

**REQUIREMENTS AND PROCEDURES FOR TRANSFERRING PROTECTION OF
PLANT VARIETIES AND THE USE OF VARIETIES PROTECTED BY THE GOVERNMENT**
(Government Regulation No. 14/2004 dated March 17, 2004)

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

That in order to implement the provision in Article 10 paragraph (2), Article 40 paragraph (4), Article 43 paragraph (3) and Article 55 of Law No. 29/2000 on protection of plant varieties, it is deemed necessary to stipulate a government regulation on requirements and procedures for transferring protection of plant varieties and the use of varieties protected by the government;

In view of:

1. Article 5 paragraph (2) of the Constitution of 1945;
2. Law No. 29/2000 (BN No. 6617 pages 18A - 27A and so on) on protection of plant varieties (Statute Book of 2000 No. 241, Supplement to Statute Book No. 4043);

D E C I D E S :

To stipulate :

THE GOVERNMENT REGULATION ON REQUIREMENTS AND PROCEDURES FOR TRANSFERRING PROTECTION OF PLANT VARIETIES AND THE USE OF VARIETIES PROTECTED BY THE GOVERNMENT.

CHAPTER I
GENERAL PROVISION

Article 1

Referred to in this government regulation as:

1. Plant Variety Protection hereinafter called PVT is special protection provided by the state, in the case being represented by the government and carried out by PVT Office, for plant varieties produced by plant nourishers through activities of plant nourishment.
2. Plant Variety Protection Right hereinafter called PVT Right is a special right given by the state to nourishers and/or holders of PVT Rights to use varieties that they use directly or approve other people or statutory bodies to use the varieties for a specified period.
3. Plant varieties hereinafter called varieties are a group of plants of one kind or species marked by shape of plant, growth of plan, leaf, flower, fruit, seed and expression of genotype characteristic or genotype combination that can differentiate from the same kind or species by at least one decisive characteristic and not change if the varieties are multiplied.
4. License is a permit given by holders of PVT Right to other people or statutory bodies to use PVT Right partly or wholly.
5. Compulsory License is a license given by holders of PVT Right to applicants on the basis of a district court decision.
6. Plant seed hereinafter called seed is plant or its part used to multiply and/or develop plant.
7. Minister is the Minister of Agriculture.
8. Day is working day.

CHAPTER II
TRANSFER OF PVT RIGHT

Part One
General

Article 2

- (1) PVT Right is transferable or can be transferred because of:
 - a. inheritance;
 - b. grant;
 - c. testament;
 - d. agreement in the form of notary deed; or
 - e. other causes allowed by the law.
- (2) Provisions on the transfer of PVT Right as meant in paragraph (1) are executed in accordance with law in force for the respective legal subjects.

Article 3

The transferring or transferred PVT Right as meant in Article 2 paragraph (1) must be registered at PVT Office.

Part Two

Requirements for Transfer of PVT Right

Article 4

The transfer of PVT Right because of inheritance, grant, testament, agreement in the form of notary deed or other causes permitted by the law as meant in Article 2 paragraph (1) must meet the requirement, already paying annual PVT fee for the current year.

Part Three

Procedures for

Transferring PVT Right Because of Inheritance

Article 5

- (1) In the case of a holder of PVT Right passing away, heir of the PVT Right holder submits application to PVT Office with regard the recording of transfer of PVT Right to the heir by completing a form of application for the transfer of PVT Right and enclosing:
 - a. certificate of the said PVT Right;
 - b. certificate of death of the PVT Right holder;
 - c. evidence as heir;
 - d. deed of appointment to a heir in the case of the heirs being more than one;
 - e. special power of attorney, in the case of the application being submitted through proxy;
 - f. evidence of payment of cost of application for recording the transfer of PVT Right.
- (2) Not later than 30 (thirty) days as from the date of fulfillment of the requirements as meant in paragraph (1), PVT Office records the transfer of PVT Right because of

inheritance in the PVT General List and certificate of the relevant PVT Right as well as announces it in PVT Gazette and notifies the heir.

- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of transfer of PVT Right to the heir.
- (4) In the case of the requirements as meant in paragraph (1) being not yet fulfilled, not later than 30 (thirty) days as from the date of receipt of the application, PVT Office notifies the applicant to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.
- (5) In the case of the applicant not fulfilling the requirements in the period as meant in paragraph (4), the application for recording the transfer of PVT Right because of inheritance is deemed withdrawn.

Article 6

- (1) In the case of the heir being not ready to become holder of PVT Right, the heir can transfer the PVT Right to other people or statutory bodies ready to accept it or declare the release of the PVT Right and notifies it to PVT Office.
- (2) In the case of the heir declaring the release of PVT Right as meant in paragraph (1), the right becomes public property.

Article 7

The annual cost of PVT Right is borne by heir or other party receiving the transfer of PVT Right.

Part Four

Procedures for Transferring PVT Right Because of Grant

Article 8

Holders of PVT Rights can grant their PVT Rights to other people or statutory bodies.

Article 9

- (1) Recipients of grant submit application for recording the transfer of PVT Right to PVT Office by completing a form of application for the transfer of PVT Right by enclosing:
 - a. copy of grant deed;
 - b. certificate of the said PVT Right;
 - c. special power of attorney in the case of the application being submitted through proxy; and

d. evidence of payment of cost of application for recording the transfer of PVT Right.

- (2) Not later than 30 (thirty) days as from the date of fulfillment of the requirements as meant in paragraph (1), PVT Office records the transfer of PVT Right because of grant in the PVT General List and certificate of the relevant PVT Right as well as announces it in PVT Gazette and recipient of grant.
- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of transfer of PVT Right to the recipient of grant.
- (4) In the case of the requirements as meant in paragraph (1) being not yet fulfilled, not later than 30 (thirty) days as from the date of receipt of the application, PVT Office notifies the applicant to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.
- (5) In the case of the applicant not fulfilling the requirements in the period as meant in paragraph (4), the application for recording the transfer of PVT Right because of inheritance is deemed withdrawn.

Article 10

- (1) In the case of the grant recipient being not ready to become the holder of PVT Right, the recipient of grant can transfer the PVT Right to other people or statutory body ready to accept it or declare the release of the PVT Right and notify PVT Office.
- (2) In the case of the grant recipient declaring the release of PVT Right as meant in paragraph (1), the right becomes public property.

Article 11

The annual cost of PVT Right is borne by recipients of grant or other parties receiving PVT Right.

Part Five

Procedures for

Transferring PVT Right Because of Testament

Article 12

- (1) Individual holders of PVT Rights can bequeath their PVT Rights to other people or statutory bodies.

- (2) The testament as meant in paragraph (1) starts to come into force after the holder of PVT Right making testament passed away.

Article 13

- (1) Recipients of testament submit application for recording the transfer of PVT Right to PVT Office by completing a form of application for the transfer of PVT Right by enclosing:
- certificate of the said PVT Right;
 - certificate of death of PVT Right holder;
 - copy of testament or other information deemed the same as that;
 - statement of heirs of the PVT Right holder passing away, which certifies that they raise no objection to the testament;
 - special power of attorney in the case of the application being submitted through proxy; and
 - evidence of payment of cost of application for recording the transfer of PVT Right.
- (2) Not later than 30 (thirty) days as from the date of fulfillment of the requirements as meant in paragraph (1), PVT Office records the transfer of PVT Right because of testament in the PVT General List and certificate of the relevant PVT Right as well as announces it in PVT Gazette and recipient of testament.
- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of transfer of PVT Right to the recipient of grant.
- (4) In the case of the requirements as meant in paragraph (1) being not yet fulfilled, not later than 30 (thirty) days as from the date of receipt of the application, PVT Office notifies the applicant to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.
- (5) In the case of the applicant not fulfilling the requirements in the period as meant in paragraph (4), the application for recording the transfer of PVT Right because of testament is deemed withdrawn.

Article 14

- (1) In the case of the testament recipient being not ready to become the holder of PVT Right, the recipient of grant can transfer the PVT Right to other people or statutory

body ready to accept it or declare the release of the PVT Right and notify PVT Office.

- (2) In the case of the testament recipient declaring the release of PVT Right as meant in paragraph (1), the right becomes public property.

Article 15

The annual cost of PVT Right is borne by recipients of testament or other parties receiving PVT Right.

Part Six

Procedures for Transferring PVT Right Because of Agreement in the form of Notary Deed

Article 16

- (1) Recipients of PVT Right because of agreement in the form of notary deed submit application for recording the transfer of PVT Right to PVT Office by completing a form of application for the transfer of PVT Right by enclosing:
- Copy of notary deed on the transfer of PVT Right;
 - certificate of the said PVT Right;
 - special power of attorney in the case of the application being submitted through proxy; and
 - evidence of payment of cost of application for recording the transfer of PVT Right.
- (2) Not later than 30 (thirty) days as from the date of fulfillment of the requirements as meant in paragraph (1), PVT Office records the transfer of PVT Right because of agreement in the form of notary deed in the PVT General List and certificate of the relevant PVT Right as well as announces it in PVT Gazette and recipient of PVT Right.
- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of transfer of PVT Right because of agreement in the form of notary deed to the recipient of the PVT Right.
- (4) In the case of the requirements as meant in paragraph (1) being not yet fulfilled, not later than 30 (thirty) days as from the date of receipt of the application, PVT Office notifies the applicant to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.
- (5) In the case of the applicant not fulfilling the requirements in the period as meant in paragraph (4), the application for recording the transfer of PVT Right because of testament is deemed withdrawn.

Article 17

The annual cost of PVT Right is borne by recipients of PVT Right because of agreement in the form of notary deed.

Part Seven

Procedures for Transferring PVT Right Because of Other Causes permitted by the Law

Article 18

- (1) Recipients of PVT Right because of other causes permitted by the law submit application for recording the transfer of PVT Right to PVT Office by completing a form of application for the transfer of PVT Right by enclosing:
 - a. copy of evidence of transfer of PVT Right because of other causes permitted by the law;
 - b. certificate of the said PVT Right;
 - c. special power of attorney in the case of the application being submitted through proxy; and
 - d. evidence of payment of cost of application for recording the transfer of PVT Right.
- (2) Not later than 30 (thirty) days as from the date of fulfillment of the requirements as meant in paragraph (1), PVT Office records the transfer of PVT Right because of other causes permitted by the law in the PVT General List and certificate of the relevant PVT Right as well as announces it in PVT Gazette and recipient of PVT Right.
- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of transfer of PVT Right because of other causes permitted by the law to the recipient of the PVT Right.
- (4) In the case of the requirements as meant in paragraph (1) being not yet fulfilled, not later than 30 (thirty) days as from the date of receipt of the application, PVT Office notifies the applicant to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.
- (5) In the case of the applicant not fulfilling the requirements in the period as meant in paragraph (4), the application for recording the transfer of PVT Right is deemed withdrawn.

Article 19

The annual cost of PVT Right is borne by recipients of PVT Right because of other causes permitted by the law.

CHAPTER III

LICENSING

Part One

Content of Licensing Agreement

Article 20

- (1) A licensing agreement contains right given by a holder of PVT Right as licensor to licensee to implement one or more than activities:
 - a. producing and multiplying seed;
 - b. preparing for the purpose of propagation;
 - c. advertising;
 - d. offering;
 - e. selling and trading;
 - f. exporting;
 - g. importing;
 - h. reserving for the purposes as meant in points a, b, c, d, e, f and g.
- (2) The licensing agreement can be:
 - a. exclusive; or
 - b. not exclusive.
- (3) The licensing agreement is prohibited from:
 - a. containing provisions which directly or indirectly can inflict loss on the state;
 - b. containing restriction which discourage the capabilities of Indonesian people in mastering and developing plant nourishment in general; or
 - c. exceeding the period of the said PVT.

Part Two

Rights and Obligations of Licensor and Licensee

Article 21

Licensors entitle:

- a. to obtain the payment of royalty in accordance with agreement;
- b. to exercise their rights directly as long as they are not agreed in the case of non-exclusive licensing agreement;
- c. to demand the nullification of license in the case of the licensee failing to implement the agreement accordingly.

Article 22

Licensors are obliged:

- a. to guarantee the licensed varieties free from legal reject or lawsuit from the third party;
- b. to notify the licensee that the granted license is not a license already given to other licensees in the case of the licensing agreement being exclusive;

- c. to foster and supervise the quality of production as the implementation of PVT Right by the licensee.

Article 23

Licensees entitle:

- a. to use the licensed varieties in accordance with the agreement;
- b. to ask again the payment of royalty already paid to the licensor in the case of the licensing PVT Right being revoked.

Article 24

Licensees are obliged:

- a. to pay royalties in accordance with the agreement;
- b. to record the licensing agreement to PVT Office;
- c. to maintain the quality of production of varieties in accordance with the standards of the licensed products.

Part Three

Requirements and Procedures for Application for Recording of Licensing Agreement

Article 25

- (1) Licensees submit application for recording the licensing agreement to PVT Office by completing the form of application and enclosing:
 - a. copy of the licensing agreement;
 - b. special power of attorney, in the case of the application being submitted through proxy;
 - c. evidence of payment of cost of application for recording the transfer of PVT Right.
- (2) PVT Office records the licensing agreements already fulfilling the requirements as meant in paragraph (1) in the PVT General List not later than 30 (thirty) days as from the date of receipt of the applications for recording the licensing agreements and announces it PVT Gazette as well as notifies it to licensees.
- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of the licensing agreement.
- (4) If the requirements as meant in paragraph (1) have not been fulfilled, not later than 30 (thirty) days as from the date of receipt of application, PVT Office notifies applicants to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.

- (5) In the case of the applicants not fulfilling the requirements in the period as meant in paragraph (4) for recording the license is deemed.

- (6) In the case of a licensing agreement concluded with PVT Office, the licensing agreement has no consequence to the third party.

Part Four

Rejection of

Application for Recording A License

Article 26

- (1) PVT Office rejects an application for recording the licensing agreement violating the provisions of paragraph (3).
- (2) The rejection as meant in paragraph (1) is notified to the applicant or his/her proxy not later than 30 (thirty) days as from the date of stipulation of the rejection.

Part Five

Termination of Licensing Agreement

Article 27

- (1) A licensing agreement can terminate because of:
 - a. the expiration of validity period according to the agreement;
 - b. agreement of the two parties;
 - c. nullification of PVT Right by PVT Office;
 - d. revocation of PVT Right by PVT Office.
- (2) In the case of the licensing agreement terminated because of the reason as meant in paragraph (1), the licensor or his/her proxy notifies it to PVT Office not later than 30 (thirty) days as from the date of termination of the licensing agreement.
- (3) PVT Office announces the termination of the licensing agreement as meant in paragraph (1).

Article 28

PVT Office notifies in writing the termination of the licensing agreement because of nullification of the PVT Right as meant in Article 27 paragraph (1) to the licensor and licensee or his/her proxy not later than 30 (thirty) days as from the date of the nullification or revocation of the PVT Right.

CHAPTER IV

COMPULSORY LICENSE

Part One

Requirements for Application for Compulsory License Article 27

- (1) In the case of a holder of PVT Right not exercising his/her right directly after elapsing the 36-month period as from the date of granting of the PVT Right, everybody or statutory body can submit directly or their proxy application for compulsory license to use PVT Right of other parties to the District Court overseeing the address or domicile of holder of the PVT Right.
- (2) The application for compulsory license as meant in paragraph (1) only can be done with the reason that:
 - a. the PVT Right is not exercised in Indonesia;
 - b. the PVT Right has been used in the form and way inflicting loss on public interest.
- (3) The people or statutory body allowed to submit compulsory license as meant in paragraph (1) must meet the following requirements:
 - a. having expertise or experts in the seedling field;
 - b. having access to use adequate facility and accredited or appointed by the minister;
 - c. having adequate financial capability to execute compulsory license;
 - d. already striving to take measures to obtain license from holder of PVT Right on the basis of the reasonable requirements and condition, but failing.

Part Two

Procedures for Applying for Recording of Compulsory License Article 30

- (1) Recipients of compulsory license submit application for recording of compulsory license to PVT Office by completing a form of application and enclose:
 - a. copy of district court decision giving compulsory license to applicant;
 - b. special power of attorney, in the case of the application being submitted through a proxy.
- (2) PVT Office records compulsory license already fulfilling the requirements as meant in paragraph (1) in PVT General List and announces it PVT Gazette as well as notifies it to recipients of compulsory license not later than 30 (thirty) days as from the date of receipt of applications for recording the compulsory license.

- (3) The notification as meant in paragraph (2) is accompanied by certificate of PVT Right already given mark of recording of the compulsory license.
- (4) In the case of the requirements being not yet fulfilled, not later than 30 (thirty) days as from the date of receipt of application, PVT Office notifies applicant to complete the requirements not later than 3 (three) months as from the date of notification from PVT Office.
- (5) In the case of the applicant not completing the requirement in the period as meant in paragraph (4), the application for recording the compulsory license is deemed withdrawn.
- (6) In the case of a compulsory license being not recorded in PVT Office, the compulsory license has no legal consequence to the third party.

CHAPTER V

Form of Application for Transfer of PVT and Cost of Recording of Transfer of PVT Article 31

- (1) Applications for recording the transfer of PVT right because of inheritance, grant, testament, agreement in the form of notary deed and other causes permitted by the law as well as licensing and compulsory license are submitted by PVT Office by completing a form.
- (2) The model and content of the form as meant in paragraph (1) at least contain information on:
 - a. names and addresses or domiciles of parties;
 - b. names of varieties;
 - c. no. of PVT certificate;
 - d. reason for transfer of PVT;
 - e. date of granting of PVT Right;
 - f. date of registration.
- (3) The model and content of form as meant in paragraph (2) are stipulated by a decree of the Minister.

Article 32

The cost of recording of the transfer of PVT right because of inheritance, grant, testament, agreement in the form of notary deed and other causes permitted by the law as well as licensing and compulsory license is stipulated in accordance with the provisions of the law in force.

CHAPTER VI
THE USE OF VARIETIES PROTECTED BY
THE GOVERNMENT

Article 33

- (1) The government can use the protected varieties belonging to someone or a statutory body for implementing policies on the procurement of food and medicines for public interest.
- (2) The policies as meant in paragraph (1) are implemented by the government in the case of food vulnerability and/or medical threat arising from scarcity of production of seeds of food crops and/or medicinal herbs which are principal and constitute the need of the public at large.
- (3) The use by the government must continue observing economic rights of the PVT right holder by means of giving reasonable compensation to the PVT right holder.
- (4) The amount of the compensation given to the PVT Right holder as meant in paragraph (3) is stipulated by the minister on the basis of an agreement with the PVT right holder after paying attention to opinion of the Minister of Finance.

Article 34

PVT Right holders whose varieties are used by the government are exempted from the obligation to pay annual cost until the use of the PVT right by the government ends.

Article 35

- (1) The use of varieties by the government as meant in Article 33 paragraph (1) is submitted by the Minister to the President, accompanied by:
 - a. plan for using the said varieties;
 - b. reason becoming the basis for the recommendation;
 - c. recommendations and considerations from ministers concerned.
- (2) The use of varieties protected by the government as meant in paragraph (2) is stipulated by a presidential decree.

CHAPTER VII
CONCLUSION

Article 36

The government regulation comes into force as from the date of promulgation.

For promulgation, the government regulation shall

be promulgated by placing it in Statute Book of the Republic of Indonesia.

Stipulated in Jakarta

On March 17,2004

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Sgd

MEGAWATI SOEKARNOPUTRI

Stipulated in Jakarta

On March 17,2004

THE STATE SECRETARY OF THE REPUBLIC OF INDONESIA

Sgd

BAMBANG KESOWO

STATUTE BOOK OF
THE REPUBLIC OF INDONESIA YEAR 2004 NO. 31

**ELUCIDATION
ON
GOVERNMENT REGULATON NO. 14/2004
CONCERNING
REQUIREMENTS AND PROCEDURES FOR
TRANSFER THE PROTECTION OF PLANT VARIETIES
AND THE USE OF VARIATIES PROTECTED BY
THE GOVERNMENT**

I. GENERAL

Global economic developments are very influential to national economy, including the agricultural sector, starting from pre-production activities, cultivation, harvest, post-harvest, distribution and trade.

In a bid to meet the domestic need and anticipate changes in international strategic environments, the agricultural sector must be capable of enhancing competitiveness of produces for both commodities for the domestic need and export-oriented commodities. The competitiveness is enhanced by means of, among others, enhancement of productivity and the quality, while the enhancement of productivity and quality is heavily influenced by the success of development of innovation, particularly in improving genetic potential of plant varieties. In relation thereto, activities which can result in more superior plant varieties need to be encouraged through the granting of incentives to people or statutory bodies operating in the field of plant nourishment which are new, unique, uniform, stable and can provide a bigger added value to users.

A kind of the appreciation is to provide legal protection for intellectual property in resulting new varieties of plants, including in enjoying economic benefits and rights of other nourishers.

Plant Variety Protection Right (PVT Right) constitutes a right given by the state to nourishers and/or right holders to use directly varieties resulting from their nourishment. Principally, the right must be used in Indonesia so as to able to produce bigger benefit to the Indonesian people. Only in certain cases wherein varieties are impossible to use in Indonesia, the varieties can be used abroad. If a holder of PVT Right is unable to exercise his/her right directly, the relevant must open opportunity for other parties to use the right through approval, meaning that the right to obtain economic benefit from the use of the PVT Right by other parties is still guaranteed by the law. The approval is granted through licensing if parties reach an agreement. In the case of an agreement being not achieved, through certain requirements stipulated by the law, other parties can apply to the District Court so that the relevant is given compulsory license.

In addition, as a material right, PVR Right must be guaranteed transferable through inheritance and can be transferred by right holders to other parties so that economic benefits of the use of PVT Right can be optimized. A PVT right can be transferred through grant, testament, agreement in the form of notary deed, or other causes permitted by the law.

Apart from that, in the case of policy on procurement of food and medicines, by certain requirements, the government also can use varieties given PVT without ignoring economic rights of holders of the said PVT right. The use of a variety protected by the government cannot be done at will, but the government must give a reasonable compensation to holder of the said PVT right.

In a bid to achieve the above mentioned objectives and in order to implement Article 10 paragraph (2), Article 40 paragraph (4), Article 43 paragraph (3) and Article 55 of Law No. 29/2000 on protection of plant varieties, a government regulation on requirements and procedures for transfer the protection of plant varieties and the use of varieties protected by the government is formulated.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear

Article 2

Paragraph (1)

Basically, a PVT right is transferable or can be trans-

ferred by holder of PVT right to other people or other statutory body. Other causes permitted by the law are, for example, the transfer of right through a decision of the court. Transferring means a legal process of the death of someone, namely in the case of holder of the said PVT right passing away. Transferred means legal action transferring PVT right to other parties, such as through transaction, exchange and others.

Paragraph (2)

The provision is based on the reality of civil law pluralism in Indonesia.

Article 3

Sufficiently clear

Article 4

The provision aims at preventing the transfer of PVT right with a view of avoiding the obligation to pay annual cost of PVT. In relation thereto, before the PVT right is transferable, the annual cost of PVT for the current year must have been settled.

Article 5

Paragraph (1)

The obligation to record the transfer of PVT right because of inheritance aims at guaranteeing certainty about legal relations between the PVT right and heir as new legal subject of PVT right. In addition, the recording facilitates PVT Office to manage data and information on PVT.

Letters a and b

Sufficiently clear

Letter c

Evidence as heir is inheritance edict from the Religious Court for Islamic followers, or inheritance deed made by notary or stipulation of inheritance made by the District Court.

Letter d

In the case of heir being more than one, PVT Office suggests to appoint any of the heirs as representative of the PVT right holder to facilitate administration of the said PVT right, especially for the obligation to pay annual cost of PVT. The appointment of any of the heirs as representative of the PVT right holder is fully affairs of the heirs.

Letter e

Proxy means PVT consultant.

Letter f

The recording of transfer of PVT right is subjected to a cost with the amount stipulated in the law.

Paragraph (2)

The recording of transfer of PVT right in the PVT General List and announcement in PVT Gazette constitute the implementation of the principles of speciality and publicity.

Paragraph (3)

The recording of transfer of PVT right to heirs in PVT certificate constitutes the implementation of the principle of speciality.

Paragraphs (4) and (5)

Sufficiently clear

Article 6

A PVT right constitutes a special right granted by the state represented by the government and implemented by PVT Office to holder of PVT right. In relation thereto, heir of the PVT right holder not ready to become holder of PVT right can transfer the PVT right to other parties ready to accept it or declares the release of the PVT right. In the case of heir declaring the release of PVT right, the right becomes public property.

Articles 7 and 8

Sufficiently clear

Article 9

Paragraph (1)

The obligation to record the transfer of PVT right because of grant aims at guaranteeing certainty about legal relations between PVT right and recipients of grant as a new PVT right holder. In addition, the recording facilitates PVT Office to manage data and information on PVT.

Paragraph (2)

See elucidation on Article 5 paragraph (2)

Paragraph (3)

See elucidation on Article 5 paragraph (3)

Paragraphs (4) and (5)

Sufficiently clear

Article 10

See elucidation on Article 6

Article 11

Sufficiently clear

Article 12

Paragraph (1)

The provision aims at affirming that testament only can be made by individual holder of PVT right.

Paragraph (2)

Sufficiently clear

Article 13

Paragraph (1)

The obligation to record the transfer of PVT right because of testament aims at guaranteeing certainty about legal relations between the PVT right and recipient of testament as legal subject of the new PVT right holder.

In addition, the recording facilitates PVT Office to manage data and information on PVT.

Letters a and b

Sufficiently clear

Letter c

Other information deemed the same as the testament deed is certificate from the head of village/sub-district fortified by the head of local district certifying matters which are the same as the above mentioned deed and account.

Letter d

Sufficiently clear

Letter e

Proxy means PVT consultant.

Letter f

Sufficiently clear

Paragraph (2)

See elucidation on Article 5 paragraph (2)

Paragraph (3)

See elucidation on Article 5 paragraph (3)

Paragraphs (4) and (5)

Sufficiently clear

Article 14

See elucidation on Article 6

Article 15

Sufficiently clear

Article 16

Paragraph (1)

Agreement in the form of notary deed is, among others, transaction and exchange.

The recording of the transfer of PVT right aims at guaranteeing certainty about legal relations between the said PVT right and recipient of the transfer of PVT right as the new PVT right holder. In addition, the recording facilitates PVT Office to manage data and information on PVT.

Paragraph (2)

See elucidation on Article 5 paragraph (2)

Paragraph (3)

See elucidation on Article 5 paragraph (3)

Paragraphs (4) and (5)

Sufficiently clear

Article 17

Sufficiently clear

Article 18

Paragraph (1)

Other causes permitted by the law are, for instance, the transfer of PVT right on the basis of a court decision already having permanent legal power on dispute over PVT right between PVT right holder and complainant.

The complainant winning the case conveys application for recording the transfer of PVT right by enclosing copy of the court decision already having permanent legal power and other requirements.

Paragraph (2)

See elucidation on Article 5 paragraph (2)

Paragraph (3)

See elucidation on Article 5 paragraph (3)

Paragraphs (4) and (5)

Sufficiently clear

Article 19

Sufficiently clear

Article 20

Paragraph (1)

Sufficiently clear

Paragraph (2)

Letter a

An exclusive licensing agreement means that only licensee can use PVT right, even the licensor cannot exercise the right as long as the licensing agreement is effective.

Letter b

A non-exclusive licensing agreement means that the licensor can license his/her PVT right to more than one licensee on the basis of the period, kind of activities and location.

Paragraph (3)

The provision is stipulated on the basis of consideration that Article 7 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the target of TRIPS is protection and enforcement of intellectual property rights which must contribute to promotion of technology innovation, dissemination/transfer of technology, mutually benefit to producers and users of knowledge in the technology field in an atmosphere conducive to social and economic welfare as well as equilibrium between rights and obligations. Therefore, all obstacles for creating the above mentioned target of TRIPS may not be existent in the licensing agreement on the use of PVT rights.

In relation thereto, the licensing agreement, particularly that made by licensor coming from other countries and licensee in Indonesia does not result in consequences inflicting loss on Indonesia, especially for the transfer of technology.

Article 21

Sufficiently clear

Article 22

Letter a

Legal reject is, for instance, the failure to meet the requirements for novelty, uniqueness, uniformity and/or stability upon the granting of PVT right, but the failure to meet the requirement is not ascertained by PVT Office upon the granting of PVT Right.

Letter b

Sufficiently

Letter c

Licensors are obliged to foster and supervise the quality of production of licensees because production constitutes identity of the licensor.

Article 23

Sufficiently clear

Article 24

As long as the licensing agreement has not been

registered at PVT Office, the agreement has no legal consequence to the third party.

Article 25

Paragraph (1)

The recording of a licensing agreement in PVT Office is needed so that the agreement has legal consequence to the third party.

In addition, the recording facilitates PVT Office to manage data and information on the implementation and the said PVT right.

Paragraph (2)

See elucidation on Article 5 paragraph (2)

Paragraph (3)

See elucidation on Article 5 paragraph (3)

Paragraph (4) up to paragraph (5)

Sufficiently clear

Article 26

Sufficiently clear

Article 27

Paragraph (1)

Sufficiently clear

Paragraph (2)

The written notification is meant to enable the expiration of the licensing agreement recording in PVT Office to have legal consequences to the third party.

Paragraph (3)

Sufficiently clear

Article 28

Sufficiently clear

Article 29

Paragraph (1)

The provision aims at encouraging the possible use of PVT right in a broad range and beneficial to the people and at the same time close the possibility that PVT right is used for the purposes contravening the objectives of this law. The licensing agreement in the framework of the compulsory license is only subjected the district court, not to PVT Office.

Paragraph (2)

Not used means that in 36 (thirty six) months as

from the date when PVT right is given, without reason based on technical factors and/or force majeure (natural disaster, fire, uncontrollable pest or disease outbreak and government policy). As a result, the PVT right cannot be used, the people loose opportunity to obtain benefit from the said varieties.

Paragraph (3)

The provision aims at guaranteeing that the granting of the compulsory license is not used for the purpose of unfair competition, but really destined for public interests.

Article 30

See elucidation on Article 25.

Articles 31 and 32

Sufficiently clear

Article 33

Paragraph (1)

Sufficiently clear

Paragraph (2)

Plants which are fundamental and constitute the need of the public at large are, among others, paddy, corn and cane.

Paragraphs (3) and (4)

Sufficiently clear

Article 34

Sufficiently clear

Article 35

Paragraph (1)

Ministers concerned are, among others, the State Minister for State-owned Enterprises in the case of cane, and the Minister of Justice and Human Rights in the case of legal aspect.

Paragraph (2)

Sufficiently clear

Article 36

Sufficiently clear