that Indonesia has been a difficult place to invest because the seed companies often violated the seed patents. This has been quoted in Kompas media in 2007, as part of complaint to Indonesia government that promise to be friendly to foreign investors and one of it food and seed investors. Following this statement Charoen Phokpand a multinational seed company from Thailand till 2009 announce they increase their profit during their operational.

Publicly listed PT Charoen Pokphand, Indonesia's largest animal feed and processed chicken manufacturer, forecasts net profits to rise more than two fold this year on the back of more sales and higher selling prices. Charoen vice president director Thomas Effendy said late Tuesday the company was upbeat that it would book Rp 450 billion (US\$47.52 million) in net profits this year, up from Rp 187 billion last year. (Jakarta Post Thu, September 18 2008, 10:33 AM)

Meanwhile while the seed corporation increase their profit back to 2005 almost 14 farmers in East Java Indonesia, were prosecuted for breeding their own seeds.

“Do not be too creative, do not breed your own seed, or you will be prosecuted.” This warning was given through the prosecution of several farmers who tried breeding their own corn seed in Nganjuk and Kediri Regencies, East Java. One of those farmers was Tukirin, a simple 53-year-old corn grower in Nganjuk Regency. He was punished with a suspended prison sentence and was ordered not to plant his own corn seeds for one year. The following is his story.



Indonesian Human Rights Committee
for Social Justice (I H C S)

The judge ruled that Tukirin violated Article 14(1) of Law No. 12/1992 on plant cultivation system. This article says that seed certification is to be undertaken by the government, or by individuals or legal bodies that are authorised to do so. (But Tukirin did not certify his seeds!) Article 61(1) b says that unauthorised seed certification as provided in Article 14(1) is liable to a penalty of a maximum three years' imprisonment and a maximum fine of Rp. 150 million. The judge handed down a six-month imprisonment, but suspended it and instead imposed a one-year probationary sentence. It also prohibited Tukirin from planting his own corn seeds for a year.

Tukirin and Suprpto were not the only farmers prosecuted by the court. Three other corn farmers from Kediri were also prosecuted. The Kediri court also imposed suspended prison and probationary sentences on Slamet and Kusen, and one-month imprisonment on seed seller Djumadi. In addition, the Kediri court prohibited Djumadi, Slamet and Kusen from planting and breeding corn seeds. Local non-governmental organisations (NGOs) report similar but undocumented cases from Nganjuk, Kediri and even Tulungagung regencies, where farmers dared not talk to reporters or NGOs of their prosecution.

In a court proceeding, where he was not defended by any lawyer, Tukirin explained how he bred his own seeds, but the expert witness from the government's seed supervision and certification office said that it was impossible to breed seeds using Tukirin's method. It was ironic that a government official actually testified against farmers.

When asked about legal representation, Tukirin said he did not know or understand that he had a right to be represented by a lawyer. "I do not know the law. I have rarely been out of my village and I simply do not understand the system," he said.

One such case involved Budi Purwo Utomo, a young farmer from Kediri who learnt seed breeding techniques from books. He was accused by a company name PT BISI (a national name for seed corporation Charoen Phokpand) of conducting unauthorised seed certification, trademark violation and copying breeding technique. This time BISI brought the case in two areas: Tulungagung, where the seeds were distributed and Kediri where Budi stayed. Budi was acquitted by the Tulungagung court, but still has to face the Kediri court. Unlike Tukirin, he is helped by lawyers from the Muhammadiyah University of Malang.

For poor farmers like Tukirin, having to appear in court to answer the questions of strangers like a criminal while not understanding what he was actually charged with, may be more of a penalty than imprisonment itself. Thus the whole case



Indonesian Human Rights Committee
for Social Justice (I H C S)

was pursued to convey an important message: "Buy your seeds from the companies or else..."

In an interview with a staff member from PT BISI(another name for Charoen Phokpand) who admitted that they found it difficult to control what they termed as "piracy of seeds" by farmers.

"They (farmers) have more faith in local seeds that they breed. It took us a long time and a lot of effort to persuade them to switch to our hybrid seeds," he said. The Tukirin case, according to him, was the tip of the iceberg of the seed piracy network. He said recently farmers in Kalimantan, Sumatra and Sulawesi who bought BISI-produced seeds complained of low quality, poor performance and longer planting period. PT BISI found that the seed supply came from East Java and therefore they suspected a seed piracy network may be operating in this province. When asked who was involved in the seed piracy, he declined to respond. He just said that if farmers were allowed to breed their own seeds, the efforts of PT BISI would go to waste.

The main issue for PT BISI and the seed supervision and certification agency was: how and from where did the farmers get the parent seeds? It is well known that when hybrid seeds are replanted (from the first harvest), plant performance declines up to 50%. Thus PT BISI and government officials suspected that farmers were given parent seeds by other parties. This is merely an unproven allegation, yet PT BISI can have its way in the courts.

Gatot Surono from Purwokerto has another story again since 1965 practised natural farming. This practised look by the Soeharto government at that time as against the project the green revolution and technology .

As a consequences he has to face psy war from apparatus that want him to obey central national instruction. Many like Joharipin, Karsiyah , forced to face discrimination and psy war simply because they believe in their own capacity as breeders.

Who's the thief and who's been stealing?

In Tukirin and several other east Java Farmers case PT BISI accused Tukirin of stealing its parent seeds but it was difficult to prove this in court. Tukirin pleaded not guilty to these accusations. He said he did not steal seeds, he did not copy the



Indonesian Human Rights Committee
for Social Justice (I H C S)

methodology of PT BISI and he did not market uncertified seeds as he only sold them to his neighbours and did not make a big business out of this.

So who's the thief here and who's the one that been stealing? Unfortunately before the Judicial Review at constitutional court it was farmers and breeders that labeled as a thief for their own seeds and their own expertise and knowledge.

The local regency judge ruled that Tukirin violated Article 14(1) of Law No. 12/1992 on plant cultivation system. This article says that seed certification is to be undertaken by the government, or by individuals or legal bodies that are authorised to do so. (But Tukirin did not certify his seeds!) Article 61(1) b says that unauthorised seed certification as provided in Article 14(1) is liable to a penalty of a maximum three years' imprisonment and a maximum fine of Rp. 150 million. The judge handed down a six-month imprisonment, but suspended it and instead imposed a one-year probationary sentence. It also prohibited Tukirin from planting his own corn seeds for a year.

What the judges in constitutional court say?

When this case finally brought to constitutional court last year in September and granted to drop almost all articles of the cultivation the argument came from the constitutional judge to abolished the clause of cultivation act was “ in a clause that says that Indonesiaa government have to be careful on possibility of sabotage in agriculture from outside, the judge stated why farmers who will benefit from agriculture should harming their own job and livelihood?”

The constitutional court finally ruled that Article 9, 12, and 60 of Law Cultivation System is unconstitutional. The decision will protect the farmers in conducting plant breeding or breeding. That is, farmers are not prohibited or not need permission from the government in collecting local seeds, produce seed and distribute seed. In the argument submit to the court CSO coalition said the articles that put small breeders and small farmers in the same position as doing commercialisation abolished as court find it as contradictory with state constitution .

“ This victory at constitutional court is a victory for all struggles of farmers and local breeders not only on Indonesia but all peasants and local breeders that feed the world.”said Amalia Pulungan a policy advisor for Indonesia Peasant Alliance



Indonesian Human Rights Committee
for Social Justice (I H C S)

Farmers and Breeders doing community practise and this practise for thousand years that lead us as society get what we called our food now.

For further info on the seed case, farmer versus corporate power you can contact

IHCS; email ihcs@ihcs.or.id; bung.gunawan@gmail.com

For further questions on TRIPS case in Indonesia you can contact : Lutfiyah Hanim

Email: nasalis2@yahoo.com; sendamalia@gmail.com

For farmers response and Indonesia coalition on seed case you can contact
Farmer Initiatives for Ecological Livelihoods and Democracy (FIELD) at
aditya67@yahoo.co.id
