

Juridical Analysis on Farmer Empowerment Research, National Economic Development and WTO Implementation

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1.1 Research Background

Law which contains farmer empowerment is a part of economic development strategy based on economic democracy principles,¹ those are even distribution of opportunity for development outcome, which according to Rawls,² can be achieved if unbalanced economic and social is avoidable. The development strategy is in conjunction to principle stipulation in Article 33 of 1945 Constitution which contains social justice principles.

To achieve the goals, government empowers farmer's enterprise in the industrialization development process as the change of classic economic towards modern global economic nowadays. The opportunity to cooperate with farmer's enterprise, not only in the field of classic economy based on biological sources, also modern economic called agribusiness, is open for National and foreign companies.

Agribusiness is activity strategy which is not only based on practical biological sources in the form of primary agriculture (on-farm agribusiness), but changes to secondary agriculture product processing industry (downstream agro industry)

¹ Moh. Koesnoe. *Nilai-Nilai Dasar Tata Hukum Nasional*. UII Press. Yogyakarta, 1997, page. 46. See also Baharuddin Lopa. *Etika Pembangunan Hukum Nasional*. RajaGrafindo, Jakarta, 1997, page . 21.

² John Rawls. *A Theory of Justice*. Harvard University Press, Cambridge, Masschusetts, 1995, Terj. Heru Prasetyo, Pustaka Pelajar, Yogyakarta, 2006, page. 69-71.

The enterprise includes activities in the field of agriculture and supporting services, which is the first-class sector of economic development, tough towards crisis and has the option for the most Indonesian people: farmers.

That is the response towards challenges and economic environment both internal and external as the cause of fundamental and complete transformation.³ Internally, law stipulation is determined in various regulations, for instances: fund in Bank Act, land in Agrarian Affairs Act, and enterprise pattern in specific act, which is Act Number 7 of 1995 about Small-scale Enterprise and Government Regulation Number 44/1997 about Enterprise Partnership. It causes legal uncertainty, and shows that government does not fully concern about agriculture.

Externally, it is related to the implementation of principles arranged in World Trade Organization (WTO) regulations, especially non-discrimination principles which prohibit discriminative national treat arrangement towards foreign and national enterprise.

Whereas the power of national companies can not be compared to foreign ones, so government, for instance in the field of agriculture, has to empower. In the empowerment, government faces some dilemmas, because the partnership of foreign and national enterprise has to apply the same treatment in order to increase traditional enterprise to modern one so that the products can go to foreign market, or at least, meet the demand of domestic market.

1.2.Problems

- 1.2.1.What and how is the agriculture empowerment in agribusiness based on Article 33 of 1945 Constitution?
- 1.2.2.What and how is the implementation of WTO especially Agreement on Agriculture in Indonesia in agribusiness?
- 1.2.3.What and how are the government's efforts in empowering farmers in agribusiness in term of WTO regulations implementation which are fit to justice principle in 1945 Constitution?

1.3.Objectives of Study

- 1.3.1.To understand what and how agriculture empowerment in national economic development based on Article 33 of 1945 Constitution is.
- 1.3.2.To understand what and how the implementation of WTO regulations especially Agreement on Agriculture in Indonesia's enterprise is.
- 1.3.3.To understand what and how government's efforts in empowering farmers in agribusiness in term of WTO regulations implementation which is fit to the justice principle of 1945 Constitution are.

1.4.Scope of Study

The study is done towards the legal aspects and others related such as political, economic and social aspects. Political aspect is related to the policy in farmer empowerment in national economic development; social-economic aspects are related to the government's efforts in public welfare through partnership with big companies in globalization era, especially with WTO implementation.

1.5.Methods of Research

The method which is used in this research is inventory, and descriptive analyses on the regulations and experts' opinion relating with farmer empowerment in national economic development based on justice principle in 1945 Constitution. The analysis results will recommend any aspects in the field of law to increase the role of farmers in national economic development, among them is related with farmer's enterprise empowerment, especially due to WTO implementation.

1.6.Theories

Agriculture empowerment is an implementation of enterprise fairness which can be related to economic democracy principles. By implementing agriculture empowerment, agriculture production will function to support economic

³ Pusat Studi Pengembangan IPB and USESE Foundation. *Keterkaitan Perkembangan Industri Dan Agribisnis Dalam Pembangunan Ekonomi Nasional*. Bogor, 2000, page. 21.

development. If government would like to improve agriculture enterprise, the field supply, enterprise pattern, and education for farmers must be developed also.

The obstacles to cope with are basically caused by general recent opinions which state that such empowerment does not fit to the spirit of free trade. Therefore it is necessary to state some strong arguments, especially the principal ones, which can be the justification for agriculture empowerment in Indonesia. It can be figure out in protection principles of economic law which are depicted in economic principles of 1945 Constitution, among them are:

Balance Principle, which is compatibility and harmony, Equality Principle, Cooperation Principle, Family principle, Economic Democracy Principle, Utility Principle, and Empowerment principle, includes empowerment for the weak to establish justice for equal opportunity in enterprise based on Article 33 of 1945 Constitution.

The basic principle of balance and harmony in Indonesia economic system is not only implied in Article 33 of 1945 Constitution, but also in Article 27 of 1945 Constitution. Article 27 subsection (1) of 1945 Constitution states: " All citizens have equal status before the law and in government and shall abide by the law and the government without any exception.". Subsection (2) states: " Every citizen has the right to work and to live in human dignity."

This stipulation beside regulates principles of basic rights equality of the citizens, also contains the state obligation to protect citizen/weak economy entrepreneur in order gradually can be competitive properly with other entrepreneurs who can compete beforehand. It is considered that Indonesian entrepreneurs come from various economic levels, therefore equality principles based on Article 27 Subsequence (2) of 1945 Constitution can fulfill legal needs to provide different treatments for capable entrepreneurs in one side, and protect ones who are not competent yet.

The Article 33 1945 Constitution is the fundamental of Indonesian democratic system, mainly formulated by the sentences: " The economy shall be organized as a common endeavour based upon the principles of the family system."

The terminology of economic democracy is implied in 1945 Constitution , and also once regulated in Decree No. XIII/MPRS/1966. Article 6 Decree No. XXIII/MPRS/1966 which was also formulated in Decree People Consultative Assembly No. II/MPR/1988 about National Guidelines of State Policy (GBHN) Chapter III Item B number (a), that "Economic Democracy has positive characteristics", among them are:

- The economy shall be organized as a common endeavor based upon the principles of the family system and therefore it does not recognize the structure of class conflict. Citizen is given freedom to choose the work and rights to get the work and living in human dignity
- Individual rights are recognized and used for social prosperity, and are not allowed to be used as the tools to exploit the people. Potency, initiative, and creativity of each citizen can be fully developed as long as not harm public interests.

Besides, Article 7 Decree of People Consultative's Assembly states about the negative characteristic which is unacceptable in an economic democratic system, that is "Free fight liberalism" system which cultivates exploitations towards human beings and other nations and in Indonesian history has caused structural weakness of Indonesia's position in the "etatism" world economic system where the state and its economic apparatus fully dominate and marginalize the potential and creativity of economic units outside monopoly state sectors. By the changing of Indonesian economic structure from closed economic system to open one, "market" as the place to purchase and sell goods is not only limited inside of the country, but becomes a network of the whole purchase-selling activities or goods and service trading.

⁴ The stipulation leads to the consequence that our entrepreneurs oblige to respect foreign "Intellectual Property Right" beside other WIPO principles, including TRIPS. Further, we strengthen our position in ASEAN regional market through agreement on "Common Effective Preferential Tariffs" (CEPT) in term of "ASEAN Free Trade Area" (AFTA) in the very near future.

There are three legal aspects to be considered in terms of market arrangements, including national legal aspect, international legal aspect, and private one, which if they are integrated, it will result in transnational legal approach.

The national legal aspects include Constitutional regulations, State Administration Regulations, Trading Regulations, Criminal law, Economic law, even Environment Law. While international law aspects include ILO regulations, UN Resolutions on recent international economy order, UNCTAD resolutions, Europe Law, Economy Agreement among ASEAN, among Asia Pacific countries, and also Uruguay Circle results known today as GATT 1994 which is enforced by WTO generally, and regulation in Agreement on Agriculture specifically, also Private Law dealing with contract in partnerships implementation.

Regulation in WTO has been stated as the rule of the game in international trading competition in each country as the competition place for products from participant countries (international commerce). Domestic market competition has to obey to the principle of "National Treatment" generally, beside special regulation/Agreement on Agriculture, although opportunities are given to the countries to get general exception due to its national interest (Article XVIII WTO).⁴

Therefore, an obligation to reduce the subsidy is implemented in the form of budgetary outlays reduce and the obligation to decrease export subsidy in the volume or quantity limitation of the products which are given subsidy because various intern subsidy will result in production surplus. Some developed countries such as Europe and USA often do subsidy export which causes distortion in international market and causes unfair competition towards other countries, and do not give export subsidy for underdeveloped countries.

The privileges given to developing countries with some conditions which must be fulfilled can not be implemented because the conditions are not

achievable, and it results to the unfairness, especially in trading and investment.

To avoid the unfairness there three things to do for the government, as stated by Rosenberg,⁵ who agrees with the principles of Smith, which aspires free trade, that government can play some roles to enforce justice in free trade, which are first, attention approach towards orderliness, order and system (can be implemented through law regulation), second, institutional approach (implemented in process renewal and type of enterprise), and third, minimum-effective approach (implemented through the view of government intervention in social system, in free trade principles implementation).

Advanced industrial countries must decrease 36 % from subsidy budget which previously given, and decrease 24 % from the whole exported quantity which is exported in the duration of 6 years. Developing countries oblige to decrease 2/3 from obligation in developed countries which is 24% for the commitment of budgetary outlays and 16% for product quantity of which subsidy is given.

2. Analyze

Internally the government's efforts in agriculture empowerment occurs in the orientation transformation of economic activities by the strong connection between production and trading, primary production facilities and agriculture enterprise, primary agriculture with primary agriculture product manufacture and trading, and its connection with consumers. Consequently, the primary mover of economy activity based on biological source is in changing process to secondary agriculture product processing industry (downstream agro industry) which determines primary agriculture activity, and defines production facility supplying.⁶

The implementation faces various gaps between goals to establish public welfare and the reality found out. In the field of law, land, fund, and enterprise pattern for farmers, especially for the

⁵ Nathan Rosenberg, *Some Institutions Aspect*, Harvard University Press, Boston Massachusetts, USA, P. 98

⁶ Bungaran Saragih, *Paradigma Baru Pembangunan Ekonomi Berbasis Pertanian*. PT Loji Griya Sarana, Bogor, 2001, page. 2.

poor ones, are not regulated in one act. Land is regulated in Act Number 5 of 1960 about Agrarian Affairs, fund raising for farmers is regulated in Act Number 10 of 1998 about Banking, and Enterprise pattern is regulated in Government Regulation Number 47 of 1994 about Enterprise Partnership. Beside the regulations which are not focused, lack of government commitment to accommodate farmers through the use of existing enterprise pattern, such as profit sharing pattern. Although this pattern has been developed since long time ago in Indonesians' mindset and it can be easily applied through the partnership with big national and foreign companies.

Externally, it is related to the implementation of the regulations in world globalization era, among them some obligations in World Trade Organization (WTO) implementation which contains enclosure of General Agreement on Tariff and Trade (GATT 1994).

In the Agriculture regulations there are fair market regulations through three main actions and policies, those are; border measures, domestic support and export subsidy.

Border measures which is related to the policy and action in regulating agriculture product import in one area through non-charge and transparent trading order. Domestic support is related to income transfer, among them fund transfer for farmer's outcome related to the policy commitment in the form of subsidy reduction for farmers in production. Export Subsidy relates to the discipline in policy and actions concerning to the assistance for export in the form of export subsidy.

National Enterprise empowerment, especially agribusiness, is done by Government by emphasizing more on fund raising, land utility, cooperation agreement, processing procedure, agribusiness insurance, storage, packaging, and its operation process. Cooperation pattern, for instance, with the aim for farmer's welfare, can be carried out through plasma core pattern in

tobacco, rubber, etc. Mutual pattern with a big scale national private company is used as its base with the main supports among them are Act Number 7 of 1995 about Small-scale Enterprise concerning with cooperation.

The aim of the opportunity opening for big and foreign companies to cooperate with agriculture enterprise is to develop national economy through agriculture product marketing including small-scale agriculture enterprise through plasma core pattern, to international market, and at least it is able to fulfill domestic food need. Such opportunity happens in other countries such as Thailand (paddy), Malaysia (tobacco), Japan (fish), and so on.

In its implementation, it has to fully regard to the WTO regulations principles, both generally, those are non-discrimination principles which are regulated in Article I (Most Favoured Nation), Article III about prohibition on national different treatment towards foreign and national companies, and Article XI which contains Quantitative Restriction (quota restriction), and special stipulations for agriculture product in Agreement on Agriculture,

This condition causes consequences for government to determine some regulations containing international characteristic regarding national interests, as stated by Sunaryati Hartono, that although nowadays law has transnational patterns, it has to be arranged that it can be useful for national interests and public welfare. Relating to the arrangement in agriculture empowerment and the involvement of foreign companies with the target to market the product abroad, so the legal regulations has to be international with the aspects of national entrepreneur development.

Legal stipulation and policy which are essential to agriculture enterprise as the response of WTO implementation, and the government's role in agribusiness development are carried out by involving foreign companies, and by doing some changes, among them are through determining

7 Sunaryati Hartono. *Pembinaan Hukum Dalam Suasana Globalisasi*. Binacipta, Jakarta, 1995, page. 3. about effect of world globalization, national law, mainly in economy, has to be open and pervades international principles, can be seen in Baharuddin Lopa. *Idealita Sistem Hukum Nasional*. UII Press. Jogjakarta, 1996, page. 26.

8 Participation of foreign company through incentive supply as attraction for Foreign Investment Company has been suggested by UN and UNTACD, in 1990s, in discussion about *Trade Restrictive Trade Practices and TOT*. See in *ASEAN Economic Bulletin*, November, 1993, pg.151.

9 According to BKPM's statistic that from 200 Foreign Investment Companies, only 25% invested in agriculture.

some regulations and policies supporting national enterprise development by using local content, such as President Decree Number 96 of 2000 about Field Of Closed Enterprise And Open Enterprise With Some Requirements For Investor, President Decree Number 118 of 2000 about the changing of President Decree Number 96 of 2000 about Field Of Closed Enterprise And Open Enterprise With Some Requirements For Investor, and so on.

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The considerations of the legal product arrangement is that the conditions nowadays tend to pay more attention to Foreign Investment Companies activities, for instance in the use of land in long duration and large scale, generally focused on the industries which are not interested in agribusiness.⁹ The legal products establishment to empower farmers are expected to fulfill the legal function to order the efforts concerning with export to increase the state income, of which the management is done with high technology without damaging the environment, and the utility of enterprise culture, such as profit sharing culture.¹⁰

In reality, the influence of WTO prohibition that is discriminative treatments between national and foreign entrepreneur who are in similar enterprise causes the government to be cautious in agribusiness entrepreneurs empowerment, mainly village agriculture products which will be exported through the cooperation with national big companies. Beside empowering national companies through wide opportunity and support to function in national development, the government has to provide the same treatment to Foreign Investment Companies, which are also needed as the support to increase national economy.

The use of Foreign Investment Companies in agribusiness is carried out through some conditions, such as export restriction in certain duration with obligations to use local production facility, or with cooperation pattern with land-owner farmer, by receiving production outcome in the guidance of foreign Investment Companies, or big companies, as it happens also in Japan, Thailand and.¹¹ By doing so, the agriculture empowerment can be carried out through the use of land, outcome and the production itself.

¹⁰ Soekarwati. *Agribisnis, Teori dan Aplikasinya*. RajaGrafindo. Jakarta, 1991, pg.187.

About the advancing of science changes the mindset of the producer also see in Indra Kencana. *Agribisnis Dan Globalisasi Perkembangan Teknologi, Serta Penerapannya*. Hill & In. Jakarta, 1999,pg.172. see also Sukandar Ibrani. *Agribisnis dan Pembangunan Berkelanjutan*. Pustaka Sumur, Jogyakarta, 2000,pg. 198.

¹¹ Cempel Fredrick. *Big and Small-scale Enterprise. Why Government Fails*. Harvard Press. 1999,P.163.

The significant role of government in using foreign investment for agriculture empowerment which is among them through people who own lands, by using discussion principles, in fact does not fully work. It can be seen from the loss suffered by people in various cases due to the unilateral determination in the land price.

In some countries like China, North Korea, and South Vietnam, the government role can be seen in agribusiness development. The natural resources are less than Indonesia, but this field is far ahead because government supports by establishing gradual plan to develop agriculture by using high technology, both for plants' health and production processing, and the use of foreign trading to export competitive agriculture products, and law which is useful for the development. In the field of fund raising, government establish agribusiness bank with light condition which is possible to use land product as the assurance.

Not only in the use of foreign investments, but also the response of the government on the legal regulations as the base of agriculture activities both national and international is also important. Hence, although in WTO, opportunities and facilities are given to the developing countries, for instance tariff protection, in order to achieve the goals of WTO agreement which is to increase member countries prosperity, in reality it is difficult for Indonesia. For instance tariff protection to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for establishment of particular industry can not be implemented due to the procedure and high costs which are required, while Indonesia needs costs for development. Eventhough as developing country, Indonesia can use the exception in implementing WTO principles, but it is also difficult due to the complicated procedure.

It shows that in responding the chance give by WTO, the government has to be committed in empowering national companies, and viewing the progress from the countries which are successful in using facilities of WTO regulations for developing countries, such as Thailand, Malaysia, China, Japan, and so on, in the future. If government is less committed in using that facility, WTO implementation threatens the progress of Indonesia development, eventhough there is exceptions in the implementations.

The role of the government is needed to avoid the obstacles in planning and programming the development in Indonesia since WTO was activated in 1994.

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In some particular matters, some facilities are given to developing countries such as subsidy for domestic producers and protection for infant industries as stated in Article XVIII WT. Uruguay Circle has been successfully agreed and Indonesia had to signed 15 agreements as one package (if following one agreement, it means following all agreements and vice verse). This condition results in the tight and heavy market regulations in Indonesia in facing foreign products.

Therefore, if Indonesia really wants to enter international and global trading in equal position with other countries, the quality and the price of Indonesian products have to be competitive economically, but also some National Economic

¹² Scalapino, A. Robert. *Perkembangan Ekonomi Asia: Masa Kini Dan Masa Depan Asian Economic Development-Present and Future*. Terj.R Soekarto, CSIS Pres., Jakarta, 1990, pg.46-51.

¹³ *Opening of Agreement on Tariffs And Trade 1994 (GATT)*. Objectives of GATT 1994 are to raise standards of living; ensuring full employment and large and steadily growing volume of real income and effective demand; developing the full use of resources of the world and expending the production and exchange of goods

¹⁴ Kartadjoemena. *GATT, WTO, Dan Permasalahannya*, UI Press, Jakarta, 2001, pg.312. Developing countries in GATT implementation, see Andita. *GATT Dan Pelaksanaannya di Negara Berkembang*. Sumber Aditya, Semarang 2000, pg.52. The difficulties, among them, are complicated procedures and other aspects which becomes the burden for developing countries, such as requirements to provide compensatory adjustment which involves other countries which have interests in consensus which will be modified.

¹⁵ Article XVIII Subsequent (2) GATT.

About national law, international trading policy, and its implementation in establishing infant industry agrienterprise in developing countries, see Soeprandowo, *Kebijakan Hukum Nasional Dan Perlakuan Khusus Berdasarkan GATT 1994*. Aditya, Semarang, 2000,pg. 52.

Law equipments has to be prepared together with various procedures, mechanism, organizations and institutions. Thus, regulations about contracts (including international contracts and government contracts), regulations about various economic agents, regulations about activities against economic law (or enterprise), rights misuse (Misbruik Van Recht) and still many more, which will shape the strong Legal Infrastructure for activities and life of Indonesia Economy.

Market development which is not based on such legal infrastructure will trap Indonesia economy in the international dependency in one side, and the huge gap among economic agents both domestic and foreigners, although at the macro level the dependency will be depicted in numbers which look good.

Viewing from legal aspect, the principle of national interest protection can be found out in Article 33 of 1945 Constitution concerning foreign company utility, and justice to achieve the enterprise opportunity in international trading regulations implementation.

The principle of national industry protection has been regulated in Article 9 Act No. 5/1984 about industrial affairs, which formulates that the arrangement of industrial affairs development is carried out by concerning on, among them, proper protection for domestic industry from foreign industrial and trading activities which are against national interests generally and domestic industry development specifically. This is the proper right for one country to increase the welfare due to the economic development which is supported by technology progress to the massive production.

Then, in massive production because it is supported by the development in the field of contract law that is the use of standard contract

(contract d' adhesion), the family and harmony principles which are stated in State Administration Law, so that the contract law is not pure private law any more, but as a part of economic law (Droit de l'economie).

Beside national legal protection, international private law principles have to be emphasized. Beside national legal aspects which at any cost increase the compatibility of domestic products, attention also has to be given to various principles and regulations of international law because it influences much on economic reputations and treatments of other countries towards the marketing of Indonesian Agriculture products, both domestically and internationally.

3. Juridical Analysis on Farmer Empowerment, National Economic and WTO Implementations

The legal arrangement for agriculture empowerment is one of government strategies to develop the enterprise which will lead to public welfare, which according to Baharudin Lopa, is the implementation of social justice principle, which is depicted in economic democracy principles of 1945 Constitution.

The concept of farmer empowerment which is used here refers to the efforts to change the condition and farmers behaviors which are generally weak to be independent and productive in meeting the daily needs, and even participate in economic development through the participation in the world market through enterprise partnership.

However, the condition of farmers in facing complicated problems in some countries in Asia and North Africa shows the similar things. Also the daily needs such as food and clothes, and others (ceremonial needs, education, health, and other needs) seem to be put aside by other parties, such as the authority and big entrepreneurs.

- 16 Sunaryati Hartono. *Perkembangan Hukum Perdagangan Internasional Dari GATT 1947 Sampai Terbentuknya WTO (World Trade Organization)*. Badan Pembinaan Hukum Nasional, Departemen Kehakiman, 1995/1996, pg. 94-95.
- 17 The stipulation leads to the consequence that our entrepreneurs oblige to respect foreign "Intellectual Property Right" beside other WIPO principles, including TRIPS. Further, we strengthen our position in ASEAN regional market through agreement on "Common Effective Preferential Tariffs" (CEPT) in term of "ASEAN Free Trade Area" (AFTA) in the very near future.
- 18 Baharudin Lopa. *Penerapan Asas-Asas Pancasila dalam Hukum*. Identitas Hukum Nasional, UII Press, Tahun 1997, Hlm. 32.
- 19 Core of people empowerment, as stated by Ginanjar Kartasasmita in his speech in Professor in Administration Science Inauguration of Brawijaya University Malang 22 May 1955, is how people is assisted to be more powerful, so they are not only able to increase the capacity and capability by using their potency, but also increasing capacity and capability of national economy.
- 20 Landsberger, Hery A & Alexandrov, YU.G. *Pergolakan Petani Dan Perubahan Sosial*, Jakarta, Rajawali, pg 18-27

Although to answer the problems of the limited land of farming, the powerless condition of farmers become more serious due to some factors such as institutional weaknesses, low education, etc. Therefore, the efforts in empowering farmers are urgent in conjunction to the increasing demand of human resources upgrading, farming products maintenance for instance self-sufficient of hulled rice, institutional approaches.

Institutional approach in Rosenberg's opinion, is that it needs to establish the new institutional order where the effort to pursue personal welfare is done to fulfill collective welfare. Big entrepreneurs who pursue personal welfare are obliged in some extent to improve collective interests.

In this context, the government role is needed, which is according to Smith in Warren J Samuels, even though there is government intervention, the freedom of each economy agent is guaranteed. Along with that opinion above, and based on the reality of limited land for farming, and technology progress, farmers are directed to industry through modernizing agriculture, which is so called agribusiness, and the implementation can be carried out based on the partnership, agreement, under the regulations, to fulfill other demands which are included in global competition.

To achieve the condition, the human resources of farmers have to be empowered. Beside through modernizing agriculture in land and product outcome, farmer empowerment can be carried out through the use of the farmer's work as the capital contribution. Work of farmer can be calculated as capital, as stated by Smith, as well as Scholastics, and Locke states that the measure of exchange value is the work.

The measure of a commodity exchange is the quantity of work which enables someone to buy or to handle other commodities in the market. With this opinion Smith, intends to state that work is the natural measurement and the last factor to define the value of goods. Then Locke, states that it is only work whose values never change. Work is the real value, and money is the

nominal values. Therefore to produce the productive work, guidance and human resources upgrading are very necessary. In this case, government plays significant role in providing the opportunity and supporting big company to raise farmer human resources until achieving required standard along with efficient time in partnership to achieve marketable farming products.

Farming development which includes its secondary product processing is a modern enterprise dealing with technology and industry so called agribusiness can involve public, which in accordance to Bungaran Saragih, is an economic sector which involves and gives living for most of Indonesians. This sector contains four subsystems, those are: upstream agribusiness, on-farm agribusiness, down-stream agribusiness, and supporting institution.

In accordance to the economic development law principle regarding with world trading in farmer empowerment, in the openness of world economy in free trade era both at regional and international level, found out are a lot of farmers in their tough and independent efforts in national economic structure.

Therefore, farmers have to empower themselves or by government, enterprise world, and Indonesian people, in accordance to 1945 Constitution, among them economic democracy implementation which is based on the family principle.

There are some principles in national treatment which at glance seem very proper, but for developing countries will result that in fact foreign investments and foreign entrepreneurs will get better treatment than the domestic ones. For instance, National Treatment principle of WTO states the basic principles that products from other countries should be treated equally with domestic ones. This principle is regulated in Article III Chapter II GATT which includes stipulations as follow:

Each party is not allowed to apply domestic quota arrangement in the way which is not against in

21 Nathan Rosenberg, *Some Institutions Aspect*, Harvard University Press, Boston Massachusetts, USA, P. 123. 23 Edwin Cannan., *An Inquiry into the Nature and Causes of Wealth of Nations*, Boston, Harvard University Press. 1965, P.32-33.

22 Warren J Samuels, *Adam Smith and the Economy as a System of Power*, 24 Harvard University Press, Boston, Massachusetts, USA, P. 497. ibid, P. 35-36

tem a. Domestic price supervisory should observe export interests of other member countries to avoid their lose. The exception of National Treatment gives to products for government's interests, and in some certain things towards cinematography products.

Therefore, it is obvious that the product quality which is imported is better than domestic product quality, and the price is relatively cheaper, so the stipulation of National Treatment itself is the obstacle for our own national industry development.

The principle of National Treatment is also effective towards ASEAN products in term of CEPT and also other countries' products. In this context, it needs to compare the products from countries which are not the member of WTO, such as China before becoming the member of WTO indeed, towards such country, bilateral agreement will be implemented. Competitive power of China's products usually has stronger position in market, for instance in electrical product markets, because China does "State Trade" and also massive production system coordinated by the state with low cost.

This example shows that being a member of a multilateral international agreement does not automatically bring long term benefit for countries which have ratified. There are some other things to consider before signing an international agreement.

Agreement on Agriculture as the rule in agriculture besides other rules in WTO is aimed for reformation to liberalization in the access to international market, and discipline implementation which gradually reduces distortions which so far blocks market mechanism in agriculture sector.

The liberalization effort and distortion reduce in short can be classified in three main types of activities and policies, those are : border measures, domestic support and export subsidy. Border measures concern with policy and action in arranging agriculture product import in one

country territory. Different with industry field, where the border measures are generally tariffs, in agriculture system, they are more complicated and most of them are non-tariff action and trading regulations which are not transparent.

Domestic support or intern subsidy concerning policy commitment in the form of subsidy reduce for production and in the form of fund transfer for farmer's income or income transfer in the form related with production. In agriculture, subsidy given is increasing so various subsidies both for one sector or all agriculture sectors occur. The subsidy, if implemented redundantly, will cause market distortion in domestic market, and will hamper import entrance although the tariff is low.

Export Subsidy concerns with discipline in policy and action dealing with assistance for export in form of export subsidy. Regarding with this, implemented must be the obligation for subsidy reduces in the form of budgetary outlays decrease and obligation to reduce the subsidy in volume or quantity limitation from products which get the subsidy, because various intern subsidy will lead to production surplus. Advanced industrial countries, such as USA and Europe, do export subsidy more than any other countries in the world creating distortion in international market that in turn causing unfair competition for other countries; and they do not give subsidy for export to the third country. Advanced industrial countries must decrease 36 % from subsidy budget which previously given, and decrease 24 % from the whole exported quantity which is exported in the duration of 6 years. Developing countries oblige to decrease 2/3 from obligation in developed countries which is 24% for the commitment of budgetary outlays and 16% for product quantity which subsidy is given.

The principles of National Interests Protection of Member Countries are arranged in national regulations, beside in WTO, based on Article 33 of Constitution 1945. Based on national interests, exceptions from general principles can be carried out, those are:

25 Bungaran Saragih. *Paradigma Baru Pembangunan Ekonomi Berbasis Pertanian*. PT Loji Griya Sarana, Bogor, 2001, pg. 2.

26 Academic Draft of Regulations about Small-scale Enterprise Protection, National Law Development Agency, Department of Justice RI in cooperation with Department of Cooperatin. Jakarta: 1997/1998, pg. 12-25.

In the case that the member country is in the status "In early stage of development" and "Can only support of a low standard living", deviated regulations can be carried out as long as the condition occurs in order to protect Infant industry. It also happens in the case that the member country is facing payment balance, and subjected to national interests of certain countries, for instance health protection and environment, animal, plants, nature resources conservation, commodity agreement implementation between government and private, etc.

International law stipulations are necessary because the efforts to develop Indonesian market in open and mixed economic structure, like what we have nowadays, do not depend on enactment or regulations in economy in Indonesia. National regulations are not able to settle all problems.

To develop Indonesian market needs some regulations, institutions, mechanism and procedure from legal and economic institutions both inside Indonesian Law, or in international private law, International law and foreign law which if all are in synergy, they are expected to lead, activate or develop the market we expect.

In these analyses, not all regulations needed can be explained. More important is how government is able to empower farmers who are considered in weak position in order to give contribution in economic development, especially on the implementation of Indonesian market policy in the future. It is indeed in term of establishing economic democracy and further explanation of the stipulations in Act Number 9 of 1995 about Small-scale Enterprise, which determine that empowerment efforts for small-scale enterprise in this analyses is farmers in Indonesian agribusiness, are carried out through enterprise climate development which is conducive for promotion through enterprise partnership.

Farmer empowerment through conducive enterprise climate development in accordance to Article 13 Act No. 9 of 1995 about Small-scale Enterprise, includes regulation and policy fulfillment to:

- Determine enterprise location, including market location, space for shops, industry center location, public farming location, and proper location for street traders and other locations;
- The form of farmer empowerment in enterprise location aspects is as follows: supplying location for traditional market or other particular markets special for small-scale enterprise, building market location for middle and big enterprise regarding distance to the market for farmers;
- The decree of enterprise and activity type for farmer enterprise is one supportive aspects in empowerment, among them activity using technology whose specification is in processing which become source for living for local people.
- Besides that, the empowerment can also be the legal consultant aid and advocacy to increase conducive enterprise climate for agriculture development through the fulfillment of policy and regulations. The government is expected to carry it out so that farmers have power to face competition without being worried to be blamed by certain parties.

4. Conclusion and Suggestions

4.1 Conclusions

4.1.1 Farmer empowerment in agribusiness in national economic development based on Article 33 of 1945 Constitution is developing agriculture to have equal rights in supporting national economy through traditional enterprise to modern, which so called agribusiness.

4.1.2 WTO is agreement on trading and investment, particularly Agreement on Agriculture that is regulation in agriculture/agribusiness which prohibits discrimination arrangement in national regulations towards foreign company and national company. Agreement on Agriculture regulates Border measures/import entrance to an area in the form of non-tariff. Domestic support or intern subsidy/commitment to reduce the production subsidy and fund transfer of farmer's income or income

transfer to farmer relating to production. And Export Subsidy /discipline in policy and action of export assistance that is export subsidy.

- 4.1.3 The government effort in farmer empowerment in agribusiness in term of WTO regulations implementation which fits to justice principle for enterprise in 1945 Constitution is opening opportunity for foreign company through establishing partnership with national company so that national company mainly in agriculture can contribute in national economic development.

4.2 Suggestion

- 4.2.1 The success of farmer empowerment can be achieved if the government strengthens the commitment to support production outcome, among them from traditional enterprise to modern one.
- 4.2.2 Opportunity given by WTO through particular treatments has to be responded by the government seriously, mainly regarding with farmer empowerment.
- 4.2.3 In opening opportunity for foreign company which will establish partnership with national company, the government carries out farmer empowerment, for instance providing education, guidance and development due to the low quality in human resources.

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