Justice is important (urgent) in the Management, Utilization and Conservation of Local Plant Varieties and as an effort to realize the protection of the rights of local communities. Justice in question must be a basic value that must be realized through law, in this case the Plant Variety Protection Law, article 7, and Regional Regulations. Substantially, both laws and regional regulations must accommodate all stakeholders’ interests and needs in the management, utilization and preservation of local plant varieties.

Keywords: Justice, Local Plant Varieties

INTRODUCTION

Justice is a fundamental issue in law. Naturalists say that the main goal of law is justice. However, justice is abstract, broad and complex in nature, so the objectives of the law are often uncertain. Therefore, the legal objectives should be more realistic. The rather realistic legal objectives are legal certainty and legal benefits. However, even though positivists emphasize legal certainty and functionalists prioritize the benefits of law, we can also say that summun ius, summa injuria, summa lex, summa crux (harsh laws can hurt, unless justice can help them). So, although justice is not the only goal of law, the most substantive goal of law is justice.

The issue of justice is in line with the evolution of legal philosophy. The evolution of legal philosophy, as part of the evolution of philosophy as a whole, revolves around certain issues that arise repeatedly, namely justice, welfare and truth. As seen in the basic idea of Utilitarianism is very simple: the right thing to do is that which produces the greatest good. Since the fact is that this kind of idea is the way many people approach ethical decisions, it is easy to see why this theory has so much appeal. A brief definition of the Utilitarian principle was put forward by John Stuart Mill in the following statement:

“Utility” or the “principle of greatest happiness” states that a particular action is right if it tends to increase happiness; it is wrong if it tends to result in less happiness. What is meant by happiness is pleasure and the absence of pain.....

In this brief statement lie two crucial assumptions that underlie all discussions regarding justice from a utilitarian perspective. First, the goal of life is happiness. Both Mill and his predecessor Jeremi Bentham argued that happiness was the goal of life. Second, the “rightness” of an action is determined by its contribution to happiness. This rule makes Utilitarianism a teleology; purpose (telos) determines what is right. “What is right” is determined by calculating

1 Dominikus Rato, Legal Philosophy: Searching, Discovering, and Understanding the Law, (Laks Bang Justitia 2011) 54
the amount of goodness produced. “The good precedes the “right,” and the “right” depends on the “good.” As Mill says, an action is right if its proportions “tend” to increase happiness. In a society, the desire to live side by side with other societies has a life goal, namely the desire to achieve happiness. By gaining happiness, the community can achieve the goal of being involved in the management, utilization and preservation of local plant varieties so that the rights of local communities receive adequate legal guarantees and protection based on the principles of justice and freedom for the continued existence and preservation of local plant varieties for future generations.

Because the basic idea of Utilitarianism is that an action is judged right or wrong depending on whether it increases "happiness" or goodness, this idea determines the implementation of this school of thought, when discussing the concept of justice. David Hume argued that justice is very useful for society, but the question that then arises is whether public benefit is the only origin of justice. Hume attempts to show that this is so by proving that the rules of justice do not arise under conditions where they are useful. Likewise, Mill’s opinion is that there is no theory of justice that can be separated from the demands of expediency. Justice is the term given to rules that protect claims that are considered essential to the welfare of society, claims to keep promises, be treated equally, and so on.

For Rawls, utilitarianism own lack because: first, identify justice social with individual justice; and second, patterned theological. According to Rawls, utilitarianism understand justice as “happiness biggest for all or at least for as much maybe people” (the greatest happiness of the greatest numbers). In terms of this, says Rawls, is utilitarianism No care, except No straight away, how total happiness That distributed among individual, as well neither did he care How one person distributes happiness for everyone period different times. With words another, utilitarianism fail formulate justice Because has justify sacrifice forced individual For interest public. Moreover, utilitarianism also fails as moral theory because patterned teleological, namely: more prioritize benefit or utility (the good) rather than obligation. In fact, said Rawls, concept justice social No There is related with draft kind in the form of pity, mercy sorry and so on. Because justice social more related with problem structure base public in set burdens and obligations individual in something Work The same social. Within the framework here it is Actually theory Rawlsian justice can categorized as part from view of “moral deontology” as against of “moral teleology”.

Thoughts of philosophers the at a time Want to confirms that law That must always justice oriented. And the characteristics of justice are equality of opportunity, equality of freedom, freedom of belief, tolerance, rule of law and balance of economic and political distribution. Justice must be a value basic must realized through law, and its manifestation That No only in formulations substance and structure law only, but must also be depicted in a way real in practice exploitation varieties plant local plants in Papua Province which resulted in the extinction of some local plant varieties and even the rights of local communities were neglected.

In this way, the principles of justice and welfare in the context of managing, preserving and utilizing local plant varieties by local communities and non-local communities are essential things that must be fought for substantially in statutory regulations. This is to improve community welfare. However, legislation regarding local plant varieties is not yet adequate in its entirety, Minister of Agriculture Regulation Number 01/Pert/SR.120/2/2006 concerning Naming Requirements and Procedures for Registration of Plant Varieties and Government Regulation Number 13 of 2004 only regulates naming and registration. and the use of original varieties to produce essential derivative varieties, thus the existence of this Government

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3 Ibid, 15
4 Ibid, 18
5 Aktieva Tri Tjitrawati, Material on Justice Issues, Faculty of Law, Airlangga University, Surabaya, 2014.
Regulation has not been able to resolve legal issues related to local plant varieties and has not been able to resolve conflicts of interest, and has not been able to bridge the inequality that occurs due to differences in interests that occur between entrepreneurs, local communities and also Regional Government which ultimately leads to justice and legal certainty.

Starting from this kind of thinking, it is very relevant if the dimension of justice becomes a special topic in discussing the philosophical basis for the importance of Justice in the Management, Utilization and Preservation of Local Plant Varieties.

RESEARCH METHODS

The Normative Legal approach type, in this research examines the conceptual basis of legal principles related to Local Plant Varieties in legislation, conventions at both national and international levels.

DISCUSSION

In connection with the article entitled "Justice in the Management, Utilization and Preservation of Local Plant Varieties ", it cannot be separated from a series of concepts that need to be clarified, namely the existence of principles, justice, protection, and the concept of Local Plant Varieties.

1. Understanding Principles or Principles

   Related to the meaning of "principle" or "principle" which in Dutch is called "beginsel" 6 or "principle" 7 (English) or in Latin it is called "principium" 8 ("primus" means first and "capere" means to take or catch). Lexically, it means something that is the basis for thinking or acting or truth that is the basic basis for thinking, acting and so on. In this way, a rule or norm essentially has a philosophical basis and a basic principle or principle as its spirit.

2. Experts define justice as follows:

   According to Plato, justice only exists in laws and regulations made by experts who specifically think about it 9. In his book The Laws, Plato not only presents his thoughts about law specifically, which are found in his other book, The Republic.

   Justice and law have a very strong bond. Justice is obtained through law enforcement. According to Plato, law is positive law made by an omniscient legislator, namely the state 10. For him the state is the only source of law. By saying that justice only exists in laws made by the state, it can be classified as a legal nomist and indeed it was from Plato that legal monism was born. Monism comes from the word "mono" which means single or only. Thus, Plato's legal philosophy reminds us that the philosophy of the modern totalitarian state places all aspects of individual life under the supervision and administration of the state. According to Plato, law is a golden stream, the incarnation of "the right reasoning" (right way of thinking) 11. However, Plato did not explain the content and source of these thoughts. In this regard, Plato made the criterion of justice "goodness" in the sense of harmony and balance from within, which cannot be known or explained with "rational" arguments.

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7 Ibid
8 Ibid
9 Dominikus Rato, Legal Philosophy: Searching, Discovering, and Understanding Law, (n 1) 58
10 Ibid
11 Ibid
In contrast to Plato, Aristotle was the first philosopher to formulate the meaning of justice. He said that justice is giving everyone what is their right, *fiat jutitia bereat mundus*. Furthermore, Aristotle divided justice into two forms, namely: *First*, Distributive justice is justice determined by the legislator, the distribution of which includes services, rights and goodness for members of society according to the principle of proportional equality. *Second*, corrective justice, namely justice that guarantees, monitors and maintains this distribution against illegal attacks. The corrective function of justice is in principle regulated by the judge and stabilizes the *status quo* by returning the property of the victim concerned or by compensating for lost property. In other words, distributive justice is justice based on the amount of services provided, while corrective justice is justice based on equal rights regardless of the amount of services provided.

Roscoe Pound is of the opinion that judicial justice is perceived that decisions (both those that are regulatory or regular and those that are stipulation or *beschikking*) are based on authority or norms or guidelines that are formed and applied in accordance with legal techniques. Behind this, 'justice with administrative characteristics' is expressed, justice is carried out according to intuition in the form of decisions with a scope of discretion (freedom to make judgments and freedom to make policies) which is tied to morals and law.

Meanwhile, according to Hans Kelsen, justice in the sense of legality is a quality not related to the content of positive legal norms, but its application. In this sense, justice is the application of law in accordance with what is stipulated in a legal system, whether in capitalist, communist, democratic or autocratic societies. Thus, justice means maintaining the legal order consciously in its application. This is justice based on law.

John Rawls, as an attempt to synthesize liberalism and socialism. So, conceptually, Rawls explains justice as *fairness*, which contains the principles, "that free and rational people who wish to develop their interests should obtain an equal position when they start and that is a fundamental condition for them to enter the meeting they want." In connection with the principles of justice, there are 2 (two) principles for achieving justice according to John Rawls, namely: 1) everyone has the same rights to the broadest basic freedoms, as wide as the same freedoms for everyone, the meaning of freedom includes: freedom obtain the benefits of rights from society and personal benefits as long as they do not harm other parties, freedom in political life (the right to express one's opinion), the right to vote and be elected, freedom of the press, freedom of belief and religion, maintaining personal property rights. 2) social and economic inequality must be regulated in such a way that (a) it can be expected to benefit everyone, and (b) all positions and positions are open to everyone.

As an alternative, to both utilitarianism and intuitionism, Rawls thinks that the theory of justice he formulated is superior to both because it starts from a justification which he calls "reflective equilibrium", namely the intersection between our intuitive beliefs and constructions. theory that we build. In other words, at the point of "reflective equilibrium", a balance is reached: intuitive beliefs get theoretical justification, the theoretical framework gets the basis for intuitive beliefs. With this foundation, Rawls then claims that his theory of justice is able to correct and surpass other moral theories, because: on the one hand, it

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14 Ibid 810
16 Ibid
18 Ibid
can fulfill an intuitive belief in the form of a sense of justice; and on the other hand, it is rational because it is based on a theoretical argument in the form of a social contract argument in a formulation which he calls the "original position".

1. Two Principles of Justice

Rawls's theory of justice is developed of two fundamental ideas: (1) society as system Work The same sustainable social from One generation to generation next; (2) humans as moral being. How form Work the same as fair? What the conditions? According to Rawls, a conception justice social must seen as agency First, standard from which aspect distributive structure base public assessed. Conception like That must be set method put rights and obligations within institutions base society, as well The method set proper distribution pleasure and burden from Work The same social. View This Rawls put it in conception general intuitive justice follows: All primary favors, freedom and opportunity, income and wealth, and the basics honor self must shared in a way equal (equivalent), division not partially equal or all over enjoyment the only if profitable all party.

Draft general above displays elements principal justice Rawls social. That (1) principle principal justice social is equality or similarity; namely: (2) similarity in distribution; above (3) primary blessings (primary goods); however (4) inequalities can be tolerated so far profitable all party. In conception general this, it seems that theory Rawls justice includes two side of the problem justice: equality and inequality. In one side, justice social is application principle similarity in problem distribution primary blessings. Meanwhile in another side, admittedly, inequality can tolerated so far matter That profitable everyone, especially disadvantaged groups.

In conception special this, Rawls packs system social Can differentiated in two aspects: First, a related problem with similarity independence base citizens (equal basic liberties), namely independence politics (eg right vote and rights enter positions public) and freedom as well as existing rights normal known as rights basic human (freedom thinking, opinion and association, independence conscience, free from detention and arrest arbitrary in accordance with draft the rule of law). In essence, principles This confirm that inhabitant in public fair social own fundamental rights are the same. And secondly, related problems with inequality economy and opportunity social. principle second try confirm that temporary distribution welfare and income No must the same, however must be profitable all, medium position decisive powers and positions must be open For all.

3. Scope of Local Plant Varieties

Knowledge and use of natural plant resources by traditional communities in Indonesia has been passed down from generation to generation. In general, it is carried out in the traditional sphere of community life. Traditional communities in Indonesia are dependent on natural plant resources, this is reflected in various forms of culture and strong customs. The dependence of traditional communities can be seen from various efforts to maintain their survival by looking for plants as a source of food, clothing, building materials, medicines, tools and so on.

The knowledge system possessed by the community regarding natural plants is traditional knowledge which is very important in maintaining its survival. Knowledge

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20 Agus Sardjono, Intellectual Property Rights and Traditional Knowledge, (Alumni, 2006) 1. Traditional knowledge is defined as knowledge that is owned or controlled and used by a particular community, society or ethnic group which is hereditary and continues to develop in accordance with changes in the environment.
about the use of vegetation is the nation's cultural heritage based on experience, which has been passed down from one generation to the next, including the current generation and future generations.

Indonesia has an abundant diversity of local varieties, but the Indonesian people have not been able to enjoy maximum economic benefits from the use of biological resources, especially in the form of local plant varieties. Local plant varieties are increasingly threatened due to excessive exploitation by other parties without providing economic benefits to local communities and countries that have local plant varieties.

And the facts prove that many Papuan orchid plant varieties have been included in exhibitions both domestically and abroad and many orchid plants are sold freely, so that many Papuan orchids are developed by outsiders by improving the genetic potential of orchid plant varieties through a biotechnology process. This raises the potential for misuse of biological resources of local plant varieties. So the orchid plant varieties produced have high economic value, but local communities have not received economic benefits from orchid plant varieties that have been cultivated by local communities for generations.

The existence of local varieties and including the traditional knowledge related to them, is a target for theft/misuse by internal and foreign parties. In its use, medicinal plant raw materials still depend on plants found in natural forests or originating from local community plantations that are cultivated traditionally. Excessive exploitation of wild plants exceeds the regeneration capacity of the plants and without cultivation efforts, will disrupt the sustainability of these plants. As a result, many plants are threatened with extinction or at least are difficult to find in Indonesian nature.

Varieties of orchids, red fruit, Pokem wheat and many other local plant varieties have become targets for exploitation by foreign and domestic parties. That the diversity of local plant varieties is clearly a biological resource that has the potential to be developed into cosmetics, medicines and food. Regarding the potential of local plant varieties as food, Wahid Rauf emphasized that:

“Papua Province is one of the regions that has quite a high diversity of biological resources, including local food source plants. Local Papuan food sources that have the potential to be used as a source of carbohydrates are red fruit, pokem wheat. This local food has been widely used by the Papuan people for generations. Thus, this commodity needs to be developed as the main food source for the community so as to reduce dependence on food derived from rice. Apart from being used as the main food source and for traditional ceremonies, local Papuan food commodities have also been developed into processed products which are managed on a home industry scale. This local food is used as an alternative food source which is expected to become a food source to support food security at regional and national levels.

Facts show that legal protection for local plant varieties is inadequate. The indications are that there is theft, irresponsible exploitation, purchases in large quantities for needs.

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22 Ibid. 21
23 A. Wahid Rauf, et al., Utilization of Local Plant Commodities as Alternative Food Sources in Papua, BPPT Papua Province, 2011, p. 2
outside the area, and sales by local people to meet their daily needs. This action will result in the existence of local plant varieties becoming increasingly limited, even disappearing completely, while local communities and regional governments who should benefit from the economic value of the existence of local plant varieties, actually lose their rights and opportunities to obtain prosperity and justice from the distribution of varietal resources. this local plant.

The principles of justice and welfare in the context of managing, preserving and utilizing local plant varieties by local communities and non-local communities are essential things that must be fought for substantially in statutory regulations. This is to improve community welfare. However, legislation regarding local plant varieties is not yet adequate in its entirety, Minister of Agriculture Regulation Number 01/Pert/SR.120/2/2006 concerning Naming Requirements and Procedures for Registration of Plant Varieties and Government Regulation Number 13 of 2004 only regulates naming and registration, and the use of original varieties to produce essential derivative varieties, thus the existence of this Government Regulation has not been able to resolve legal issues related to local plant varieties and has not been able to resolve conflicts of interest, and has not been able to bridge the inequality that occurs due to differences in interests that occur between entrepreneurs, local communities and also Regional Government which ultimately leads to justice and legal certainty.

In the context of the principle of justice, when linked to Rawls' opinion, in the management, utilization and preservation of local plant varieties to create prosperity for local communities, the first principle is: that local communities must be given equal space and opportunity for the widest freedom to managing, utilizing and preserving local plant varieties to achieve prosperity; secondly, that regional regulations made must be responsive and ensure that social disparities in the management, utilization and preservation of local plant varieties must be reorganized so that they can provide reciprocal benefits to the government, the business world and local communities. In the context of benefits, the instrument for generating justice and prosperity for local communities is benefit sharing arrangements in managing and utilizing local plant varieties.

The consideration is that local plant varieties are a wealth asset belonging to the Indonesian nation, especially local communities, therefore local communities have the authority to manage, utilize and preserve local plant varieties as genetic resources with high economic value. If these local plant varieties are managed, utilized and preserved based on the principles of justice, then social welfare will be realized for the Indonesian people, especially local communities. The means for realizing justice and prosperity for local communities is that local plant varieties must be regulated in statutory regulations, especially regulations regarding the management, utilization and preservation of local plant varieties between the Regional Government, in this case the Regent/Mayor or Governor, with local communities and third parties so as to create expected value of justice. Likewise, it is necessary to map local plant varieties based on geographical distribution and local characteristics in the area.

24 Exploitation (English: exploitation) which means the politics of arbitrary or excessive use of a subject of exploitation just for the sake of interest economy simply without considering taste propriety, justice as well as welfare compensation. Id.wikipedia.org/wiki/Exploits, accessed November 18, 2013.

25 Burton Ong, 2004, p. 3. In Strategy for Utilization and Protection of SDGPTEB Through IPR and Current Issues, Tomi Suryo Utomo. It can be seen in IPR Media with the title Ownership and benefit sharing regarding the commercialization of genetic resources, Traditional and Folk Knowledge (GRTKF) in the Indonesian Legal System, which discusses Benefit Sharing regarding the use of genetic resources and traditional knowledge. In general, commercial use of GRTKF is aimed at national economic interests, especially for the welfare of indigenous communities as owners of GRTKF. To realize this goal.
Starting from such thinking, it is very relevant that the principle of justice becomes important (urgent) in efforts to realize the protection of the rights of local communities. Justice in question must be a basic value that must be realized through law, in this case article 7 of the Plant Variety Protection Law, and Regional Regulations. Substantially, both laws and regional regulations must accommodate all stakeholders' interests and needs in the management, utilization and preservation of local plant varieties.

Normatively, regional laws and regulations made must ensure the authority of local governments, businesses and local communities to manage, utilize and preserve local plant varieties, as well as mechanisms/procedures for the use and preservation of local plant varieties. Specifically, the regulatory substance of regional laws and regulations must ensure space for local communities to be involved in the management, utilization and preservation of local plant varieties so that the rights of local communities receive adequate legal guarantees and protection based on the principles of justice and freedom for the sake of existence and sustainable preservation of local plant varieties for future generations.

4. Concept of Protection of Local Community Rights

Legal protection is an effort regulated by law to prevent violations of Intellectual Property Rights by unauthorized people. The aim of legal protection for Intellectual Property Rights is intended to provide legal clarity regarding the relationship between creations or discoveries which are the result of human intellectual work and the creator or discoverer or right holder and the user who uses the results of the intellectual work. The existence of legal clarity and ownership of intellectual property rights is a legal recognition and reward given to people for their efforts and creative human works that have been created or discovered.

In legal science, protection often means protection of the parties in a legal relationship, where if the rights owned by the parties are violated by another party, then there are legal remedies that can be enforced so that these rights can be fulfilled. Legal protection if explained literally can give rise to many perceptions. Before we explain legal protection in its true meaning in legal science, it is also interesting to explain a little about the meanings that can arise from the use of the term legal protection, namely legal protection can mean the protection given to the law so that it is not interpreted differently and is not injured by the authorities, law enforcer and can also mean the protection provided by law for something.

Legal protection can also raise questions that then cast doubt on the existence of the law. Because the law must actually provide protection for all parties in accordance with their legal status because everyone has the same position before the law. Every law enforcement officer is clearly obliged to enforce the law and with the functioning of legal rules, the law will indirectly provide protection for every legal relationship or all aspects of community life that are regulated by the law itself. Legal protection is an illustration of the working of legal functions to realize legal objectives, namely justice, benefit and legal certainty. Legal protection is a protection given to legal subjects in accordance with legal rules, whether in a preventive (prevention) or repressive (coercive) nature, both written and unwritten in order to enforce legal regulations.

The existence of law in society is to integrate and coordinate the interests of all members of society. The regulation of these interests should be based on a balance between providing freedom to individuals and protecting the interests of society. The order created by new law becomes a reality when legal subjects are given rights and obligations. Sudikno Mertokusumo stated that rights and obligations are not a collection of rules or regulations,

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26 Article 7 of Law No. 29 of 2000 concerning Plant Variety Protection
but rather a balance of power in the form of individual rights on one party which are reflected in obligations on the opposing party. These rights and obligations are given by law.

In Phillipus Hadjon's opinion, there are two forms of legal protection for the people, namely: First, preventive legal protection, meaning that the people are given the opportunity to submit their opinions before the government's decision takes a definitive form which aims to prevent disputes. Second, repressive legal protection aimed at resolving disputes. Theoretically, forms of legal protection are divided into two forms, namely: 1) preventive protection and 2) repressive protection. The definition of legal protection is protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection is an illustration of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.

The definition of local communities in the study of forest resource management laws and regulations is divided into traditional communities and communities in and around the forest. The term customary law community is widely used in statutory regulations. However, there is not yet a single regulation that provides an explanation of what the true meaning of customary law community is. The term customary law community is taken from the literature on customary law, especially after van Vollenhoven's discovery of customary law rights (beschikkingsrecht) which are said to only be owned by communities referred to as customary law communities. The definition of a customary law community according to Ter Haar is a group of people who are orderly, permanent, have their own power and wealth, both in the form of visible and invisible objects. Literally, basically the terms local communities, indigenous people, local communities and customary (legal) communities; as explained above, refers to the same meaning, namely communities that depend on forest areas, and/or are groups of people who live in and around forest areas and rely on forest products for their survival.

CONCLUSION

The philosophical basis for the importance of legal protection for local plant varieties can be linked to the aim of legal protection for intellectual property rights, which is intended to provide legal clarity regarding the relationship between creations or discoveries which are the result of human intellectual work and the creator or inventor or rights holder and the user who uses them. The results of this intellectual work. There is legal clarity and ownership of intellectual property rights, in this case local communities who have traditionally developed local plant varieties and ultimately there is unilateral exploitation of local plant varieties that have been cultivated by local communities, so that in this way there is legal protection for the rights of local communities inadequate. The indications are that there is theft, irresponsible exploitation, purchases in large quantities for needs outside the area, and sales by local people to meet their daily needs. This action will result in the existence of local plant varieties becoming increasingly limited, even disappearing completely, while local communities and regional governments who should benefit from the economic value of the existence of local plant varieties, actually lose their rights and opportunities to obtain prosperity and justice from the distribution of varietal resources. this local plant.

27 H. Salim and Erlies Septiana Nurbani, op.cit. h. 264. In his book it is explained that repressive legal protection is legal protection that is preventive in nature. Protection provides an opportunity for the people to submit objections (inspraak) to their opinions before a government decision takes definitive form. Thus, this legal protection aims to prevent disputes and has a very big meaning for government actions which are based on freedom of action. And the existence of this preventive legal protection encourages the government to be careful in making decisions related to the principle of freies ermessen, and the people can raise objections or be asked for their opinion regarding the planned decision.
In the context of benefits, the instrument for generating justice and prosperity for local communities is *benefit sharing arrangements* in managing and utilizing local plant varieties. And the principle of justice is important (*Urgent*) in efforts to realize the protection of the rights of local communities. Justice in question must be a basic value that must be realized through meta-legal norms of justice in this case Article 7 of Law Number 29 of 2000 concerning Protection of Plant Varieties, and Regional Regulations. Substantially, both laws and regional regulations must accommodate all *stakeholders' interests and needs* in the management, utilization and preservation of local plant varieties. And a good regulatory mechanism is needed so that better local community rights can be created and justice is felt by the local community.

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