بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ
INTERNATIONAL CONFERENCE ON

LAW AND SOCIETY

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta
2017
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Chairman, International Conference on Law and Society 6,
Universitas Muhammadiyah Yogyakarta

Assalaamu’alaikum Warahmatullahi Wabarakatuh,
In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among Universitas Muhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), Universiti Islam Sultan Sharif Ali (UNISSA), Universiti Sultan Zainal Abidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today’s joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program.

I would also like to express my heartfelt thanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

Wassalamu’alaikum Warahmatullahi Wabarakatuh.
Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the Fakultas Hukum, Universitas Muhammadiyah Yogyakarta in organizing this Inaugural International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the advantages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to create a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the development of knowledge. This plan will only materialise with the continuous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.
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Assessing the Legal Protection for Farmers in the Policy Agricultural Insurance Facility

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ABSTRACT

Farmers have a significant contribution in the development of agriculture and rural economic development. Farmers as agricultural development actors need to be given protection and empowerment to support the food needs which is the fundamental right of everyone to achieve food sovereignty, food sovereignty and food security in a sustainable manner. Through the State Constitutional Court Decision No. 002 / PUU-I / 2003 Jo Constitutional Court decision 87 / PUU-X / 2013 in relation to the concept of the rights of control of the state under Article 33 of the 1945 Constitution states that the state authorities to regulate their protection and empowerment these farmers. Referring to article 7 paragraph (2) and Article 12 paragraph (2) of Law No. 19 In 2013, one of the ways to protect farmers is through agricultural insurance program. Legislative policy in the form facility on Agricultural Insurance program was held to protect the farmer from the loss of crop failure due to natural disasters. The issue of agriculture requires a separate study, especially agricultural insurance in Indonesia. This study aims to investigate the policies facilities on Agricultural Insurance program, to know the legal certainty for the implementation of agricultural insurance and to know the scope of the commodities that could be protected by agricultural insurance, as part of a self-sufficiency program in the framework of food sovereignty.

Keywords: Legal Protection of farmers, agricultural insurance, food sovereignty.

I. Introduction

During this time Farmers have a significant contribution in the development of Agriculture and rural economic development. Agricultural farmers as development actors need to be given protection and empowerment to support the food needs is a basic right of every person to achieve food sovereignty, food sovereignty and food security in a sustainable manner.

Referring to the provisions of Article 33 UUD 1945, the State has made a legislative policy to ensure the realization of food sovereignty program through Article 7 paragraph (2) of Law No. 19 Year 2013 jo. Article 12 paragraph (2) protection of farmers is one done in the form of agricultural insurance are program. Agricultural insurance is an agreement between the farmer and the insurance company to enter into risk coverage Farming (see article 1 point 16 of Law number 19 Year 2013).

Legislative policy in the form of facilities for Agricultural Insurance program established to protect the farmer from the loss of crop failure due to natural disasters, outbreaks of infectious animal diseases, climate change; and / or other types of risk stipulated by the Minister; and can provide help redress crop failure due to extraordinary events in accordance with the financial capacity of the state (article 37-38 of Law Number 19 Year 2013).

The problem is how the birth of the basic concepts of program policies facilities for Agricultural Insurance, Is there any legal certainty for the implementation of agricultural insurance and how to limit the commodities which may be covered by agricultural insurance.
II. Method

As a normative juridical research. The assessment will be done using primary data and secondary data. The primary data of legal material relating to the policy in the form of legislation relating to the regulation concerning the protection and empowerment of farmers, which starts from the provisions of the 1945 Constitution and Act No. 19 of 2013 on the Protection and Empowerment of Farmers. The primary data collectors do with literature review.

While the secondary data from various agencies involved work program of agricultural insurance and food self-sufficiency program in the context of food security. Secondary data collection is done through a literature search and a digital library to generate data and information in order to achieve objectives.

Analysis conducted Content analysis of various legislative policy document in the form of legislation relating to the regulation concerning the protection and empowerment of farmers through insurance-related statute approach that agriculture and food self-sufficiency program in the context of food security.

III. Discussion

3.1 State Right to Control

Article 33 UUD 1945 asserts:

(1) The economy is structured as a joint venture based on family principles. Production branches which are important for the country and dominate the life of the people controlled by the state.

(2) The earth and water and natural resources contained in it are controlled by the state and used for the people’s welfare.

(3) The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental friendliness, independence, and balancing economic progress and national unity.***)

(4) Further provisions on the implementation of this article are regulated by law.

The above provisions according to BagirMananis including the definition of Controlled by State and State Control Rights as follows: (a) Mastery sort of ownership by the state, meaning the state through the government is the sole authority to determine the right to authorize it, including here the earth, the water, and the riches contained in it, b). Organize and supervise the use and utilization, c). Equity and in the form of state enterprises to the efforts of certain.1

If Article 33 UUD 1945 are interpreted so, then how the intangible right to control state policy-setting by the State in relation to the protection and empowerment of farmers, particularly related to issues of food sovereignty and agricultural insurance. For that need to be discovered a common thread that connects them.

The interpretation of the concept of state authority of Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 paragraph (2) BAL can be interpreted associated with this problem if it is connected with the explanation Pasa1 33 paragraph (3) of Law No. 26 Year 2007 on Spatial
Planning (UUPR) which asserts that in order stewardship of land on the space that had been planned for the construction of infrastructure and facilities for the public interest, the government (both central and local) have the right first priority to receive the transfer of land rights from the rights holder on the ground. If the interests of the community in terms of stewardship of land above, interpreted as the public interest, it is in the context of land acquisition for development, provision of Article 33 paragraph (3) in conjunction with Article 1 UUPR PP 16 of 2004 must be interpreted as the government’s first priority right is a manifestation of the right to control the country as defined in Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 paragraph (2) BAL.

So according to the interpretation of the Constitutional Court, meaning controlled by the state under article 33 UUD 1945 is the people collectively, mandates the state to create a policy (beleid) and acts of management (bestuursdaad), setting (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) to the purpose of the prosperity of the people. So according to the interpretation of the Constitutional Court, meaning controlled by the state under article 33 UUD 1945 is the people collectively, mandates the state to create a policy (beleid) and acts of management (bestuursdaad), setting (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) to the purpose of the prosperity of the people.2

Arrangements function (bestuursdaad) by the state carried out by the Government with the authority to issue and revoke licenses facilities (vergunning), licenses (licentie) and concessions (Consessie). Arrangements function (bestuursdaad) by the state carried out by the Government with the authority to issue and revoke licenses facilities (vergunning), licenses (licentie) and concessions (Consessie). 3

The regulating function of the state (regelendaad) is done through legislative authority by the Parliament and the Government, and regulation by the Government.4

Management functions (beheersdaad) carried out through the ownership of shares (shareholding) and / or through direct involvement in the management of State-Owned Enterprises or State Owned Legal Entity as institutional instrument, through which the State, c.q. The government, leveraging its control over the sources of wealth were to be used for the greatest prosperity of the people.5

Likewise, the function of oversight by the state (toezichthoudensdaad) conducted by the State, c.q. The government, in order to monitor and control that exercise of control by the state over the resources in question really do for the greatest prosperity of the people.6

In this regard, the state plays an important role for consummate ground as elements of public goods into private goods equitably, to align and integrate land acquisition activities in layout. So is the right to control the State under Article 33 UUD 1945 is the right of the State to formulate policies, make arrangements, Arrangements, management and control, including in this case is to formulate policies and organize a wide range of issues related to the protection and empowerment of farmers.7

3.2 Food Security Policy

Food security is one of the strategic issues of food sovereignty policies in the context of development of the country as a developing country, because it has a dual function: 1). One of the main objectives of development, 2). One of the main instruments of economic development.8

The concept of food security refers to the terms of their ability to access food in adequate amount to maintain an active and healthy life. Food security is a multidimensional concept that includes the chain of food and nutrition system, ranging from the production, distribution, consumption, and nutritional status. Briefly food security is actually only about three important things, namely the availability of, access to, and consumption of food.9

Formal definitions of food security, according to some experts is as follows:

1. The World Food Conference in 1974, UN 1975: Food Security is the world sufficient food
availability in all the time to maintain the sustainability of food consumption and balance fluctuations in production and prices.

2. **FAO 1992**: Food Security is a situation in which all people in all times have sufficient amount on food safety (safe) and nutritious for the sake of a healthy and active life.

3. **World Bank 1996**: Food Security are: access by all people at all times to food that is sufficient for healthy and active life.

In contrast to the concept of food security (food security), now the concept of sovereignty / self-sufficiency (food sovereignty) more relevant to put forward. You see, the paradigm of food sovereignty can overcome the weaknesses food security policy which has relied more on compliance with food in a modern way through the application of agro-business, free trade and privatization of productive resources.  

Indonesia has Law No. 7 of 1996 on Food, which confirms that food security is a condition in which the sufficiency of food supply for households as measured by the adequacy of food in terms of quantity and quality and also the guarantee of security (safety), the equitable distribution and the ability to buy.

Conditions lack of access to food commodities that cause food insecurity. Rise and fall of the number of people classified as food insecure usually follows the rise and fall of the number of poor people in Indonesia. There are still many poor people who are vulnerable to food insecurity. Local and national food situation is being affected by climate change and global warming (global warming). Upon the occurrence of climate change and global warming, food self-reliance had become a global issue. In fact, farmers in various parts of the world are now demanding their food self-sufficiency.

Local and national food situation is being affected by climate change and global warming (global warming). Upon the occurrence of climate change and global warming, food self-reliance had become a global issue. In fact, farmers in various parts of the world are now demanding their food self-sufficiency. In contrast to the concept of food security (food security), now the concept of food sovereignty (food sovereignty) more relevant to put forward. You see, the paradigm of food sovereignty can overcome the weaknesses food security policy which has relied more on compliance with food in a modern way through the application of agro-business, free trade and privatization of productive resources.

Some examples of cases that occurred in Indonesia, among others:

1. According to the Head of Food Insecurity availability and EkoHaribasuki Tjuk Department of Agriculture, total of 2.5 of the total population of Indonesia in conditions of food insecurity. That is, there are about 5 million people of this agricultural country who ate less than twice a day.

2. Conditions lack of access to food commodities that cause food insecurity. Rise and fall of the number of people classified as food insecure usually follows the rise and fall of the number of poor people in Indonesia. There are still many poor people who are vulnerable to food insecurity (processed from BPS data) that in 2006 the number of poor people reached 39.3 million (17.75%) and residents were very insecure about 10.04 million (4.52%), whereas in 2007 the number of poor population of 37.17 million (16.58%) and residents were very insecure about 5.71 million (2.55%).

3. Report of the Indonesian Farmers Union (SPI) states, occurred 144 cases of violation of farmers’ rights. This figure does not include cases of malnutrition, which until December 2011 and then recorded 686 cases. While the KPA (Consortium for Agrarian Reform) in 2011 noted there
were 163 cases of agrarian conflicts across Indonesia with 22 farmers killed victim.\footnote{16}

4. As part of the Ministry of Agriculture agricultural development planning, goals and objectives of Food Security Agency in 2010 - 2014 will be realized through a national priority activities and areas, namely: (1) Development and Availability of Food Handling Food Insecurity; (2) Distribution System Development and Stability of Food Prices; (3) Development of Food Consumption Diversification and Food Safety Enhancement fresh; while supporting activities is management support and other technical including Welfare Improvement Small Farmers.\footnote{17}

It is recognized that in order to achieve the development of food security as a form of food sovereignty is not easy, but with determination and cooperation of the scope of the Food Security in the central and regional governments, as well as coordination with the First Echelon scope of the Ministry of Agriculture and related agencies, will be able to achieve the goals and targets of national food security.\footnote{18}

Implementation of the Food Security in the Strategic Plan 2010 - 2014 in the planning and development phases annual food security, it is still possible to experience improvements and enhancements for policy changes, problems, and results of the evaluation in the implementation of development programs of food security.\footnote{19}

3.3 The Concept of Protection and Empowerment of Farmers

Related to the protection and empowerment of farmers, there is a lot of legislation that has been made and is applicable in Indonesia, whose setting scattered in various fields’ settings.

In the hatchery, applicable regulations include, among others Cultivation System Act 12 of 1992, Law No. 19 of 2013 on the Protection and Empowerment of Farmers, PP of Seed Plants 44 1995, Kepmentan 803/Kpts/OT.210/7/97 on certification and seed quality control bina, KepMentan No.1017/Kpts/OT/TP.120/12/1998 on seed production permit construction, permit entry of seeds and super seed expenses.

Nonetheless textually legislation that expressly regulates the protection and empowerment of farmers is Law No. 19 of 2013 on the protection and empowerment of farmers (Law 19/2013). Because they were limited in the assessment of the scope of Law No. 19 of 2013 on the protection and empowerment of farmers.

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

So SatriaNugraha found Farms Farmers as agents of development need to be given protection and empowerment to support the food needs which are basic rights everyone has to realize food sovereignty, food sovereignty and food security in a sustainable manner.\footnote{20}

Farmers generally tried on a small scale, the average area of farm land less than 0.5 hectares, and even some of the farmer does not own the land called Farmers Farming or tiller, and even farm laborers. Farmers generally have a weak position in acquiring the means of production, financing Farming, and market access. The likelihood of climate change, vulnerability to natural disasters and business risk, globalization and the global economic downturn, as well as the market system does not favor the Farmer.\footnote{21}

Therefore very urgent needs clear regulations related to the protection and empowerment of farmers.

In Law No. 19 of 2013 on the protection and empowerment of farmers, Scope of Protection
and Empowerment of Farmers covering: a. plan. b. protection of Farmers; c. Farmer empowerment; d. financing and funding; e. supervision; and f. community participation (see article 4).

Article 5 of Law 19 Year 2013, insists that the protection and empowerment of farmers planning must contain strategies and policies. Planning the protection and empowerment of farmers must be done in a systematic, integrated, effective, thorough, transparent, and accountable. Careful planning must be based on the carrying capacity of natural resources and the environment, spatial planning, and the development of science and technology, economic growth rates, the number of farmers, needs infrastructure and facilities; and the technical and economic feasibility and compliance with institutional and local culture.

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

<table>
<thead>
<tr>
<th>No</th>
<th>Policy</th>
<th>Strategy</th>
<th>provider and / or managers</th>
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<tbody>
<tr>
<td>1</td>
<td>Farmers Protection Strategy (article 7 paragraph 2) is done through:</td>
<td>a. Agricultural production infrastructures and facilities</td>
<td>Government and local governments and business communities</td>
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<td></td>
<td></td>
<td>b. business assurance;</td>
<td>Government and Local Government</td>
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<td>c. Agricultural commodity prices;</td>
<td>Government</td>
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<td>d. the elimination of the practice of high-cost economy;</td>
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<td></td>
<td></td>
<td>e. compensation of crop failure due to an extraordinary event;</td>
<td>Government and Local Government</td>
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<td></td>
<td></td>
<td>f. early warning systems and the impact of climate change; and</td>
<td>Government and Local Government</td>
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<td>g. Agricultural Insurance</td>
<td>Government and Local Government</td>
</tr>
<tr>
<td>2</td>
<td>Farmer Empowerment Strategy (Article 7, paragraph 3) is done through:</td>
<td>a. education and training</td>
<td>Government and Local Government agency and / or an accredited institution, business agent</td>
</tr>
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<td></td>
<td></td>
<td>b. extension and advisory services;</td>
<td>Government and Local Government</td>
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<td></td>
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<td>c. system development and marketing of the means of Agriculture;</td>
<td>Government and local governments and business communities</td>
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<td></td>
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<td>d. consolidation and assurance Agricultural land area;</td>
<td>Government and Local Government</td>
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<td></td>
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<td>e. the provision of financing and capital facilities;</td>
<td>Government and Local Government</td>
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<tr>
<td></td>
<td></td>
<td>f. ease of access to science, technology, and information; and</td>
<td>Government and Local Government</td>
</tr>
<tr>
<td></td>
<td></td>
<td>g. Institutional strengthening farmer.</td>
<td>Government and Local Government</td>
</tr>
</tbody>
</table>

Source: Adapted from Law No. 19 in 2013

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

The strategy of protection and empowerment of farmers is done through several ways. Deliberately differentiated protection strategy with the strategy of empowering farmers and further elaborated with different emphasis on various programs related to the guarantee implementation. Program protection and empowerment of farmers also governs the provider and / or managers, in order to more clearly who is in charge associated with the authority, duties and programs that can be planned.
Planning Protection and Empowerment of Farmers compiled by the Government and Local Government in accordance with its authority by involving farmer, compiled at the national, provincial, and district / city, into a plan Protection and Empowerment of Farmers both short term, medium term and long term.

Where it as a planned effort in order to ensure the sovereignty and independence of the farmer in order to improve the welfare, quality, and a better life.

Policy Protection and Empowerment of Farmers should consider: alignment with community development projects and public participation and / or other stakeholders as partners with government and local governments. What is the protection and empowerment of farmers? Farmers are the protection of all efforts to help the farmer in confronting difficulties in obtaining infrastructure and production facilities, business certainty, risk pricing, crop failure, high cost economy practices, and climate change (see article 1 point 1 of Law Number 19 Year 2013).

While the definition of Farmer Empowerment is all efforts to improve the ability Farmers to implement Farming better through education and training, counseling and mentoring, development of systems and means of marketing of Agriculture, consolidate and guarantee the extent of agricultural land, the ease of access to science, technology and information, as well as institutional strengthening Farmers (see article 1 point 2 of Law Number 19 Year 2013).

3.4 The Concept of Uncertain Losses in Insurance

The Book of the Law Legal trade/Wetboek van Koophadel (Commercial code) in Article 246 states that the definition of insurance is an agreement in which the borrower promises to the guaranteed to receive a sum of money premium in lieu of damages, which may be suffered by the guaranteed as a result of an event that will happen is unclear.

So insurance / coverage is an agreement in which a binding to an insured to receive a premium, to provide turn him for a loss, damage, or loss of expected profit, which may be suffered due to an event that is not necessarily.22

Insurance is defined as the “insured”. Insurance or coverage is an agreement between two or more parties, the insurer committed to the insured to receive insurance premium, to give the turn to the insured for loss, damage or loss of expected benefits or legal liability to third parties which may be suffered by the insured, the arising from an uncertain events, or to provide a payment based on death or life of an insured person. 23

The objective of insurance among others, are as follows:
1. To transfer my earlier listed risks on the part of the owner to the insurer is willing to accept the risk, the risk is a possible hit by a loss.24
2. To provide compensation to the parties concerned and the benefit in addition to doing some assurance to the participants.25
   a) Provide a guarantee of protection from the risks of losses suffered by one party
   b) Improving the efficiency, because we do not need to specifically conduct surveillance and patrolling to provide protection that takes a lot of energy, time and cost.
   c) To help hold the cost of equity, which is enough to pay any premiums which amount is fixed, and regularly every period, so no need to replace or pay for their own losses arising whose number is not certain and uncertain.
   d) Basic lending from the Bank or other financial institutions, which in granting the credit or leasing, the lender or leasing requires guaranteed protection of goods collateralized loan / leasing
e) As Savings, even more than that, because that is paid to the insurance company would be returned with a larger number.\textsuperscript{26}

In the book of the Penal Code article 264 also stated that the purpose of insurance is to prevent at least reduces the risk of loss that may arise due to lost, damaged or destruction of goods insured of an uncertain event.

From the description above can be understood that the purpose of insurance is to keep from a business suffer losses and to provide redress to the parties concerned. Including in this case it is possible to provide insurance to farmers who experienced crop failure, because failure of the harvest can be included in the scope of the terms of the risk of loss that is not expected occurrence.

3.5 Agriculture Insurance as a Note

Policy on agricultural insurance facilitation program stipulated in Law No. 19 in 2013 with the general assumption that the farmer faced with the likelihood of climate change, vulnerability to natural disasters and business risk, globalization and the global economic downturn, as well as the market system does not favor the farmer. Therefore, it is necessary to protect and simultaneously empower (see general explanation of Law Number 19 Year 2013).

1) Legislation Governing the Agriculture Insurance Law.

Facilitation of agricultural insurance program in Law No. 19 2013 On the protection and empowerment of the farmer, reinforced with a variety of regulations supporting the program, among others:

a) Act No. 17 of 2003 on State Finance (State Gazette of the Republic of Indonesia Year 2003 Number 47, Supplement to the State Gazette of the Republic of Indonesia Number 4286);
b) Act No. 1 of 2004 on State Treasury (State Gazette of the Republic of Indonesia Year 2004 Number 5, Supplement to the State Gazette of the Republic of Indonesia Number 4355);
c) Act No. 41 of 2009 on the Protection of Agricultural Land Sustainable Food (State Gazette of the Republic of Indonesia Year 2009 Number 149, Supplement to the State Gazette of the Republic of Indonesia Number 5068);
d) Act No. 13 of 2010 on Horticulture (State Gazette of the Republic of Indonesia Year 2010 Number 132, Supplement to the State Gazette of the Republic of Indonesia Number 5170); Act No. 19 of 2013 on the Protection and Empowerment of Farmers (State Gazette of the Republic of Indonesia Year 2013 No. 131, Supplement to State Gazette of the Republic of Indonesia Number 5433);
e) Act No. 23 of 2014 on Regional Government (State Gazette of the Republic of Indonesia Year 2014 Number 244, Supplement to State Gazette of the Republic of Indonesia Number 5587); Act No. 39 of 2014 on Plantations (State Gazette of the Republic of Indonesia Year 2014 Number 308, State Gazette of the Republic of Indonesia Number 5613);
f) Act No. 40 of 2014 on Insurance (Official Gazette of the Republic of Indonesia Year 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618);
g) Act No. 18 of 2009 on Animal Husbandry and Animal Health, as amended by Act No. 41 of 2014 (State Gazette of the Republic of Indonesia Year 2014 Number 338, Supplement to State Gazette of the Republic of Indonesia Number 5619);
h) Presidential Decree No. 121 / P of 2014 on the Establishment of the Ministry and the Cabinet Appointment Work Period 2014-2019;
i) Presidential Regulation Number 7 Year 2015 on Organization of the Ministry of State (State
Gazette of the Republic of Indonesia Year 2015 Number 8); j) Presidential Regulation No. 45 Year 2015 concerning the Ministry of Agriculture (State Gazette of the Republic of Indonesia Year 2015 Number 85); k) Regulation of the Minister of Agriculture No. 61/Permentan/OT.160/10/2010 on the Organization and Administration of the Ministry of Agriculture l) Regulation of the Minister of Agriculture of the Republic of Indonesia Number 40/Permentan/ SR.230 / 7/2015 on Facilitating Agricultural Insurance. Those many legislation underlying the policies of agricultural insurance facilities program is to demonstrate the efforts of the government to guarantee legal certainty associated with the risk of collateral damages which may be suffered by farmers caused by crop failures.

Therefore, various agricultural issues are so complex and requires extensive study of its own, especially agricultural insurance in Indonesia, in order to later be known restriction commodity that can be covered by agricultural insurance and legal certainty for the implementation of agricultural insurance.

2) The Urgency of Agricultural Insurance Policy

During this time Farmers have a significant contribution in the development of Agriculture and rural economic development. Agricultural farmers as development actors need to be given protection and empowerment to support the food needs is a basic right of every person to achieve food sovereignty, food sovereignty and food security in a sustainable manner (see general explanation of Law Number 19 Year 2013).

Referring to the provisions of Article 7 paragraph (2) of Law No. 19 Year 2013 Jo. Article 12 paragraph (2) protection of farmers is one done in the form of agricultural insurance are program. Agricultural insurance is an agreement between the farmer and the insurance company to enter into risk coverage Farming (see article 1 point 16 of Law Number 19 year 2013).

The legal basis for agricultural insurance in Law No. 19 in 2013, as follows: Article 39:

(1) Government and Local Government in accordance with the authority to facilitate each farmer participated Agricultural Insurance.

(2) Facilitation referred to in paragraph (1) shall include:a. ease of registration to be a participant;b. ease of access to the insurance company;c. socialization program to Farmers Insurance and insurance companies; and / ord. premium payment assistance.

According to Law No. 19 of 2013 Article 12, paragraph 2 that the agricultural insurance to farmers with the following criteria:

a. Peasants food crops that do not have farm land and most area work on two (2) hectares;

b. Farmers who do not own land and do business of producing food on the land area of 2 (two) hectares; and / or

c. Horticultural farmers, planters, or small-scale farmers in accordance with the provisions of the legislation.

Criteria for agricultural insurance in accordance with article 12, paragraph 2 of the only set of candidates farmer insurance recipients but has not set a prospective locations insurance recipients. Candidates need insurance recipients specified location criteria in order to reduce misuse / abuse of the field.

Legislative policy in the form facilities’ Agricultural Insurance program established to protect the farmer from the loss of crop failure due to natural disasters, outbreaks of infectious animal diseases, climate change; and / or other types of risk stipulated by the Minister; and can provide help redress crop failure due to extraordinary events in accordance with the financial capacity of
The state (see article 37-38 of Law Number 19 Year 2013).

While the “compensation of crop failure due to an extraordinary event” is compensation that is not covered by the Agricultural Insurance, caused among others by the destruction of plant cultivation or livestock caused by endemic area, periodic natural disasters, and/or damage to infrastructure Agriculture. Meaning “premium payment assistance” is the payment of a premium to help and educate Agricultural Insurance Farmers in following with attention the financial capacity of the state. Help came from the insurance premium revenue and expenditure budget and/or budget revenue and expenditure, paid up otherwise by the Government and Local Government that the farmer can afford to pay the premiums themselves.

Some definitions that need to be understood as follows:

1. Agricultural insurance is an agreement between farmers and insurance companies to engage in agricultural business risk coverage.
2. Agricultural Insurance Facility is easily alleviate damages through an agreement between the farmers with the insurance company to engage in agricultural business risk coverage.
3. Insurance Premium Farms is a value for money that is set by the insurance company as the person and paid by Farmers as the insured as a condition for the validity of the insurance agreement and entitles the farmer to claim damages. Agricultural Insurance Policy is a document engagement agricultural insurance, includes among others the rights and obligations of each party as written proof of the insurance agreement and signed by the person.
4. The claim is a claim for compensation for the disaster that resulted in financial losses for the insured and give him the right to file a claim for compensation to the insurer.

3) The concept of disadvantage uncertain in Insurance.

Article 246 of the draft Law of trade / Wetboek van Koophadel (KUHD) states that the definition of “insurance is an agreement in which the borrower promises to those who are guaranteed to receive a sum of money premium in lieu of damages, which may be suffered by the guaranteed as a result of an event that will happen is not clear.”

Insurance is defined as the “insured”. Insurance or coverage is an agreement between two or more parties, the insurer committed to the insured to receive insurance premium, to give the turn to the insured for loss, damage, or loss of expected profit, which may be suffered due to an event that is not necessarily.

Insurance is defined as the “insured”. Insurance or coverage is an agreement between two or more parties, the insurer committed to the insured to receive insurance premium, to give the turn to the insured for loss, damage or loss of expected benefits or legal liability to third parties which may be suffered by the insured, the arising from an uncertain events, or to provide a payment based on death or life of an insured person (article 1 of Law Number 2 Year 1992 about Insurance Business).

The objective of insurance among others, are as follows:

1. To transfer my earlier listed risks on the part of the owner to the insurer is willing to accept the risk, the risk is a possible hit by a loss.
2. To provide compensation to the parties concerned and the benefit in addition to doing some assurance to the participants.
   a) Provide a guarantee of protection from the risks of losses suffered by one party
   b) Improving the efficiency, because we do not need to specifically conduct surveillance and patrolling to provide protection that takes a lot of energy, time and cost.
   c) To help hold the cost of equity, which is enough to pay any premiums which amount is fixed, and regularly every period, so no need to replace or pay for their own losses arising
whose number is not certain and uncertain.

d) Basis of credit from the Bank or other financial institutions, which in granting the credit or
leasing, the lender or leasing requires guaranteed protection of goods collateralized loan / leasing.
e) As Savings, even more than that, because that is paid to the insurance company would be
returned with a larger number.32

The benefits obtained by the farmers after participating in agricultural insurance, including:
1) Protect farmers from the financial / funding against losses due to crop failure,
2) raise farmers’ position in the eyes of financial institutions to credit farmers,
3) Stabilizing farm income for their dependents losses of the insurance company in the event of
losses due to crop failure,
4) Increase production and productivity of the agricultural sector by following the procedures of
good farming as a prerequisite to follow the agricultural insurance,
5) Insurance is one way to educate farmers to grow crops as well as one of the prerequisites to
follow the agricultural insurance.33

While the benefits by the Government with the facilitation of the agricultural insurance program,
including:
6) Protect the state budget from losses due to natural disasters in the agricultural sector because
it is already covered by a company insurance,
7) reduce ad hoc allocation of funds for natural disasters,
8) The certainty of allocation of funds in the state budget, in the amount of insurance premium
assistance,
9) In the long term to reduce poverty in the agricultural sector,
10) In the long term can increase national agricultural production that are expected to reduce
imports.34

While in the book Commercial code article 264 also stated that the purpose of insurance is to
prevent at least reduces the risk of loss that may arise due to lost, damaged or destruction of
goods insured of an uncertain event.

From the description above can be understood that the purpose of insurance is to keep from
a business suffer losses and to provide redress to the parties concerned. Including in this case it is
possible to provide insurance to farmers who experienced crop failure, due to the crop failure can
be included in the scope of definition of risk occurrence of unexpected losses.

While the “compensation of crop failure due to an extraordinary event” is compensation that
is not covered by the Agricultural Insurance caused by including: (a) The extermination of crop
cultivation due to the endemic area, or b). the destruction of livestock caused by endemic area,
c). the periodic natural disasters, and / or, d). Damage to infrastructure Agriculture.

4) Type and Agricultural Insurance Facility

Insurance companies implementing agricultural insurance must have the permission of agri-
cultural insurance products authorized by the Financial Services Authority (FSA).

Agricultural insurance is done to protect the farmer from the loss of crop failure due:

a. Natural disasters;
b. Plant Pest Organisms attack;
c. outbreaks of Infectious Animal Diseases;
d. the impact of climate change; and / or
e. Other types of risks.

Broadly speaking Agricultural Insurance type that can be facilitated in the program, including:

a. Agricultural Insurance Crop insurance covers (crops, horticulture and plantation)

b. Insurance Livestock (Livestock ruminant and monogastric livestock nonruminansia / pseudoruminant)

Agricultural insurance premium payments differentiated by patterns

a. independent patterns, and

b. the pattern of government premium support

(1) The premium payment assistance made through registration

(2) The premium payment assistance from the state budget will be further stipulated by the Director General on behalf of the Minister

Implementation of Agricultural Insurance Facility, can be provided through multiple policies, which include:

a. The Ease of Applying for a Participant of Insurance

Conducted through data collection / inventory Farmers insurance applicants by insurance companies that are known by the Department of districts / cities, namely:

(1) Ease of registration is done through data collection / inventory Farmers insurance applicants by the Office of the district / city.

(2) The results of the inventory by the Department of the district / city verified and subsequently submitted to the Office of the province to the proposed establishment of insurance participants.

(3) The provincial offices have accepted the proposal as and assign candidates and propose to the Ministry of Agriculture through the Directorate General.

(4) Registration form insurance applicants accompanied by the official of the district / city.

(5) Beneficiary verification is performed gradually by district / city, provincial and Center.

b. Easy Access to the Insurance Company;

Ease because it is done through farmer meetings with the insurance company with the involvement of the Office of the district / city.

(1) Ease of access to the insurance company conducted by the Office of the district / city by means of:

a. encourage understanding and benefits of agricultural insurance membership;

b. Farmers bring together potential participants agricultural insurance with an insurance company; and

c. Encourage the formation of binding of agricultural insurance.

(2) Data collection or inventory financed by the State Budget (APBN) is performed gradually over the proposed regent / mayor to the governor, to then be submitted to the Minister.

How true realization? So far the government has issued many policies and programs to help the agricultural sector. Some policies / programs in the agricultural sector such as subsidized seed, fertilizer subsidies, aid inputs, and credit program for the agricultural sector such as Credit Food and Energy (KKPE), Credit energy Development and Plantation Revitalization (KPEN-RP), Kredit Usaha Rakyat (KUR)). However, such assistance is felt not quite able to overcome the various problems in the agricultural sector, especially the problem of crop failure due to natural conditions / natural factors.35

The low realization of agricultural insurance from the target caused many farmers are not
interested in insuring their farmland. Therefore, there is a part of the farm that is rarely experienced failed crops, so farmers are reluctant to enroll in the program. There are farmers who find it hard to pay a premium to take insurance.\(^3\)

As an example of the application of agricultural insurance in Klaten district, as follows: Head of Department of Agriculture and Food Security Klaten district WahyuPrasetyo, said “Now there is agricultural insurance facilities as stipulated in the Regulation of the Minister of Agriculture No. 40 of 2015. The agricultural insurance program that is managed by PT AsuransiJasa Indonesia (Jasindo), state-owned enterprises in the field of insurance. In the period 2015-2016, Klaten gets a quota of 21 thousand hectares of rice fields that can be insured. The total rice area in Klaten reached 33 thousand hectares. Klaten got a quota is greatest when compared to six other central areas of rice in Central Java. Therefore, the total quota for the fields that can be insured in Central Java, only an area of 162 thousand hectares. “Boyolali could be just about 10 thousand hectares,”

Only the fields of technical Air irrigation, semi -technical and simple that can be insured. While rained area of 3000 hectares in the district of Bayat, Kemalang, Jatinom, and Tulung excluding paddy insurable category. Indeed, the premium to be paid for each season of Rp 180 thousand per hectare. Because the government subsidizes 80 percent of the 2015 Revised State Budget, farmers simply pay a premium of Rp 36 thousand per hectare per cropping season. If the farmers who insure their fields crop failures, PT Jasindo will pay compensation amounting to Rp 6 million per hectare. Because the majority of farmers in Klaten only has about 2,500 square meters of land, the premium paid only Rp 9,000 per growing season and the compensation of Rp 1.5 million.\(^3\)

Results facilitating agricultural insurance policies nationally, showed in 2016, the Ministry of Agriculture targets to insure paddy farmers of 700,000 hectares (ha). Throughout 2015 and the realization of land are insured up to 200,000 ha. But until the beginning of September 2016, the actual area under rice cultivation that has been insured only about 375,000 ha, or only reached 53.57%. Target agricultural land included in the insurance program in 2017 reached 1 million hectares across Indonesia. Whereas 2016, the budget allocation of Rp 750 billion for agricultural insurance program.\(^3\)

From the example above, the implementation of agricultural insurance in Indonesia need to see important note into consideration whether or not applied after previously done a few things, as follows:

a. calculations of the cost of premiums,

b. Wide range of land and other auxiliary preparations.

c. the scope of agricultural commodities which may be covered by agricultural insurance
d. Government regulations required that regulate more clearly, so that in the implementation of agricultural insurance in the future will produce clarity and legal certainty.

e. Implementation of agricultural insurance needs to be disseminated by the government as a form of information disclosure, so that people, especially farmer knows that farmers in conducting economic activities protected by Laws Invitation. So that the community, especially farmer knows that farmers in conducting economic activities protected by Laws Invitations.

f. It requires Farms area based on the conditions and potential of natural resources, human resources, and man-made resources;\(^3\)

In addition to the above, in 2015, been a matter related to the issuance of a regulation about farm insurance from the Ministry of Agriculture in the form of Regulation of the Minister of Agriculture (Permentan) No. 40 / Permentan /SR.230 / 7/2015 signed by the Minister of Agriculture AmranSulaiman on July 13, 2015, which is a derivative of the regulation of Law No. 19 /
2013 on the Protection and Empowerment of Farmers, still a policy on paper but not yet implemented in the field. The proof, the majority of farmers in West Java claimed not to know due to lack of socialization. Moreover, the Financial Services Authority (FSA) as a regulator of financial institutions, including non-bank financial industry (IKNB), it is not certain when it will issue a more detailed regulation of insurance related to agriculture.

Study Pathways Implementation of Agricultural Insurance Nationally, noting Based on the preparations made by the Ministry of Agriculture, public hearings and trials agricultural insurance, there are several findings and inputs that would need to be discussed jointly by the Ministry of Agriculture and Ministry found some cause, that the end result is concluded, as follows:

1) Implementation of national agricultural insurance has been mandated in Law No. 19 of 2013. Therefore, all parties concerned, including the Ministry of Finance will need to prepare a comprehensive study on the implementation of the national agricultural insurance from the aspects of technical, financial, and legal. preparation for the implementation of agricultural insurance is generally divided into two, namely:
   a. preparation related substances / materials of agricultural insurance.
      Preparation of the substance/ material is more mainstream and should be done before the preparation of funding, including the roadmap program, features, stakeholders involved, monitoring and evaluation, insurance schemes, etc.
   b. Preparation of funding.
      Preparation of funding includes the preparation of funds before the program is running and during the program runs.

2) In the early stages of the implementation of agricultural insurance, the model could be used in trials by the Ministry of Agriculture used to carry out the mandate of Act No. 19 of 2013, on the grounds:
   a. Ministry of Agriculture has made preparations through a review in 2008 to support the implementation of the national agricultural insurance, but these results need to be improved together. Ministry of Agriculture also has been testing agricultural insurance. Currently the Ministry of Agriculture is preparing a regulation of the Minister of Agriculture (Permentan) related agricultural insurance.40

4 Conclusion
1. Facilities for Agricultural Insurance policy is a policy program to provide coverage against the risk of losses incurred by farmers caused by crop failures. This policy in facilitation by the Government and Local Government in accordance with the authority granted to each farmer participated Agricultural Insurance, including ease of registration to be a participant; ease of access to the insurance company; socialization program to Farmers Insurance and insurance companies; and / or the premium payment assistance.

2. The rule of law for the implementation of agricultural insurance has been guaranteed by the State through various legislations created to support the implementation of agricultural insurance facilitation program.

3. the scope of the commodities that may be covered by agricultural insurance, facilitated through the establishment type Agricultural Insurance which covers Insurance plants (crops, horticulture, and estates) and Insurance Livestock (Livestock ruminants, Livestock nonruminansia and monogastric / pseudoruminant), implemented by patterns of premium payments divided into pattern and the pattern of self-government premium support.
ENDNOTES

1 Bagir Manan, Pertumbuhan dan Perkembangan Konstitusi Suatu Negara, (Bandung: Mandar Maju, 1995), page 12.


3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid.


10 Ibid.


16 Sabiq Carebesth, Masa Depan Kedaulatan Pangan, http://binadesa.co


18 Ibid.

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