Indonesia: Proposed laws threaten to reinstate corporate control over agrodiversity

In 2012, the Constitutional Court of the Republic of Indonesia annulled key Articles of a 1992 Law on Plant Cultivation Systems. These Articles prohibit farmers from continuing the age-old practice of selection and breeding of plants - the very practice that has created the immense agrobiodiversity that exists today. (1) Now, proposed laws on Conservation and Biodiversity and on Oil Palm are threatening to reinstate the kind of corporate control over agriculture plant diversity that the judges of the Constitutional Court had considered unconstitutional in their 2012 ruling. Taken together, the two proposed laws go even further: They will limit community access to, use and breeding of plants that are protected by law or for which companies have registered a patent.

Between 1980 and 2000, the Government of Indonesia aggressively pushed through the kind of 'modernization' of agriculture that is symbolized by the use of chemical fertilizer, hybrid seeds, pesticides, tractors and other heavy machinery. As part of this 'modernization', the government issued Law No. 12 of 1992, on Plant Cultivation Systems. The law was passed without prior consultation with peasant farmers' associations or farming communities even though it significantly affected their way of life. The law prohibits farmers from breeding of plants used as agriculture crops or medicinal plants for which corporations have registered a patent. Yet, the selection of seeds and plant breeding by peasants has been an integral part of peasant farming systems as well as a cornerstone of civilization.

By the end of 2011, many farmers who continued the practice of breeding of food plants were convicted after being sued by corporations claiming to own patent rights to these plants. (2) The Constitutional Court Decision No. 99 of 2012 annulled those Articles of the 1992 law that granted the monopoly to plants and seeds used in agriculture to corporations. Peasants were allowed again without risk of persecution to select and breed the plants they use as they had always done.

In 2016, two proposed laws were introduced in Indonesia, one on Conservation and Biodiversity and a second one on Oil Palm. The Conservation and Biodiversity Bill reintroduces a corporate monopoly in plant breeding similar to the corporate rights that had been enshrined in the Articles on Law No. 12 of 1992 – the Articles that were annulled by the Constitutional Court in 2012. Moreover, the proposed Conservation and Biodiversity law would prohibit community access to, use or breeding of plant varieties of species that are either listed on a Conservation Annex or for which e.g. a pharmaceutical or oil palm company has registered a patent. Under *adat* (customary law), communities are allowed to use certain protected plant species that are used traditionally, e.g. as traditional medicines, if they have registered such species as genetic "resources" for traditional use with the government authorities.

The restrictions in the proposed law are like two sides of the same coin – whichever way you turn it, the law will disadvantage communities' *adat*. If the communities use the plants without government

permit, they will face the criminal consequences; if the communities request the permit, there is a big risk that their traditional intellectual rights regarding medicinal properties of the plants will be stolen by pharmaceutical corporations before communities' knowledge has been accepted as meeting the legal requirements of the proposed law. Corporations are hunting for this information about traditional medicinal use of plants which communities have to include in their application for the use permit. Communities might initially be awarded a use permit but the companies will then register a patent and traditional use and breeding of the plant would then be prohibited under the law because another (corporate) entity has already registered a patent for this plant. Either way, the proposed Conservation and Biodiversity law presents a huge threat to community use and breeding of plants the communities traditionally use, be it for food or medicines.

There is already a history of Indonesian peoples' knowledge about traditional herbal medicine having been grabbed by pharmaceutical companies. The information is then commercialized and patented by the industries without consent from the traditional users and knowledge holders. Traditional herbal medicines for various diseases have also been used for in-depth academic research. This research and the resulting commercialization, too, amount to intellectual property theft because the selection of specific herbs for specific medicines to treat specific diseases, the composition, and the practices used to prepare and apply these traditional medicines are the result of continuous research carried out by community member and passed on from generation to generation. This knowledge, however, is not credited and recognized as in-depth research because it doesn’t conform to the contemporary academic approach.

The purpose of the proposed law on Oil Palm is to define oil palm as a naturally occurring species in Indonesia. This, however, would obscure the fact that oil palm – a species native to West and Central Africa, where traditional oil palm varieties are cultivated and used for a wide variety of products and uses – has been introduced into Indonesia by the palm oil industry. (3) Once considered a naturally occurring species in Indonesia, the oil palm plantations companies can patent the plant, and combined with Article 15 of the proposed Conservation and Biodiversity law, enable them to restrict community use of oil palm to the use of fruit – which the company has an interest in buying. But community use of any other part of the plant could be prohibited – once oil palm has been declared a naturally occurring species in Indonesia to which the proposed Conservation and Biodiversity law would also apply. Declaring oil palm a naturally occurring species in Indonesia would thus amount to a second land grab for farmers growing oil palm on their land and for communities living around the corporate plantations because oil palm companies could limit community use of oil palm to only the fruit – the part of the plant the companies are interested in. Once these laws are passed, it will also be more difficult for farmers to reclaim their lands.

If the two proposed laws are considered together, it becomes clear that the intention of the government is not to resolve some urgent problem affecting local communities in Indonesia. Rather, the proposed laws serve to increase corporate control over agrobiodiversity and land of interest to corporations. These legal changes must be seen as part of a corporate strategy – well planned and organized – to expand corporate control, not only control over community land but also community use of 'biodiversity'. Proposing regulations such as the two proposed laws on Conservation and Biodiversity and on Oil Palm in Indonesia, must be seen as part of legitimizing the confiscation of people’s life sources. Passing these laws would also provide legal protection, if not impunity to the corporate crime of stealing traditional knowledge about plant use that communities have refined and passed from generation to generation: The Constitutional Court of Indonesia already has decided that such corporate monopoly over plant breeding and use is unconstitutional. And yet, the government is advancing the corporate agenda by proposing laws that aim to reinstate this very corporate monopoly over agrobiodiversity, seeds and genetic diversity of plant varieties that the Constitutional Court of

Indonesia already has declared unconstitutional.

The community or traditional wisdom expressed in *adat* and the immense diversity of plant varieties used by traditional communities and peasant farmers today is indication of the long adaptation process between nature, plant diversity and communities. This agrodiversity as well as the communities that produced it depend on free use and access to the land that is home to the plants used by communities. It is this very use and access to land and plants by communities that the laws on Conservation and Biodiversity and on Oil Palm are putting at risk.

Corporate crime cannot be understood only as criminal act of confiscating, stealing or taking away state assets. More than that, corporate control through intellectual property rights protection and laws that provide corporations with a monopoly over plants and seeds has confiscated communities' land as well as their knowledge over traditional use of these lands. Such crimes force processes of fundamental changes onto communities: from being the owner to being made the consumer, consumer of plants and seeds that have been turned into commodities covered by corporate patents. The proposed laws on Conservation and Biodiversity and on Oil Palm are part of this process of legalizing corporate theft of community knowledge and traditional use of 'biodiversity'.

Zenzi Suhadi

WALHI, Head of Departmen Research, Advocacy and Environmental Law

(1) Decision No. 99/PP-X/2012 of the Constitutional Court annulled Articles 5, 6, 9, 12, and 60 of the 1992 Law No. 12 on Plant Cultivation Systems.

(2) See also: Indonesian farmers prosecuted for breeding their own seeds. http://www.alt.no-patents-on-seeds.org/index.php?option=com_content&task=view&id=59&Itemid=42

(3) For an impression on the diversity of uses of traditional oil palm varieties in West and Central Africa, see for example 'Africa: another side of palm oil. A long history and vast biodiversity' by GRAIN https://www.grain.org/article/entries/5035-a-long-history-and-vast-biodiversity and the film 'West African women defend traditional palm oil' http://www.farmlandgrab.org/post/view/26141-video-west-african-women-defend-traditional-palm-oil