Adoption of the Value of Justice in National Food Law

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Article Info
Received: 15 -7 - 2022
Revised: 5 – 10- 2022
Accepted: 30-12-2022

Keywords:
Food Law; Justice; Food Sovereignty

Abstract
Indonesia is a country that has abundant natural resources; unfortunately, some areas are vulnerable to food insecurity. Such conditions indicate that food development has not reflected justice for the community. This study aims to examine the value of justice in the fulfillment of the right to food. This research applied the statutory approach, the conceptual approach and the philosophical approach. The fulfillment of the right to food for all Indonesians is an obligation of the state, therefore; the values of justice need to be put forward in order to realize national food sovereignty. Social justice is the focus for the direction of development policies to achieve the community welfare. Legal arrangements are needed in the development of food law, such as by drafting laws and regulations in the food sector based on Pancasila values and the constitution, changing the *paradigm of food development to food sovereignty, using international legal instruments on food that have a positive impact on people's welfare, and diversifying food as a support for food sovereignty.*

I. Introduction

The map from the Food Security Agency (BKP) of the Ministry of Agriculture shows that 88 regencies/cities in Indonesia are vulnerable to food insecurity determined from the aspects of food availability, food access, and food utilization. Areas that are vulnerable to food insecurity are mostly found in Eastern Indonesia, including Papua and Nusa Tenggara Timur. Such conditions are caused by transport infrastructure problems. It indicates improper food

development in Indonesia that has not run optimally to meet the needs of the community and has not reflected a sense of justice.

The availability of quality human resources (HR) is an indicator of the success of a nation's development. The quality of human resources is characterized by a strong physique, a strong mentality, excellent health, and intelligence so quality and nutritious food adequacy are needed. If nutritional adequacy is not met, it will have an impact on (1) low work productivity; (2) loss of school opportunities; and (3) loss of resources due to high health costs.
In fulfilling the right to food, there are principles, as follows: First, the availability. The regulation of the right to food must be widespread so as to eliminate the possibility of discrimination due to limited resources in order to fulfil the need for food. Second, the accessibility or the availability of access which means conditions for fulfilling the right to food for all people without discrimination. The goal is to have stability over food access. Third, the acceptability. All facilities for the fulfilment of the right to food must be carried out with respect for the culture of individuals, minorities, residents and communities, and the fulfilment of the principles of sensitive gender. It means that the fulfilment of the right to food must be culturally acceptable. Fourth, is the quality. The fulfilment of the right to food includes the feasibility of food supply and the fulfilment of nutritional demands. The basic principles in efforts to fulfil food rights must be used as a standing ground in solving the problem of the right to food. In an effort to meet the food needs of the community, the government needs to take a food implementation policy that provides protection, both for those who produce and those who consume food.

Law Number 18 of 2012 concerning Food (Food Law) is a political product formed by the policy maker in this case the government together with the legislature aiming at solving problems related to food administration. The food development paradigm adopted in Law No. 18 of 2012 is oriented toward food security instead of food sovereignty, opening up the opportunities for food imports, and opening up the opportunities for foreign investment in food genetic engineering activities, as affirmed in Article 36 paragraph (1) that food imports can only be carried out when the domestic food production is insufficient and/or cannot be produced domestically. This provision is a justification for the implementation of food imports.

In trade practice, the government continued to import food even though domestic production was abundant. The imported products include, among others, sugar and salt. The government always imports rice to meet the needs of

the people although rice is the staple food of the people. The high dependence on rice imports has resulted in less attention on domestic rice production from the government. The government still uses the import approach in meeting food needs even though domestic food production has not been optimized.

This approach model is very ironic for Indonesia because this country is an agricultural country in nature whose main livelihood is farming or agriculture. The food development paradigm based on food security means that the government is required to provide food in various ways including importing food. In this perspective, food is only interpreted as an economic commodity in the form of products or goods even though food has many meanings and values. The national food development carried out by the government so far has been considered a failure by some sources. Lestari Moerdijat (Deputy Chairman of the People's Consultative Assembly of the Republic of Indonesia for the 2019-2024 period), in an online discussion with the theme *Mengantisipasi Ancaman Krisis Pangan Dampak Perang Ukraina-Rusia* (Anticipating the Threat of a Food Crisis due to the Ukraine-Russia War), stated that currently there is global food insecurity, one of which is triggered by post-pandemic conditions and is also influenced by geopolitical factors. The Global Food Security Index (GFSI) states that the condition of Food Security in Indonesia in 2021 was at the level of 59.2, down from 2020 which was at the level of 61.4. This position has resulted in Indonesia is ranked 69th out of 113 countries in terms of food security. This is due to the high level of food imports, the lack of food production land, the low purchasing power of the people, and the high rate of poverty. The main topic of discussion is the issue of the food crisis. Other indicators that show the government's failure in food development are the high number of imports of people's staple foods, especially rice commodities, reduced agricultural land, dependence on seeds from abroad, and the supporting capacity of agricultural facilities and infrastructure to increase food crop production. The failure in the development of the food sector is caused by the inaccuracy of regulations and policies in the food sector.

Based on the discussion above, the problem studied in this paper is the urgency of justice values in structuring food law. Some of the previous research that discussed food sovereignty were reviewed from several perspectives including an article entitled *Kedaulatan Pangan sebagai Basis untuk Mewujudkan Ketahanan Pangan Nasional* (Food Sovereignty as a Basis for Realizing National Food Security) written by Syahyuti and friends. The purpose of the article is to review the concept of food sovereignty in the international world and the policies of the Indonesian government. This research suggests that food sovereignty and food

security are two things that complement each other. Food sovereignty is related to farmers' rights and access to agricultural resources as measured in various levels of territory, households and individuals. Article from Muhamad Ilham Arisaputra entitled *Reforma Agraria untuk Mewujudkan Kedaulatan Pangan* (Agrarian Reform to Realize Food Sovereignty). The purpose of the study is to examine the concept of agrarian reform to realize food sovereignty in Indonesia. The study revealed that agrarian reform aims to maximize people's food security in the form of guaranteed employment opportunities for farmers, improved management of natural resource conservation, and increased productivity of farming families.

The article entitled *Gagasan Konstitusi Pangan: Urgensi Pengaturan Hak atas Pangan Warga Negara dalam Amandemen Kelima UUD 1945* (The Idea of the Food Constitution: The Urgency of Regulating the Right to Food of Citizens in the Fifth Amendment to the 1945 Constitution) written by Putra Perdana Ahmad Saifullah which aims to explore the right to food as one of the contents of the constitution. Research using the normative method explains that the protection and fulfilment of the right to food are not regulated in the constitution, while if studied, citizens have the right to legal certainty in the food sector through strengthening in the 1945 Constitution. Strengthening norms on guaranteeing the protection of the right to food can be used as a medium of anticipation of the food crisis. Some of these studies have differences in principle from this article, namely on the aspects of structuring food laws that provide justice value for the community. The approaches used in this study are the statutory approach, the conceptual approach and the philosophical approach. The problem is studied using the theory of responsibility and the theory of justice.

2. Research Method

This research applied normative legal research methods to examine legal norms related to food law. The approaches used in this study were the statutory approach, the conceptual approach, and the philosophical approach. The statutory approach was used to examine laws and regulations correlated with the food sector, including the 1945 Constitution and Law No.18 of 2012 concerning Food. Both were used as reference material to examine the suitability and consistency between one legal basis and another. The conceptual approach became a foothold in building legal arguments. The philosophical approach was used as the embodiment of philosophical values as well as lofty ideals in the frame of ideality in the field of food law. The problem was studied using the theory of responsibility and the theory of justice. The collection of legal materials

was in accordance with the approach used by collecting laws and regulations and relevant legal concepts related to the research issues. Legal materials in accordance with the structuring of food law were analyzed to answer the legal issues raised in this research topic.

3. Results and Discussion

1. The Nature of Fulfilling the Right to Food that Reflects Community Justice

Food is a commodity that plays a very important role in economic life. Based on the Rome Declaration on World Food Security launched at the World Food Summit, food security is achieved if all individuals at all times, have access to sufficient food, nutritious, and physically and financially safe to suit their needs and tastes in order to live a healthy and productive life.[1]

Food security contains at least the basic elements, namely food availability, community accessibility, and food price stability. These three became absolute conditions. If one of them is not fulfilled, then a country cannot be entitled to a good food-secure country. Food access is an indicator of food security. Although food is sufficiently available at the national and regional levels, individual access to meet food needs is uneven, food security is still said to be fragile. Aspects of food distribution to remote rural areas and households are very important in efforts to strengthen food security strategies.

Regulation aimed at realizing food sovereignty needs to be compiled in nature to realize the development of the food sector. Law is needed to regulate social life in all aspects such as in social, political, cultural, and educational life, let alone its function or role in regulating economic activities. The law became a guide in development. It implies that: (1) law is a principle of development. Every movement of development must be set forth in the law, both in terms of the basis of activities and in the enforcement of the pillars of development. Thus, the law becomes the guarantor for the preservation of good development results; (2) the existence of a national legal unity that serves the interests of humanity, civilization, and the glory of the nation and state. It does not mean denying the existence of a plurality of laws formed and enacted through customary law and/or religious law which is precisely the fundament for the building of national law. The law is built and enforced for the benefit of the foundation of

[1] 'World Food Summit' <https://www.fao.org/3/w3548e/w3548e00.htm> [accessed 4 November 2021].

development and empowerment of the nation in achieving the goals of welfare and justice for all people.[2]

The fact that the government is carrying out national development is very necessary even though it causes debate. Some experts agreed with the intervention on the grounds that there was a worry about bearing a big risk or a problem of trust. This is in line with the opinion of Karel Hendrik Mark, an adherent of communism, that the government must take a role in the welfare of society in order to realize economic balance. Under such conditions, the authority of the ruler is created which results in the community becoming passive. In order to achieve balance, the government is expected to play a role as a supervisor and evaluator in economic activities so that it can provide welfare for the community. Other experts disapproved of the government's involvement because they think that the economic sphere is sufficiently done by entrepreneurs. In the practice of intervention, the government has a role as the key to achieving a prosperous society. This is based on the understanding that economic problems cannot be left to a free mechanism so a balance of economic growth is needed through government supervision and regulation. Strategic measures must be pursued by the government to reduce economic inequality so as to minimize social differences and create psychological, ideological, social and political conditions that are beneficial for carrying out government tasks in economic development. The government must be guided by certain restrictions in order to guarantee intervention running well so that it does not exceed the government's capacity. Over-exceeded capacity may push the development towards economic distortion[3].

The Unitary State of the Republic of Indonesia (NKRI) has made the choice to develop a legal system that supports the market economy. Conscious use of the law in order to transform or develop Indonesian society into a supporter of the market economy is based on the understanding that law can function as "a tool of social engineering". In addition to legal factors, it is debatable the possibility of other factors such as the economy and the use of technology as the driving factors that provide systematic first impetus.[4]

[2] Winahyu Erwiningsih, 'Peranan Hukum Dalam Pertanggungjawaban Perbuatan Pemerintahan (Bestuurshandeling)(Suatu Kajian Dalam Kebijakan Pembangunan Hukum)', *Jurnal Ilmu Hukum*, 9.2 (2006), 183–200.

[3] Padang Sumatera Barat, '"INTERVENSI PEMERINTAH "ANTARA KEBUTUHAN DAN PENOLAKAN DI BIDANG EKONOMI Sumarni', *Journal of Economic and Economic Education Vol*, 1.2 (2013), 183–94.

[4] Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti, 2000).

The development of the Food Law in Indonesia is faced with many problems because food is not only related to consumption and production, but also the carrying capacity of a comprehensive agricultural sector. There are four aspects that are prerequisites in carrying out agricultural development: (1) access to land ownership; (2) access to inputs and production processes; (3) access to markets; (4) and access to freedom. Of the four prerequisites, there are three prerequisites that have not been implemented consistently, namely opening up access for farmers in land ownership, providing freedom to organize and making their own choices in production. Until now, the government has always avoided these two things because it is considered to have a high political risk. Government policy focuses more on production and the market. If you look at the success stories of agricultural development in Japan, Korea, Thailand, China, and Vietnam, all of them cannot be separated from the overhaul and realignment of unequal land tenure structures through agrarian reform programs. The program includes the redistribution of land to smallholders and farmworkers, structuring production through the development of agricultural infrastructure, capital facilities and appropriate technology, strengthening farmer institutions or organizations in the form of cooperatives or associations, farmers and protection of agricultural products.

The politics of Indonesian food law must refer to the country's constitution, the right to food in the 1945 NRI Constitution is formulated in Article 27 paragraph (2), Article 28 A paragraph (1), and Article 34. Article 27 paragraph (2) of the 1945 NRI Constitution states "Every citizen has the right to a decent job and livelihood for humanity", and Article 28 A, paragraph (1) of the 1945 NRI Constitution second amendment states "Every citizen has the right to live a prosperous life born and mentally, to live and to have a good and healthy living environment and the right to obtain health services". It implicitly includes the dimension of the right of every citizen to food. Article 34 of the 1945 NRI Constitution implicitly affirms the role of the state in ensuring the rights of the poor and children. The formulation of Article 27 paragraph (2), Article 28 A paragraph (1) and Article 34 is a limited reflection of the achievement of the state objectives of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution in the second paragraph which emphasizes, "An independent, united, sovereign, just and prosperous Indonesian state".

The legal politics of national food security in its embodiment is more oriented towards fulfilment and depends on the needs and mechanisms of the global market which are very liberal and capitalistic and deny the existence of a local wisdom system owned by indigenous peoples. This reality has an impact on the

food crisis and the loss of biodiversity of food crops. The food crisis occurs in connection with agricultural development strategies or orientations implemented by world institutions, such as the WTO and the World Bank, which prioritize the agriculture industry-oriented to the world market and become a supplier of global supermarket chains. This concept argues that it is productivity and quality are the cornerstones of the green revolution. Global agribusiness companies are intensively expanding agriculture loaded with chemical and biotechnological intakes to the rest of the world.[5]

2. Government Responsibility in Fulfilling the Right to Food

The state is responsible for the fulfilment of food for its citizens because food is an essential need for the entire community. The role and function of food are very vital, therefore since the Unitary State of the Republic of Indonesia (NKRI) was established, the basis of the State of Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI) mandate that the fulfilment of the right of all people to food is the obligation of the state. These obligations include the availability, affordability and fulfilment of sufficient, safe, quality, and nutritionally balanced food on an ongoing basis.

The concept of food sovereignty is more strategic in principle than the concepts of self-sufficiency and food security. High dependence on imported food is one indication of food sovereignty problems. The most worrying form of poor food sovereignty is the "trap" of importing food. It implies that the country is completely dependent on the food supply of other countries. It also has implications for the deterioration of foreign exchange reserves and the domestic balance of payments. The government's performance as an executive institution determines the success of the implementation of the Food Law, namely to ensure food security, maintain food independence, and create national food sovereignty. If the government can consistently fight for aspects of food sovereignty, the prerequisite that must be completed is to improve the consistency of the basic strategy of agricultural sector policy and the development of food sovereignty.

The concept of food sovereignty initiated by La Via Campesina (a world organization of farm workers and farmers of the world) essentially focuses on the right of the state and farmers to own and determine food policies that are prioritized on local food production, as well as the prohibition of dumping practices in the food trade because it will harm farmers. The right to determine

[5] Rachmad Safa'at, 'Rekonstruksi Politik Hukum Ketahanan Pangan Berbasis Pada Sistem Kearifan Lokal (Studi Kasus Dinamika Perlindungan Hukum Hak Masyarakat Adat Tengger Dalam Menuju Kedaulatan Pangan)' (Program Pascasarjana Undip, 2011).

one's own food policy has the aim that farmers and farm workers determine for themselves the selection of production, the type of technology, the relationship between production and distribution and food safety. Based on this, to achieve food sovereignty, all food production activities must be pursued by farmers instead of entrepreneurs.[6]

3. Development of Food Law Based on Justice in Realizing Community Welfare

The direction of legal development is dotted with the outlines of ideas in the 1945 NRI Constitution, however, it requires alignment with the level of development of the society to which it aspires. Legal development should not be synonymous with the construction of laws or regulations. Forming a law is different from forming a law. The formation of laws is limited to the meaning of the formation of legal norms. The social, cultural, and political order goes beyond the norm order; thus, a certain spirit is needed for the order to have the capacity. In the construction of law, there are three pillars as stated by Lawrence M. Friedman, namely substance, structure, and culture. The three pillars should ideally run harmoniously, in harmony, and in balance because these three things are closely related to each other. Gustav Radbruch stated that the purpose of the law is to achieve justice, certainty and expediency. Justice is in the first and foremost position compared to certainty and expediency.[7] The law is required to fulfil the three domains of applicability which Gustav Radburch calls triadism, that "the idea of law is defined through a triad of justice, utility and certainty. " The three basic values have a tension relationship (spanungsverhaltnis) with each other.

The value of utility or expediency arises from an analysis of the value of justice. The embodiment of the value of justice can be seen in two forms, namely the value of individual justice and the value of social justice. The value of individual justice is largely determined by each individual in carrying out interactions between them. The realization of the value of social justice is highly dependent on the role of the state through the conditioning of the social structure in a particular society so that it does not depend on the will of individuals. If there is a social injustice, then the cause is an unjust social structure. Such unjust social structures must be sought to be improved. Social justice can also be defined as a behavior, that is, the behavior to give to others what they are entitled to for the realization of a prosperous society which is the main goal of social justice.[8]

[6] Triwibowo Yuwono and others, *Pembangunan Pertanian: Membangun Kedaulatan Pangan* (UGM PRESS, 2019).
[7] Aep Gunarsa and B Arief Sidharta, 'Meuwissen Tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum' (Refika Aditama, 2013).
[8] Suteki, *Disain Hukum Di Ruang Sosial* (Semarang: Thafa Media, 2013).

According to Soejono Koesoemo Sisworo, justice means an outward and inner balance that provides possibility and protection for the presence and development of truth, which has a climate of tolerance and freedom.[9]

According to Suhrawardi K. Lubis[10], Fairness or Justice is a form of recognition and balanced treatment between rights and obligations. If there is recognition and balanced treatment between rights and obligations, it means recognizing the right to life. The right to life should be maintained by working hard, but without causing harm to others, because others also have the same rights. The recognition of the other person's life directly gives the other person the opportunity to defend his individual rights. Thomas Aquinas, a figure philosopher of natural law, grouped justice into two, namely:

a. General justice means justice according to the will of the Act that must be carried out for the realization of the public interest.
b. Special justice means justice which is based on the principle of equality according to its part or proportionality.

Pancasila is the basis for realizing food sovereignty. The state has the full right to direct food policy without the influence of market interests. National food sovereignty can be realized through struggles, including challenges arising from the dominance of the free market, for example, the conversion of agricultural land for settlement purposes, resulting in reduced land. On the other hand, there is an increase in the number of people which directly increases the need for food. Strategic efforts through the realization of social justice are needed in order to form pro-people regulations to achieve food sovereignty.[11]

The development of food law must be oriented towards the realization of social justice in the form of community welfare. In order to achieve this, efforts are needed, including, drafting laws and regulations in the food sector based on the spirit of Pancasila values and the 1945 NRI Constitution Article 27, Article 28, and Article 33; changing the paradigm of food development from the paradigm of Food Security to Food Sovereignty; conducting studies on international legal instruments related to food regulation; and diversify food crops to support food sovereignty. The study of international legal instruments needs to be considered for their impact on society. If it has a good impact on the welfare of the community, then the law can be accommodated in food laws and regulations. On

[9] Nursidik, 'Kebenaran Dan Keadilan Dalam Putusan Hakim', *Jurnal Mimbar Hukum Dan Peradilan*, 74 (2011), 139.
[10] Suhrawardi K. Lubis, *Etika Profesi Hukum* (Jakarta: Sinar Grafika, 1994).
[11] 'Pancasila Dalam Tindakan: Perjuangan Mewujudkan Kedaulatan Pangan Nasional' <https://bpip.go.id/bpip/berita/990/83/pancasila-dalam-tindakan-perjuangan-mewujudkan-kedaulatan-pangan-nasional.html> [accessed 6 November 2021].

the contrary, if it does not have a good impact, then those international rules can be abandoned.

International food politics is influenced by neo-liberalism, which is reflected in the provision of food controlled by radical capitalism. The World Trade Organization (WTO) as part of the group proposes that developing countries buy food in international markets rather than independently supplying food needs. The proposal is stated in the Agreement on Agriculture (AoA) approved by Indonesia in 1995. The agreement resulted in injustice because on the one hand, it benefited international corporations across countries and developed countries in the form of subsidized agricultural products and low import duty rates. On the other hand, farmers and the majority of the people are harmed by the small agricultural subsidies and people's consumption. Such conditions result in suffering, lack of attention from the government to its people (the non-response) eventually becomes powerlessness. The injustice arises when there is incompetence resulting in physical and psychological social suffering.[12]

The currently running food system does not reflect fairness and resilience. This condition is proven when the world is faced with the pandemic situation of the Covid-19 disease outbreak which lasted almost 2 years from the beginning of 2020. Indonesia is experiencing the threat of food insecurity. The vulnerability of the national food system is due to dependence on corporations and profit hunters who have complete control over food distribution mechanisms. Imports have always been a mainstay to find solutions to suppress food inflation. Local food resources are not a priority solution to food constraints. Farmers are supposed to be subjects in the implementation of the food system. Sovereignty and justice should be the priority of the food system through the placement of farmers as subjects in food development. The government must think more and act responsively to the interests of farmers, provide for the needs of farmers and be sensitive to farmers' problems.[13]

The food diversification program has not been able to be implemented because it is faced with constraints on the availability of types and quality of food ingredients and inadequate food distribution. Farmers and communities must think creatively and innovatively to find solutions to face the limited availability

[12] Sulhani Hermawan Hermawan, 'Tinjauan Keadilan Sosial Terhadap Hukum Tata Pangan Indonesia', *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 24.3 (2012), 489–503.
[13] 'Saatnya Sistem Pangan Yang Berdaulat, Adil Dan Resilien' <https://kedaulatanpangan.org/saatnya-sistem-pangan-yang-berdaulat-adil-dan-resilien/> [accessed 6 November 2021].

of types and quality of foodstuffs. The efforts of these farmers must be supported by the government through various policies that are oriented toward the interests of the wider community and not to a handful of entrepreneurs.

4. Conclusion

Philosophically, food is closely related to survival and is a symbol of people's prosperity and well-being. The right to food is part of human rights whose fulfilment is the responsibility of the state. It is mandated by the UN human rights charter, strengthened in the United Nations Socio-Cultural Economic Covenant, and is a mandate of the 1945 Constitution of the Republic of Indonesia. Pancasila and the 1945 NRI Constitution mandate that the state is obliged to fulfil the right to food for all people, this is considering the role and the very vital function of food. Efforts to meet food needs are state obligations which include the availability, affordability and fulfilment of sufficient, safe, quality, and nutritionally balanced food consumption in a sustainable manner. In order to meet aspects of justice for the community, it is very necessary to regulate food laws based on food sovereignty which prioritizes the availability, accessibility and equal use of food.

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