

## ABSTRACT

Thesis Title : Plant Variety Protection Act

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The thesis aims to study plant variety protection system which is available for Thailand by comparing the patent law system and the sui generis system. The research also analyzes the structure of Plant Variety Protection Act which should be enacted recently and examines the good points and the bad points which will occur as a result of the implementation of such Act.

The study was carried out by compiling data from documentary research, textbooks and journals of both foreign and local sources and the focus of the research is on the development of ideas and legal measures of new plant variety protection in the United States, Japan and Australia. The research also studies plant variety protection under the International Undertaking on Plant Genetic Resources, International Convention for the Protection of New Varieties of Plant, Convention of Biological Diversity and Agreement on Trade related Aspects of Intellectual Property Rights.

The writer analyzes and compares the Plant Variety Protection Act with plant variety protection law of the U.S. (Plant Patent Act and Plant Variety

Protection Act) and the International Convention for the Protection of New Varieties of Plant.

It is found that plant variety protection law or plant breeder's right in sui generis system is suitable for Thailand's plant protection. This system is loose and grants less exclusive right to the plant breeder than the patent law does. The breeder's right of plant variety protection law should not extend to acts undertaken by the farmer in use of farm saved seed. This exception exclude from patentability.

The Patent law criteria such as novelty, inventive step and industrial applicability are designed for patentable of machines, physics and chemical. Those criteria are not suitable for protection of plant varieties because plant is a living thing which is more complex than other inventions. The patent protection for product inventions are focus on inventive step, meaning the product is "non-obvious" and go beyond the skill or ability that can be expected from the person skilled in the art, on the contrary, the sui generis system the protected plant variety is only distinct, uniform and stable.

The patent law system grant the plant's breeder exclusive right of which the scope of right is broader than the right granted to plant's breeder by plant variety law would make tremendous impact on the population of Thailand's agricultural section.

The Plant Variety Protection Act has two kinds of protection: one is a new plant variety protection which comply with plant variety protection of TRIPs and the other is a native variety protection which comply with the Convention on Biological Diversity.

The good points of the Plant Variety Protection Act are: to confer plant variety protection to breeders, to offer more new plant varieties in the market that the farmer will have more choice, to develop transfer of technology and the growth

of seed industry. The bad points are that the multinational corporations will take advantage of Thai corporations in the field of hi-technology plant breeding which gains more from the plant Variety Protection Act, the price of seed would increase, the farmer's privilege in use of farm saved seed in the following season is limited and the names of plant varieties that breeder can apply for protection is not proclaimed in the act but stipulated by the administrative branch.

The good points of native plant variety protection are: the farmer rights of the plant genetic resources is stated by the act, community rights, indigenous knowledge and plant variety diversity are also protected and there is a plant variety protection fund.

The bad points of native plant variety protection are: the meaning of "Community" is not clear-cut, the role of local community for participation in management of plant variety resources is not mature.

Suggestion have been made that Thailand should protect plant varieties by sui generis system and to extend the farmer's privilege in use farm saved seed from the triple yield they harvested to unlimited quantity, to declare the names of new plant variety that the breeder can apply for registration in the act and to prepare the civil service organizations for plant variety registration. For the native plant variety protection, the need to define the meaning of "community," to prepare the local community for management of plant genetic resources and to study the impacts of the act on each group of people.