

Law No. 13/2010 Governing Horticulture in Indonesia

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INTRODUCTION

Indonesia has abundant natural resources and a range of biodiversity including horticulture in which they must be maintained, utilized, and preserved sustainably. As one of essential agricultural sub-sectors, horticulture has multifunctionalities, among other things in terms of: (1) carbohydrates, protein, fats, and fiber sources; (2) vitamins, minerals, enzymes, hormones, anti-oxidants, and various natural medicinal active ingredient sources which benefit human health and fitness; (3) environmental improvement and preservation functions; (4) important components in various ceremonial activities; and (5) part of aesthetic value improvements.

The multifunctionalities of horticultural plants and products potentially drive the economy and generate income, business and employment opportunities, as well as the upstream-downstream linkages with other sectors. Hence, it is necessary to organize the implementation system of horticulture development to which it is aimed at clarifying the authorities and obligations of government, business actors, communities, and other related stakeholders protected by the rule of law.

Objective

The general objective of the Law No. 13/2010 is to develop horticulture sub-sector in Indonesia. The specific objective of this law is to organize this sub-sector comprehensively to achieve its development in Indonesia.

The substance and provision of the Law

Substantially, the Law No. 13/2010 consists of 18 chapters and 133 articles. They are: (1) Chapter I (General Provision, 1 article); (2) Chapter II (Principles, Objectives, and Scopes of Regulation, 3 articles); (3) Chapter III (Planning, 6 articles); (4) Chapter IV (Resource Utilizations and Developments, 29 articles); (5) Chapter V (Horticulture Developments, 38 articles); (6) Chapter VI (Distributions, Trades, Marketing, and Consumptions, 18 articles); (7) Chapter VII (Financing, Guarantees, and Investments, 6 articles); (8) Chapter VIII (Information Systems, 2 articles); (9) Chapter IX (Research and Development, 8 articles); (10) Chapter X (Empowerments, 2 articles); (11) Chapter XI (Institutional Aspects, 3 articles); (12) Chapter XII (Supervisions, 2 articles); (13) Chapter XIII (Public Participation, 3 articles); (14) Chapter XIV (Administrative Sanction, 1 articles); (15) Chapter XV (Investigation, 1 articles); (16) Chapter XVI (Penalty Provisions, 6 articles); (17) Chapter XVII (Transitional Provisions, 2 articles); and (18) Chapter XVIII (Closing Provisions, 2 articles).

General provision

In this law, horticulture is defined as all substances related to fruits, vegetables, vegetable ingredients, and floriculture including fungi, algae, and aquatic plants functioned as vegetables, vegetable ingredients, and/or aesthetic materials.

Principles, objectives, and scopes of regulation

The implementation of this law is based on certain principles. They are: (1) sovereignty; (2) self-reliance; (3) usefulness; (4) integration; (5) togetherness (collective); (7) sustainability; (8) efficiency in justice; (9) environmental preservation; and (10) local wisdom.

This law has some objectives. Specifically, it is aimed at: (1) utilizing and managing the horticultural resources optimally, accountably, and sustainably; (2) fulfilling the needs, desires, tastes, aesthetics, and cultures of horticultural products and services; (3) increasing the production, productivity, quality, value added, competitiveness, and market share of horticultural products; (4) enhancing the consumption of horticultural products and the utilization of services; (5) providing employment and business opportunities; (6) setting up the protection to horticultural farmers, businesses, and consumers nationally; (7) expanding the sources of foreign exchange; and (8) improving the health, welfare, and prosperity of people.

The implementation scopes of this law are: (1) planning; (2) utilization and development of resources; (3) development of horticulture; (4) distribution, trade, marketing, and consumption; (5) financing, guarantees, and investments; (6) information systems; (7) research and development; (8) empowerment; (9) institutional aspects; (10) supervision; and (11) public participation.

Planning

The horticultural planning is intended to develop horticulture sub-sector in a sustainable manner. It must consider the follow: (1) population growth and consumption needs; (2) natural resources and environmental carrying capacities; (3) national and local development plans; (4) spatial plans; (5) economic and productivity growths; (6) horticultural infrastructure requirements; (7) technical, economic, and institutional needs; and (8) science and technology developments. Moreover, the development of horticulture is the unified relationship among aspects of: (1) human resources; (2) natural resources; (3) artificial resources; (4) production and consumption goals; (5) financing, guarantees, and investments; and (7) science and technology research and developments.

Resource utilization and development

General

The horticultural resources consist of: (1) human resources (businessmen, extensionists, and other related institutions); (2) natural resources (land, climate, water resources, and genetic resources); and (3) artificial resources (horticultural infrastructures and facilities). The natural and artificial resources are utilized efficiently, environmentally friendly, and sustainably. The utilization of artificial resources is mainly prioritized to domestic production components.

Human resources

Government is obliged to increase the expertise and skills of human resources to meet the horticultural competency standards. Those are carried out through education and training stages. Apart from government, the accredited business institutions would be able to conduct education and training. The competency standard can be achieved through competency certification issued by the accredited institution in accordance with the provisions of legislation.

The business institutions shall give priority to the national human resources. On the other hand, the international human resources can be employed in the event of unavailability of national human resources which have specific expertise and capabilities in the field of horticulture. The

international human resources are employed based on the provisions of legislation after attaining recommendations from businessmen associations. The qualifications of certain expertise and capabilities in horticulture would be further regulated under the Ministry Regulation.

Natural resource (land)

The cultivated horticultural area consists of open and covered lands using soil and/or other growing plant media. Those must be functionally protected, preserved, recovered, and enhanced in line with environmental preservations according to the provisions of legislation. Government and other related institutions can develop the utilization of planting media other than soil for horticultural cultivations.

Natural resource (climate)

The government is obliged to monitor, evaluate, forecast, document, and map the climate patterns for horticultural development. The results of monitoring, evaluation, forecasting, documenting, mapping the climate change are openly disseminated to the public. Those can be referred for horticultural planning and development. Moreover, the government provides assistance to micro and small businessmen who experienced crop failure due to disasters caused by climate change. Those are carried out based on the status of disaster areas determined by government in line with the provisions of the legislation.

Natural resource (water)

Water for horticulture must meet the quality standards in accordance with the provisions of legislation. The water for horticulture is mutually utilized in line with other necessities efficiently for which it prioritizes the daily basic needs of people based on the provisions of legislation. The government is responsible in terms of: (1) providing the assurance for the availability of water for horticulture; and (2) determining the allocation plan and providing the rights of waters uses for horticulture.

Natural resource (genetic resources)

The horticultural genetic resources shall be protected, conserved, enriched, utilized, and developed in line with the provisions of legislation. The government carries out inventory, registration, documentation, and maintenance of horticultural genetic resources in collaboration with the public. The horticultural genetic resources data are opened in which it can be utilized and developed by the public, excluding the confidential data under the provisions of legislation.

The horticultural genetic resources are utilized eternally and sustainably. The Minister sets the endangered horticultural genetic resources by considering its nature, number, and distribution. The utilization of endangered horticultural genetic resources is carried out with the permission of the Minister.

The government encourages the enrichment of the national horticultural genetic resources through a variety of methods and introductions. It provides the simplicity of licensing and using the government-owned research facilities for enriching the national horticultural genetic resources. The entry and exit of horticultural genetic resources are implemented based on the provisions of legislation. It is prohibited to release the varieties of the endangered horticultural genetic resources and/or become a detriment to the national interests. The genetic resources having certain geographical specifications are protected by the geographical indications related to its sustainable uses.

Artificial resource (infrastructures)

The horticultural infrastructures are constructed in integrated and planned manner. It comprises of the follow: (1) irrigation networks; (2) waste processing; (3) connecting road from cultivated area to postharvest location up to market place; (3) port and transit area; (4) electricity networks up to postharvest location; (5) communication networks up to cultivation area; (6) technical required warehouse; (7) technical required house or shade plants; (8) cold storage; (9) technical required postharvest handling; and (10) market.

Artificial resource (facilities)

The facilities of horticulture include: (1) improved variety seeds; (2) environmentally friendly fertilizers, growth regulator substances, and pest and disease controls; and (3) tools and machineries supporting horticulture. Those are implemented and developed in line with climate and soil conditions as well as environmentally friendly aspects.

The horticulture is implemented with emphasis on the utilization of domestic horticultural facilities. The foreign horticultural facilities can be utilized in the case of horticulture facilities are inadequate or unavailable. The foreign horticultural facilities should be: (1) efficient; (2) environmentally friendly; and (3) preferably containing domestic components. The government provides incentives to produce domestic horticultural facilities in the form of simplicity licensing, facilitating, financial accesses, and/or tax relief. The circulation of horticultural facilities should meet the registered quality standards.

The circulation horticultural facilities containing genetically modified organisms must follow the provisions of legislation on biosafety. The Minister set the minimum technology requirements for undeveloped quality standards excluding the domestic production of horticultural facility which is limited circulate in one group.

The producers of horticultural facilities who have the Indonesian National Standard (INS) certification must stick the label of INS in the products before circulating. Conversely, for those who have not obtained the INS certification, they must stick the label on the circulation of horticultural facilities. The label must be in Indonesia language and at least covers: (1) the name of products; (2) name and address of producers; and (3) characteristic of products.

Producers, distributors, and retailers – individually or jointly – must be liable to the suitability of product distributed to the specified requirements. Producers and /or distributors must conduct socialization (campaign) about the methods of utilization, safety, repair, and maintenance, the horticultural tool and machineries. Any person who performs procurement, circulation, and utilization of horticultural facilities shall take into account the safety and social culture of the community, cultivation systems, natural resources, and/or environmental functions.

Horticultural development

General

Horticulture is located in specific areas, intercropping with other plants, and/or integrating with other areas of which it must pay attention to spatial plans outside the conservation areas. The horticultural development is required to ensure natural resource conservation, environmental function, and public safety aligned with the interest of other activities.

The government sets a superior product which will be developed in the area of horticulture. Thus, the government is obliged to ensure the availabilities of: (1) infrastructure and facilities needed; (2) domestic and international distribution and marketing; (3) financing; and (4) research and development of technology.

Horticultural region

The government plans and establishes the horticulture areas in line with the aspects of: (1) horticultural resource; (2) the superior potential to be developed; (3) the potential market; (4) readiness and community support; and (5) the specificity of the region.

The government is obliged to have the availability of: (1) infrastructure needed; (2) domestic and international distribution and marketing; (3) financing; (4) research and development of technology; and (5) data and information. In addition, the government is also obliged in terms of: (1) facilitating the horticultural services responsible; (2) conducting the training and development of horticultural regions; (3) securing the safety of horticultural regions from physical, biological, chemical and other disruptions in accordance with the provisions of legislation; and (4) ensuring the development of horticulture. The implementation of horticultural development involves community participation.

Horticultural business

The horticultural business comprises of the follow: (1) seed; (2) cultivation; (3) harvest and post-harvest; (4) processing; (5) distribution, trade, and marketing; (6) research; and (7) agro tourism. Those are divided into micro, small, medium, and large businesses required to be registered. The micro, small, medium businesses are merely handled by Indonesian citizens or business entities which entirely belong to Indonesian citizens. The large businesses can be operated by domestic industries either self-managed or joint venture with foreign investment under legal entity according to the Indonesia Law and domiciled in Indonesia.

The horticultural business actors is required to fulfill the process or the minimum technical standard requirements (quality and safety of horticultural food products) facilitated by government. It is prioritized through providing facilities and incentives to: (1) micro and small horticultural units; (2) environmentally friendly horticultural units; (3) horticultural units which prioritize the development of primary national and local commodities; (4) organic farming; and/or (5) horticultural units engaged in research and development.

The horticultural business can be implemented in partnership scheme involving micro, small, medium, and large businesses. The large business is obliged to carry out this scheme with micro, small, and medium businesses in the forms of: (1) nucleus-plasma; (2) sub-contract; (3) franchise; (4) general trading; (5) distribution and agency; and (6) other partnership types.

Seed

The seed business covers breeding, production, certification, distribution, and exit/entry of seed in the territory of the Republic of Indonesia. Seed breeding can be carried out in the form of seed or the introduction of parent material seed which does not exist in Indonesia. Seed production can only be performed by businessmen who have a certificate of competency or certified business entities which are required to implement seed quality assurance certification. The Individual or group who produce seed for self purposes and/or limited used in one (1) group are excluded.

The results of breeding and the introduction of new variety must be registered to the government. The variety using the genetically modified technology must be registered and distributed according to the biosafety requirements based on the provisions of legislation. Prior to circulation, the accuracy of seed is tested by an accredited agency. Certain plants are exempted from this requirement test.

The distribution of certified seeds is under the responsibility of the owners or their authorized bodies. Those seeds must fulfill the accuracy of seed quality standard requirements. Moreover, the protection of horticultural varieties is implemented based on the provisions of legislation.

The government supervises the procurement, distribution, and use of seeds conducted by seed supervisors.

The seed exits and entries must be obtained with permission. The entry of seeds for commercial purposes must fulfill the specified quality requirements. It is allowed if seeds cannot be produced domestically or domestic demand has not been accomplished. The government facilitates the seed development-based on national genetic resources.

Cultivation

The classification of horticultural cultivation is governed by the Minister Regulation. It includes: (1) the micro unit of horticultural cultivation; (2) the small-scale unit of horticultural cultivation; (3) the medium unit of horticultural cultivation; and (4) the large-scale unit of horticultural cultivation.

The horticultural cultivation is implemented by taking into account some concerns. They are: (1) market demands; (2) good cultivations; (3) efficiency and competitiveness; (4) environmental functions; and (5) local wisdoms.

The horticultural cultivators can determine their own cultivated type of plants. Those who are categorized as micro and small-scale cultivators would be recorded in terms of type and number of plants and/or size of lands which are being cultivated or would be cultivated by authorized institutions. This is aimed at determining the production forecasts. The cultivation of horticulture which harms public health can be carried out for health services and/or science interests according to the provisions of legislation.

Harvest and postharvest

The horticultural harvest and postharvest are implemented to achieve maximum yields, fulfilling the quality standards, reducing the loss and/or damage as well as increasing value-added on handling, processing, and transportation of horticultural products. It is organized through good harvest and postharvest practices. The postharvest, in particular, can only be carried out in postharvest warehouses or in other places complying with sanitary requirements.

Processing

The processing of horticultural products must fulfill the quality standard based on the provisions of legislation. Government is obliged to provide guidance to local processors who have not fulfilled the quality standard and food biosafety yet. The large-scale processors must absorb local horticultural products.

Distribution, trade, and marketing

The distribution of horticultural products is from cultivation units to consumers. The distributors must employ logistic system to keep maintaining the freshness, quality, biosafety, and appropriateness of the amount and time of supplies.

At least the distribution of horticultural products is supported by transportation and storage facilities as well as transportation system and information of which the distributors must fulfill the management standard of facilities and its information systems. The government is obliged to guide distributors in order to achieve the standard requirements.

The horticultural trade set the processes of selling and buying transactions among traders and between traders and consumers. In this case, the modern market must perform domestic horticultural product trade. In addition, the traders must classify the products based on quality and price standards transparently.

The marketing of horticultural products is implemented through market promotions and disseminations of both national and international levels. It must prioritize the marketing of

domestic horticultural products. The government has obliged to provide guidance for every horticultural marketing actor with the aim of implementing good marketing procedures.

Research

The horticultural research can be carried out in relation to the aspects of seed, cultivation, harvest and postharvest, processing, distribution, trade, marketing, and agro-tourism in order to obtain the maximum benefits for horticultural development. Government, business institutions, and/or community must provide royalties and or/or awards to researchers, owners, and/or other parties with regard to the utilization of research results.

Agro-tourism

The area and/or unit of horticultural cultivation can be used and developed for agro-tourism. Government and/or other related institutions must involve local communities and concern with environmental conservation and local wisdom. The government determines the norms, guidance, and criteria of agro-tourism. The area and unit of agro-tourism of horticultural cultivations are decided by government.

Distribution, trade, marketing, and consumption

The government develops the distribution, trade, marketing, and consumption systems of horticultural products ensuring the protection of domestic producers, related actors, and consumers. The facilities of horticultural product distribution include: (1) providing the convenient licensing for storage and transportation; (2) supporting the systems of product, price, market, and distribution of production sites; (3) setting the appropriate place, building, and/or storage at seaports, airports, and terminals; (4) controlling the various tax and duties which are not declared in the provisions of legislation; and (5) supporting the availability of transportation from central producing areas to consumers.

The horticultural products can be directly traded to consumers through auction markets and exhibitions, and/or indirectly organized through commodity exchanges and contract farming. The exhibition, in particular, must fulfill the requirements of biosafety, sanitation, and public order.

The exportation of horticultural products is conducted by considering the national consumption needs and must fulfill the quality standard and/or food safety requirements. The importation of horticultural products, on the other hand, must be concerned with the aspects of: (1) food safety; (2) domestic availability; (3) production and consumption targets; (4) packaging and labeling requirements; (5) quality standards; and (6) the provision of security and protection to human, animal, plant, and environmental health. Those are implemented through determined entrance recommended by responsible minister in trade. Any person is prohibited to circulate certain imported fresh horticultural products inappropriate to the quality standard and/or food security.

The government is obliged to conduct and facilitate the activity of horticultural products marketing domestically and globally. The minister determines the type of plants and/or horticultural products in relation to their exit and entry permits. Government and other related institutions keep maintaining the balance of supply and demand of horticultural products at any time up to the local level through: (1) providing the accuracy of production and consumption information; or (2) controlling export and import. The government is obliged to develop the effective and efficient marketing system through organizing: (1) central market in horticultural regions; (2) horticultural market in strategic location periodically; (3) auction markets; (4) commodity exchange; and (5) contract farming. The marketing of horticulture must prioritize

local products through providing adequate facilities. Government is obliged to facilitate the marketing of local horticultural products at traditional markets. In addition, government and other related institutions perform continuous promotion inside and outside the country to increase: (1) public awareness on horticultural products and services; (2) consumption and utilization of local horticultural products; (3) the interest of investors; (4) market shares; (5) foreign exchange earnings; and (6) agro-tourism.

In terms of consumption, the government plays a role to increase the public consumption of horticultural products through: (1) determining and campaigning fruits and vegetables as staple foods; (2) determining the target per capita consumption of fruits and vegetables in accordance with health standards; and (3) introducing horticultural aspects into national and local education curricula.

Financing, assurance, and investment

Financing

The horticultural financing implemented by government is derived from state and local budgets. Apart from that, the source of horticultural financing can also be provided by other related parties such as businessmen, financing institutions, public, and other funds. Government is able to assist horticultural development financing undertaken by businesses supporting the government programs.

The government sets the proportion of agricultural subsidized portfolio credits for horticulture. It is implemented through allocating the development budgets for interest subsidy and/or credit as well as determining the allocation quota of development budget. The government encourages the establishment of financial institutions to support horticulture. Those are prioritized to micro and small-scale horticultural units.

Assurance

The government encourages the financial institutions of government and private to provide loans to horticultural actors. In addition, the government facilitates the micro and small-scale horticultural units to acquire loans without collateral from financial institution based on feasibility assessments in the forms of: (1) providing collateral for loans; and/or (2) technical guidance. The horticultural actors who store their products in warehouses can obtain and utilize the warehouse receipt in accordance with the provisions of legislation.

Investment

The government encourages investment by prioritizing the domestic investors. Foreign investments can only be performed in large-scale horticultural units. The extent of foreign investments is 30 percent maximum. Foreign investors are obliged to open the account in domestic bank equal to their capital investment. They are prohibited to acquire bank credit from financial institutions of government. The horticultural foreign investors are required to provide apprenticeship opportunities and carried out technology transfers to domestic horticultural actors.

Information system

The horticultural information system comprises of collecting, processing, analyzing, storing, presenting, and disseminating the integrated horticultural data and information. At least, the horticultural data and information would be used to the activities of: (1) planning; (2) monitoring and evaluation; (3) supply and demand of horticultural product managements; and (4) investment considerations. These are managed by the institutional center which at least

provides data and information on: (1) plant varieties; (2) horticultural cultivation areas; (3) market demands; (4) market opportunities and challenges; (5) production estimation; (6) price estimations; (7) supply estimations; (8) planting and harvesting season estimation; (9) climate predictions; (10) infrastructure provisions; and (11) facility provisions. Data and information belong to individual or institutional horticultural entities which are ongoing processes of licensing and/or research are confidentially protected.

Research and development

The government, research institutions, educational institutions, and/or businessmen are compelled to continually conduct horticultural research and development either individually or in co-operation with no harm to human health and damaging biodiversity as well as environmental preservations. The government provides the protection of intellectual property rights of horticulture based the provisions of legislation. The government shall provide incentives for the outstanding horticultural researchers in terms of: (1) producing superior varieties; (2) generating new value-added products; and (3) discovering the appropriate technologies benefiting the public. Apart from that the incentive would also provide to businessmen, research institutions, and/or domestic educational institutions conducting horticultural research(s) through national and local research programs.

Empowerment

The horticultural empowerment includes several aspects. They are: (1) strengthening the institutional aspects and improving human resources; (2) providing technical assistance; (3) facilitation of access to financing or capital institutions; (4) sharing data and information; (5) facilitating the promotion and marketing; (6) supporting the infrastructures; (7) providing the competency certifications; and (8) developing the partnership.

Institutional aspect

The government facilitates the establishment of institutional horticulture development as required, namely independents, professional, and non-profit institutions as government partners. The institutions consist of: (1) public figure; (2) businessmen and its associations; (3) experts and academicians; and (4) horticultural consumers. The tasks of these institutions include: (1) accommodating and conveying the aspirations of businessmen and public; (2) providing suggestions to government related to horticultural development; (3) sharing data and information as well as inputs to government and/or businessmen; and (4) mediating the businessmen associations.

Supervision

The supervisions are carried out to ensure the quality of horticultural product facilities suitable to the appropriate quality standard and coping with a variety of detrimental negative impacts to society. It covers central to local governments in accordance with its authorities by involving public participation.

Public participation

The implementation of horticulture involves public participation in the forms of proposition, response, objection, suggestion, and/or assistance. It includes: (1) plan preparation; (2) area development; (3) research; (4) financing; (5) supervision; (6) empowerment; (7) association establishment; (8) information development; (9) institutional development; and/or (10) drafting the guideline.

Administrative sanction

Any person who violates the certain substantive provisions of this Law would be subjected to administrative sanctions. The sanctions are in the forms of: (1) written warning; (2) administrative fines; (3) suspension of activities; (4) withdrawal of circulation products; (5) revocation of license; and/or (6) closing the activities.

Investigation

Apart from the state police officials, the certain civil servant officials who have a scope of duties and responsibilities in the field of horticulture can be given special authority to investigate the horticultural criminal acts as referred to the Law No. 8/1981.

Penalty provision

Any person who releases horticultural varieties from the extinctive genetic resources and/or it may harm the national interests shall be punished by imprisonment of two (2) years or a maximum fine of Rp 2,000,000,000 (two billion rupiahs).

Transitional provision

At the time of the implementation of this Law, all legislations that regulate horticulture shall remain valid as long as those have not been changed or not in conflict with this Law. Within a period of four-year after the implementation of this Law, foreign investors who have invested and obtained licenses from government must comply with the provisions of: (1) performing activities in large-scale horticultural units; (2) investing on a maximum of 30% of foreign investment requirement; (3) opening the account in domestic bank equal to capital investment; and (4) obeying the prohibition of bank credit from financial institutions of government.

Closing provision

The government regulations to support the implementation of the Law No. 13/2010 on horticulture must be set up with a maximum of 24-month from the promulgation of this Law. This Law is effectively implemented according to the date of its promulgation in the State Gazette of the Republic of Indonesia (24 December 2010).

CONCLUSION

One substantial contents of the Law No. 13/2010 – the extent of foreign investment is 30% maximum – is claimed by foreign investor representative (litigant). It is perceived that the capital restriction, particularly horticultural seeds, will disrupt the availability of improved seed since Indonesia still relies on technology from foreign investors. Therefore, this regulation should be constitutionally transformed. Nevertheless, the government views that this regulation is specifically able to encourage the creativity of domestic horticultural seed producers to which they do not depend upon imported horticultural seeds.

The different perceptions on this regulation have been legally sued in the Indonesian Constitutional Court. It has temporarily decided that it is not related to the constitutional issue but associated with the application of norms. Conclusively, this Law still remains valid while the regulation on the extent of foreign investments will be tackled in the next agenda.

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