

THE EXISTENCE OF AGRICULTURAL ASSURANCE AGREEMENT ON NATIONAL FOOD RESILIENCE PROGRAM

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THE EXISTENCE OF AGRICULTURAL ASSURANCE AGREEMENT ON NATIONAL FOOD RESILIENCE PROGRAM

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ABSTRACT

Law protection towards farmer particularly rice farmers, are really needed because of the risks that they face towards planted crop. The risk or damaged of paddy crop which is planted, definitely will disadvantage farmers. The disadvantage risk occurred must be anticipated precisely because will potentially weaken the farmers' motivation to develop their farming or even could threaten the national food resilience. Food and Agricultural Organization estimates most of the world's countries (especially developed tropical countries) will face a hard challenge to sufficient their food resilience. Because of that, the recent government is promote a program to increase the agricultural result by national food resilience program, which is definitely very impacting on food production that is planted by all farmers. Food resilience program by government is gifted to all farmers by giving the protection to agricultural production by agricultural assurance program. Agricultural assurance program which is undertaken by government is hoped to assist farmers on increasing agricultural production and giving the disadvantaged agricultural assurance risk program based on agricultural production which is planted by farmers. That agricultural assurance program is hoped also would giving protection to all farmers toward catastrophe which is probably happened, based on the damaged risks towards the planted crop especially rice. Rice plant as a main food for Indonesia citizen definitely must be protected and gifted incentive toward farmers who plants that. Hence, agricultural assurance program will be very helpful to increasing the agricultural production in terms of government national resilience food program.

Key words: Agricultural assurance, national food resilience program.

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1. INTRODUCTION

Technically, the effort activity at agricultural sector will be always faced to unsure high risk. The unsure risk encircles failure crop which is caused by catastrophe like flood, dryness or plant disturbance organism attack and climate changes. The unsure and high risk is very enable farmers to move other commodity effort which has high economized by more little failure risks. The risks on agricultural are not only impacting all farmers, but also giving the impact as a whole to agribusiness value chain [1]. If this thing left, it will impact on national food resilience stability, particularly on the production and availability on rice main comestibles.

Food resilience program is initiated by government offer's one of the compensation's way crop failure through agricultural assurance. [2] Based on agricultural living value, those are advanced, ecological friendly, sustainable, law must encourage also guide, so that the agricultural living technically always become more perfect and advantage all parties. [3]

In an attempt to manifest the national food resilience by President Joko Widodo, targets the control of food import by food productivity increasing way in the country, eradication Mafioso import and develop agricultural export based on agricultural process. Hence, when the harvest failure happens, mainly because of catastrophe, farmers will not burden the lost, because the farming land has already assurance.

The risk experienced by farmers was probably because of pest, weather or catastrophe. This thing surely will be the disadvantage for farmers. Hence, President Joko Widodo held to give protection to farmers based on the suffered risk by giving assurance protection. According to Robert Meh, states five ways to overcome the risks, those are:

- Risk avoidance, by not doing the activity which gives the lost potential.
- Risk reduction, by smaller the lost potential.
- Risk retention, by not doing for all what makes the risks could be happened.
- Risk sharing, by moving the risks to other parties, by reassurance.
- Risk transferring, by moving the risks to other parties like Assurance Company.

Risks can define as uncertainty of financial lost, which is inside, there are two elements, and those are movement lost and uncertainty [4]

The big risk can be measured by goods value which experiences outside the burdened mistake, hence the risks could be move to lost assurance company in the form of premium. The risks movement balances by premium payment form to Assurance Company. The lost in each few periods depends on the policy which are in assurance agreement. This risk benefit is obtained by the insured.

The lost risk that comes must be anticipated precisely, because will be potentially weaken the farmer motivation to develop the agricultural effort or even could threaten national food resilience. Food and Agricultural Organization (FAO) estimates, that a few countries in the northern area, even is being benefited. However, the most parts of countries in the world (mainly developed tropical countries) will be estimated face the harder challenge to suffice the food need [5] The benefit that is probably derived from agricultural assurance program is as follows: [6]

- By agricultural assurance, the risks that happen in agricultural commodity production could be decreased. Hence, it means by giving an economized incentive, particularly relates to the high production fee for adopting the recent technology usage for farmers.

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- Besides that, the agricultural assurance could have a role on stabilize the credit institution, because the agricultural assurance could guarantee the farmers ability to pay back the loan debt to loan giver institution, mainly if there is a harvest failure.
- Enable the government aid continual which is done based on the business count. It is more rational than the catastrophe countermeasure programs that incidental characterized, to overcome the gravity which is experienced in a particular years.
- Create the stabilized and certainty on agricultural sector. Hence, prevent the migration event to all farmers towards to urban centers that cause problems.
- Agricultural assurance could be considered as allowance transfer program to farmers. (Those are poor categories).
- Save and create the vacancy in order to develop the agricultural sector

Assurance Company undertakes all kinds of effort so that could stay widen and advance the business, which undertakes all this time. One of the steps that has to done, by issued all kinds of new products and more innovative for the customers. As the company goes, the assurance company also could issue many kinds of products that could be chosen and used as the customers' need, likes the researcher will review on the research about the agricultural assurance agreement, which is ruled on legislations Number 19 year 2013 about farmer protection and empowerment.

The agricultural assurance activity is also guided on the assurance agreement principles publicly. Those are [7]:

- Principle of Insurable Interest
- Principle of Indemnity
- Utmost Good Faith
- Subrogation

Assurance Company is a party that bears the risks movement based on the risks movement or lost which is accepted by person or business entity as the insured that corresponds to agreed agreement. Giving the guarantee scope based on the responsibility risks or damaged who's suffered by consumer [8]

In *KUHD* filled three clause, particularly about the agricultural production failure which is assurance, those are 299, 300 and 301 clauses [9] It is important to set until the responsibility based on the lost, will be probably struck the farmer agricultural production. This agricultural lost determination is through the agricultural production and not based on the planted kind price on the ground at a particular time.

Besides act as the agricultural assurance premium payment subsidy giver, the legislation Number 19 year 2013 about farmer protection and empowerment also particularly mandate the government, whether central or rural, to be also involved as Assurance Company in terms of that there is crop failure lost. Legislation 37 verse (1) Legislation Number 19 Year 2013 about the farmer protection and empowerment explain government and rural government as the authority, is obligated to protect the farming, which is done by farmer as stated on clause 12 verse (2) in the form of agricultural assurance. Hence, in the case of crop failure lost on clause 37 verse (2) Legislations Number 19 year 2013 about farmer protection and empowerment. Those are because of catastrophe, plants disturbance organism attack, climate changes and kind of risks. Hence the government is mandated to give protection to all lost farmers.

Assurance policy is generally limited or controlled by provisions legislation book civil law or *Burgelijk Wetboek* (next called BW) as follows:

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Clause 1337 BW “a clause is prohibited, if that clause is prohibited by legislations or contradicted with moral or public order.

Clause 1338 verse (3) BW “all agreement whose made by parties, must be done by good intention

Clause 1339 BW “the agreements are not only tied to things that are firmly stated inside, but also to all things that are according to that agreement characterized, must be based on decency, custom or legislations”.

Those provisions above explain that in terms of deciding clauses or prerequisites on a standard agreement could be applied and tied all parties. The parameter is legislations, moral, public order, decency and custom also good intention. The burdened as the party who accepts to risks’ movement, means tied themselves to compensate, if there is a risk which promises a lost or missed reality. The obligation to compensate makes the assurance company has right to receive premium from the burdened, mainly because as the premium assurance company is very needed to operate the healthy company.

Legislations Number 18 year 1999 about the consumer protection gives the law protection to all farmers on agricultural assurance agreement. Agricultural assurance farmer in terms of this is as consumer Assurance Company which is premium subsidized from government. For protecting the consumer generally and remind the weak consumer position. Hence, he must be protected by law [10] [11], because the law goal is giving law protection to society [12] [13]

Agricultural Assurance Company must give the farmer rights as agreed on the agricultural assurance policy. Agricultural Assurance Company must undertake and serve farmers righteously, give transparent information, good intention and giving compensation as the agricultural assurance agreement. Besides agricultural assurance, there is law protections to farmers that would make farmers could do maximally on running the agricultural production. Clauses 18 Rule Ministry Number 40 year 2015 about agricultural assurance facility explains farm [8]er receive premium assistance as meant on Clause 17, must be joined in farming group, and has actively involvement. If the unpredictable events are happening, then it changes the lost cause. The risks become burden insured, changes then be the compensation which must be fulfilled by the insured. From the risk control side, Assurance Company plays a role as the insured, before the claim which is proposed by consumer [14] This risk control is to find the probable risks which appears from a company or an effort to assist a company on avoiding the risk, prevent or decrease the lost numerous or decrease the unwanted effect from a risk [15]

Agricultural sector is an effort that has high risks toward nature condition and susceptible towards pest also disease, which is caused by production shortage, even crop failure also the price fluctuation risks. Hence, the farmers’ income decrease or lost. Those farmers risk impact will suffer great lost, so that the next effort is not having another capital or even all farmers borrow needy credit to give back. Hence, it makes a non performing loan. One of the efforts that need to be undertaken genuinely is to decrease or smaller risks are by introducing agricultural assurance.

Reviewing the above description, so that the writer wants to lift law issue as to assurance company responsibility, that relates to food resilience program by government and law protection to farmers, towards agricultural assurance agreement to food resilience program by government. Agricultural assurance is a wise effort by government on giving protection to farmers and could undertake the national food resilience program. Most farmers is a poor group, that becomes more impoverished, if they experience crop failure. Based on the description above, then the law issues which would be researched are about:

- Assurance company responsibility that relates to food resilience program by government.
- Law protection for farmers, also the obstacles towards agricultural assurance agreement to national food resilience program, if experiences crop failure.

2. METHOD

This research is legal research using statutes and conceptual approaches. Normative legal research is legal research that places law as the norm system. [16] Legal materials used include primary, secondary [17] and tertiary materials. [18]. The method used in legal research is done by examining legal materials as an existing library [19]. The material of this study is to analyze the articles in the law relating to the role of the agreement on agricultural insurance in protecting the interests of farmers who experience crop failure in order to improve national food security. The analysis of legal issues is using interpretation or legal construction. [20]

3. DISCUSSION

As the manifestation on food resilience by President Joko Widodo, targets to control food import by increasing the food productivity in the country, eradication import mafia and also develop the agricultural export, based on agricultural process. *World Bank* defines that food resilience or food security is access by all people at all times to enough food for an active and healthy life. Hence, each person has access physically and economically toward food, so could be lively healthy and active [21]

The government tries to protect agricultural protection by manifesting agricultural assurance program. Therefore, when it is happened, mainly caused by catastrophe, farmers will not be burdened their own lost, because the farming land has already insurance. Technically, the effort activity in agricultural sector will face to uncertain high risks. The uncertain risks encircle crop failure level, which is caused by catastrophe like flood or drought, and plant disturbance organism attack. The assurance company is a party that will receive risk transition from someone that wants to switch the risk.

The wise breakthrough that government is done at food problem is an effort to manifest the national food resilience. Overcoming the farmers lost, government will assist the farming business protection in the form of agricultural assurance, as stated on legislations Number 19 year 2013 about farmer protection and empowerment. The agricultural assurance implementation according to clauses 37 verse (2) Legislations Number 19 year 2013 about the farmer protection and empowerment are undertaken by protecting farmer from crop failure lost caused:

- Catastrophe
- Attack of plant disturbance organism
- The plague of contagious animal disease
- Climate changes impact, and/or
- Other risk kinds that ruled by Ministry.

Generally, the kind risks that can be grouped, divided into three groups, those are [22]

- Pure risk is a risk that if only truly happened, would give the lost. In additional, if only it does not happen, then will give the lost.
- Speculative risk is a risk that relates to the two probable events, those are the probability to get advantage and disadvantage.
- Individual risk is a risk that faced on daily life like personal risks, wealth and accountability.

Agricultural insurance include the lost assurance, because there is a pure risk which is caused by catastrophe like flood, drought, and plant disturbance organism which could cause the farmer lost. Agricultural Assurance Company gives protection for farming business. Then, in the farming business assurance, gives protection before the plant damaged by giving the limitation as follows based on Ministerial Decree Number 2 of 2016 about Rice Farm Business Insurance Premium Assistance.:

- a) Flood is inundated the farming land for growing plant periods in a particular depth and periods. Hence, it would decrease the plant production level
- b) Drought is un-fulfillment the water plant need in a few periods growing plant, which causes by plants' growing is not maximal. Therefore, decreasing the plant production level.
- c) Plant disturbance organism is an organism that could disturb and damage the plant ive or die to food plant, including:

- Plant pest: stem borer, brown stem aphid, grasshopper, mice, caterpillar and golden snail.
- Plant disease: Blast, brown spot, tungro, stem spoiled, ragged stunt virus (RRSV)

Jasindo assurance company is state owned enterprises that shown by government as the company who handles this agricultural assurance, like in clause 38 verse (1) legislations Number 19 year 2013 about the farmer protection and empowerment, and clause 22 rule agricultural ministry Number 40 year 2015 about the agricultural assurance facility. After that, it is explained Clause 38 Legislations Number 19 year 2013 about farmer protection and empowerment, as follow:

- Government and rural government as the authority that mandated to state own enterprises in assurance field on implementing agricultural assurance.
- Agricultural assurance implementation as stated on verse (1) that implemented as legislation rules provisions

Jasindo Assurance Company by agricultural official helped by (official duty implementation unit / field instructor officers) undertakes socialization to numerous areas in Indonesia, particularly rice producer. Giving lessons as to the importance agricultural assurance foe protecting the farming business, but in the implementation, there are challenges on doing socialization all farmers, to introduce agricultural assurance [23]

The risks that are being assurance by all farmers, it could be mentioned explicitly in the policy, what risks that could be guaranteed by assurance company. If that risks or one of the risks, could cause the lost to agricultural that is being assurance. Therefore, the assurance company will give compensation as the amount of lost, that are being promised. For instance, the experience of Bukur village farming group, Bojong district, Pekalongan town got a compensation claim assurance from Jasindo, because of the paddy plant that width 10 hectare, is damaged by mouse pest. [24]

Agricultural assurance in Indonesia is indemnity based characterized or compensation, where the assurance company will do the compensation based on the lost or damaged, that is really happened and experienced by farmer. In terms of the lost caused by risks which are policy guaranteed, then agricultural assurance members must done the claim steps as follow [25]:

- Reporting the lost or organism disturbance attack to field instructor officers nerby, then altogether with Officers Control Plant Pest Organisms-Observer Pest Disease done the avoiding undertake before the attack.
- Reporting as soon as possible, if there is a lost to Jasindo, at the very least seven days since the lost/organism plant disturbance attack.

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- Altogether with Officers Control Plant Pest Organisms-Observer Pest Disease help the Jasindo officers to survey the lost location
- Completing the support document claim as the rice farming business assurance guide, those are :
 - The damaged notice form that has been fulfilled by content and signed.
 - The damaged check official report that has been fulfilled or signed.
 - Assurance policy photocopy / policy certificate as the attachment.
 - Damaged images
 - 20% premium payment slip

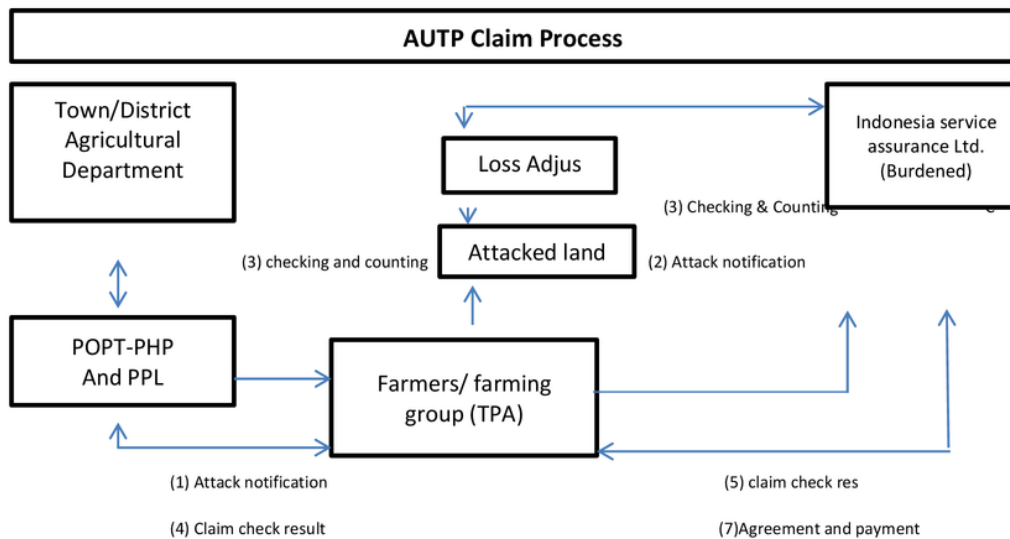


Figure 1 Claim process picture AUTP

4. EXPLANATION

If the agricultural implementation is being lost/damaged to rice farming business, hence as soon as possible, farmers report to Jasindo as the assurance company. Then, will be followed up by assurance company party, is helped by party from agricultural official area, to go to the field to review the agricultural business land data. Such as in agricultural group, there is one hectare farming land, that divided into five terraces and the lost claim is only one terrace land, therefore the compensation is that one terrace land. After the claim process steps are finished, they should then wait to get claim agreement from Assurance Company. If it is stated to agree towards claim that is proposed, then compensation payment like ruled on rice agricultural business assurance guide as follows:

- Payment based on claim is proposed, caused the crop failure as the damaged level happened,
- Payment compensation based on claim that is undertaken, at the very least 14 (fourteen) days calendar since the official report on damaged check result
- Compensation payment is undertaken through the overbooking application to the insured account

Farmer to this agricultural assurance agreement is as consumer because of the customers from Jasindo Assurance Company. Agricultural assurance policy is a standard agreement prepared and set by Assurance Company that must be agreed by the farmer. Agricultural agreement content is confirmed partly by Assurance Company, while those who are not involved also determine the agreement content. After the assurance agreement, the farmers only need to sign the assurance agreement of policy.

Policy, a standard clause as mentioned in article 18 verse (1), verse (2), verse (3), and verse (4) legislations Number 8 year 1999 about consumer protection, explained that the standard clause inclusion principle in each standard agreement is not prohibited. However, the standard inclusion that burden and disadvantage the consumer as stated on legislations Number 8 year 1999 about consumer protection is not allowed.

Standard clause which is stated on policy is not deviating but it may be cancelled if it is not suitable as the explained rule above. Farmer as the creditor is obligated to pay the premium to get protection from debtor. Otherwise, the assurance company as debtor is obligated to give protection as the compensation based on the agreement risks.

Based on the national law guide entity research production, the weaken factors for consumers are as followed:

- The low consumer awareness level about their rights is still.
- Consumer society has not been conditioned, because the society has not known after their rights and where the right is distributed, if gets difficulties or shortage from good standard or reasonable service.
- Consumer society has not been conditioned as a society that has willing to fulfill their rights.
- Complicated court process and continuous period.
- Consumer position is still weak.

Consumer has bigger risk from Assurance Company, which is caused by weak offering position. Therefore, the farmers' right is very risky to be violated. Consumer right is ruled in clause 4 Legislations Number 8 year 1999 about consumer protection, which is stated by consumer right as follows:

- Right based on comfort, security and safety in good/service consuming
- Right to choose good or service and get those goods or services as the exchange and condition, also the promised guaranteed condition.
- Right after the right information, clear and honest as to the condition and good or service guarantee.
- Right to be opinion's heard and complain after the good or service, which is used.
- Right to get advocate, protection and finishing the dispute consumer protection decently
- Right to get the consumer guidance and education
- Right to be treated or served righteously and honestly, also not be discriminative
- Right to get compensation, if there are goods or services, those are not acceptable as the agreement or as stated.
- Rights to be ruled in other legislations rule provision.

Clause 39 verse (2) Legislations Number 29 year 2013 about the farmer protection and empowerment, explains that each farmer becoming the members of agricultural assurance get the below facilities:

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- The registration simplicity to be member
- The simplicity access towards the assurance company
- Assurance program socialization towards farmer and assurance company and/or;
- Premium payment assistance

Furthermore, clause 31 Legislations Number 40 year 2014 about the assurance explains as follows:

- Assurance agent, assurance brokers, re-assurance brokers and Assurance Company are obligated to apply all skills, attentions and precisions in serving or transact with policy holder, third party administrator or members.
- Assurance agent, assurance broker, reinsurance brokers and assurance company are obligated to give right, not fake or mislead to policy holder, third party administrator or risks, functions, obligations and fee burdened that relate to assurance product or sharia assurance product which is offered.
- Assurance Company, sharia Assurance Company, Reassurance Company, sharia reinsurance company, assurance broker company, and reinsurance broker company, that is obligated to handle the claim and complaint through fast, simple, accessible and justice process.
- Assurance company, sharia assurance company, reinsurance company and sharia reinsurance company are prohibited to undertake which can slower the claim finishing or payment, or do not undertake, so that it can slower the claim finishing or payment.
- The continual conditions as to the claim handling and complaint through fast process, simple, accessible and just as stated on financial service authority rule.

Rights and facilities above are given to all farmers as the law protection form to be agricultural assurance member. The government also involves the farmer empowerment trough clause 55 verse (1) Legislations Number 29 year 2013 as to the farmer protection and empowerment by giving available agricultural land guarantee to all farmers. The existence of farmers' empowerment in their farming business activity as stated on one of the principles that exist on consumer protection.

In the relation of farmers and rights, one of main ways in achieving the balance between law protections for farmers by assurance company protection, is enforcing the farmers' right. Besides the compensation protection giving to agricultural production, government is also obligated to protect farmer rights' that undertakes the agricultural assurance as clause 4 Legislations Number 8 year 1999 about the consumer protection. One of the main rights that are received by farmers is receiving compensation payment after the agricultural land, that has been assurance and get premium assistance. The assistance premium payment 144.000 rupiahs,- per hectare per planted season (80%) which is given by government party to farmer/farmer group, that is obligated to be used for paying the rest to Jasindo assurance company. Next premium rest is paid by farmer as big as 36.000 Rupiahs per hectare per planted season (20%). The aid premium payment from government and the shortage rest self-help premium payment farmer, directly aims to Jasindo Assurance Company.

The challenge faced in agricultural assurance is by socializing the problem to all farmers. The difficult implementation is caused by the farmers' low education degree, so that they might not be able to understand the importance of Assurance Company. The lack of knowledge becomes the challenge on socializing the program from that government. Therefore, it is unfortunate the farmers could not use subsidized the fund which is budgeted by central government.

Besides, protecting the farming business from crop failure risks, farmers become he agricultural assurance member, also protect the all behalf in implementing the process. Such

as, all farmers right which receive the premium payment aid and get the compensation claim payment. The Guidelines for Consumer Protection (general principle) United Nation Resolution Number 39/248 year 1985, also patterned all consumer importance which is protected encircles :

- Consumer protection from healthy and safety dangerous
- Promotion and protection to al consumer economy interest;
- Information provision which is sufficient enough for consumer to give their ability on implementing the right choice as willed and personal need.
- Consumer education, including the education of environment effect, social and economy based on their choice.
- Compensation effort provision which is effective enough.
- Freedom to form the consumer organization or that organization to voice their opinion, in terms of decision taking claim by their relevant interests
- Continual consumption pattern promotion

Assurance Company is not justified to do the finishing slower undertaken or claim payment, or not doing the action as it should be done. Therefore, it makes the delayed finishing or assurance claim payment, that could be sanctioned, such as warning, business activity limitation, and business permit retraction sanction, that is being explained at clause 71 verse (1) Legislation Number 40 year 2014 about assurance.

Clause 19 Legislations Number 8 year 1999 about consumer protection, patterns the consumer lost as follows:

- Business doer is responsible to give the compensation, after the damaged, profanation or consumer lost, because of the service or good consumption which is produced or traded.
- Compensation as it meant on verse (1), that could be money replacement or service/goods replacement or on a par, health maintenance, and allowance giving which suits to applied legislations confirmation.

In the agricultural assurance implementation, has not been happened the dispute between the assurance company party and assurance member. The agricultural assurance activity is still new on Indonesia society, particularly to all farmers. Agricultural assurance is treated trial to 2011 to 2013 and starts to be socialized on the President government and JK to program the national food resilience.

5. CONCLUSION

- The assurance company responsibility relates to food national program by government, is by giving the compensation to farmers that experiences the lost, because of flood, drought and plant disturbance organism attack, which is guaranteed by rice agricultural business assurance policy. Therefore, government is trying to increase the national food resilience, mainly on the source of increasing from the production increasing on agricultural sector, particularly on rice agricultural business.
- Law protection for farmers towards the agricultural assurance agreement to national food resilience program, if there is a crop failure is by giving the farmer rights like mandated on legislations. One of them is legislations Number 29 year 2013 about farmer protection and empowerment. The form of farmer law protection is also ruled on legislations Number 21 year 2011 about financial service authority, which explains the existence of financial service institution. It is the implementation institution on assurance sector. The challenge in agricultural assurance is socialize the problems to all farmers. The implementation is not easy

because the low farmer education degree, so that it does not truly understand the importance of agricultural assurance.

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