



Legal politics for the realization of national food sovereignty in anticipating the impact of the global food crisis

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Abstract

This research examines and explores the need for the Government to increase and strengthen National Food Sovereignty. The main problem in each period of Government is Consistency and Sustainability in the Policy for the Realization of National Food Sovereignty. This research is a normative legal research or doctrinal research which is explorative-analytical in nature. The data used is secondary data, in the form of primary legal materials and secondary legal materials. The results of the study show that the main cause of the difficulty in realizing food sovereignty is the government's lack of good will towards the food sector which is the livelihood of its people. The government prioritizes and prioritizes other sectors that have a large impact on the country's income and foreign exchange. As for legal politics to realize and strengthen food sovereignty in anticipating the impact of the global food crisis, it is a return to the qitah and philosophy of the political direction of an agrarian country based on industrialization. Establishment of Regional Food Agency Institutions from a linear hierarchy from the center to the regions and discussion and drafting of a Law on Food Management, which is *Lex specialis derogat legi generalis* in nature. Bearing in mind that the impact of the global food crisis is a phenomenon and a challenge before our eyes that some poor countries have been affected, appropriate and consistent policies are immediately implemented.

Keywords: Legal politics, food sovereignty, global food crisis

Introduction

The 1945 Constitution of the Republic of Indonesia (UUDNRI) Pasal 28I ayat (4) mandates, "Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government." In the context of the right to food, the state is burdened with the obligation to fulfill it like other human rights. The state is burdened with the obligation to meet the community's need for affordable and adequate food and nutrition. Therefore, the neglect of food and nutrition itself can be considered as a violation of human rights by the state. In fact, when the right to food is ignored continuously, then these violations can be equated with latent generation annihilation (silent genocide).

Food is the most basic right for humans. Food is the basic right of every citizen whose fulfillment is the obligation of the state. Quoting a fragment of Bung Karno's speech "I ask you: while the Indonesian people will experience disaster, catastrophe, catastrophe in the near future if the issue of food for the people is not resolved immediately, while the issue of food supply for us is a matter of life or death" — Soekarno, Bogor Agricultural Institute, 1952.

The right to food is also affirmed in the United Nations General Assembly Resolution, ICESCR (The International Covenant on Economic, Social and Cultural Rights). Article 11 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights as follows: "Covenant Contracting States recognize the right of every person to an adequate standard of living for himself and his family, including food, clothing and adequate housing, as well as the improvement of conditions live on and on. Thomas Malthus has warned that the number of people increases exponentially, while efforts to increase the food supply can only increase arithmetic.

In the context of the State, sovereignty is the most strategic sector, it can be seen that no country can carry out development optimally before the development of food security is created. The existence of food security with food availability is one of the urgency of a country to be able to create it. This is motivated by the fact that a country's food security can affect all aspects of state life such as the economy, social politics and even culture. Therefore, the act of fulfilling people's food needs by the State is a global issue, not just an issue of a single State and encourages the birth of food policies from a government.

Law No. 18 of 2012 concerning Food. In Article (1) it is stated that food sovereignty is the right of the state and nation to independently determine food policies that guarantee the right to food for the people and which give the people the right to determine a food system that is in accordance with local resources. It can be seen that there are two parties related to food sovereignty, namely (1) the state has the right to independently determine food policies that guarantee the right to food for the people and (2) the community also has the right to determine a food system that is in accordance with local/locality-specific resources. Implicitly and explicitly stated that the state is obliged to carry out food affairs in a serious, consistent and legally formal manner can be used as the main guideline in the realization of national food sovereignty.

Until now the problem of food is still a fundamental problem for the Indonesian people, as a country with such a vast territory and abundant natural resources, but the level of food imports is still high, food prices are increasingly expensive and food insecurity is threatening in various regions. The issue that has attracted attention in the period at the end of 2022 and at the beginning of 2023 is the

Government's policy of importing rice of 500 thousand tons and 2 million tons. That at the same time, the Indonesian people, especially the farmers, have entered the harvest season between February and May 2023.

This rice import policy is believed to damage the psychology of farmers. Moreover, according to data from the Central Statistics Agency (BPS) the rice surplus at the end of 2022 is projected to reach around 1.7 - 1.8 million tons. Professor of the Bogor Agricultural Institute (IPB) Dwi Andreas Santosa said this figure had not been added to the previous year's surplus of rice which reached 5.7 million tons, according to data from the National Food Agency (Bapanas). Dwi Andreas also highlighted the reasons for the rice import policy due to the government's rice reserve (CBP) stock at Bulog being thin. At the time the import was decided, Bulog's CBP stock at that time (as of 15 December 2022) was 440,000 tons. So there is a misperception about stock issues. It seems that the national stock with figures seems thin, but it is not. Those reserves belong to the government, while most of the others are in the community, small traders, big traders, farmers. So the rice is there.

From the data on the balance of exports and imports of rice, it can be seen that the net rice exporters are Thailand, Vietnam, Cambodia and Myanmar. The other six member countries are net importers of rice. Indonesia is the largest rice producing country in the ASEAN region, but due to its large population consuming rice, Indonesia is also a rice importing country. The condition of the ASEAN region is relatively stable compared to the average condition of other world regions in terms of food availability. According to Clarete *et al.* (2013), low fluctuations in food prices in the ASEAN region are caused by the relatively small amount of rice traded on the global market. Meanwhile, ASEAN is an exporter region which is also the largest rice importer region in the world.

Instruments of legal products and legislation have regulated a lot about the implementation of food, both international instruments such as the 1948 Human Rights Declaration and the Social and Social Security Covenant which have been ratified through Law Number 11 of 2005 as well as national instruments, namely our constitution, the 1945 Constitution of the Republic of Indonesia. guarantee the right to food which is implicitly contained in Article 27 Paragraph (2), Article 28 Paragraph (1) and Article 34, then explicitly Law Number 18 of 2012 concerning Food (Food Law) has mandated that the administration of food must be based on food sovereignty, food independence and food security.

Quoting President Joko Widodo's statement, "Food security is different from food sovereignty. Food security "only" means food "is there" in logistics warehouses and in markets. But where the food comes from doesn't matter, it doesn't matter whether it's imported or local, what matters is that it is available. But in the concept of "food sovereignty", food is there, we produce it ourselves and we are strong in marketing, even the food we produce from our agriculture can dominate markets abroad. We are sovereign over our food sources, if there is chaos abroad, our logistical reserves are still strong because our food production is more than sufficient to meet the people's needs. In the Working Cabinet government, the goal is "improvement of food sovereignty". The biggest vision of food sovereignty is when food products from Indonesia are abundant in local and foreign markets, at least in the markets of ASEAN countries.

Based on the background described above, the author would like to further examine: Why should the political law of national food sovereignty be realized in conditions of a global food crisis? and How is the construction of the political ideal of national food sovereignty law?

Research Methods

According to Ali, legal research is an activity of a researcher to answer all legal issues that are both practitioners and academics, both in the form of legal norms or legal principles that develop in society, as well as those related to legal reality in society. While the research method as stated by Efendi and Ibrahim is a scientific activity related to a systematic work procedure to understand an object or research subject, in terms of finding answers that can be scientifically accounted for and tested for validity.

Legal research methods generally divide research into two major types or groups, including normative legal research and empirical legal research. The selection of the type of research is adjusted to the problems or legal issues that will be analyzed and solutions are sought, namely those related to the Legal Politics of the Realization of Food Sovereignty in conditions of a global food crisis. To get answers to these legal problems, normative legal research is used. Normative legal research or often also called doctrinal legal research is a legal research conducted by examining secondary data or library materials so that it is also known as library legal study. This research is classified as a type of normative legal research because in the process of collecting data related to the research theme (the concept of Political Law for the Embodiment of National Food Sovereignty in conditions of a global food crisis) obtained from secondary data or library materials, such as regulations legislation, books, journals, articles, websites and other reference sources related to the research problem being studied.

Discussion

1. Political Contextualization of National Food Sovereignty Law

In relation to the contents of the Constitution, Sri Soemantri quoted the opinion of J.G. Steenbeek explained 3 (three) basic materials, namely:

1. Guarantees for human and citizen rights;
2. The fundamental constitutional structure of a country;
3. Division and limitation of constitutional tasks which are also fundamental.

Sri Sumantri noted one of the important lessons, "politics which is often dubbed the art of possibility is actually demanding mutual acceptance of differences and managing them in a compromise for the benefit of the people at large". Whereas then the discussion on issues related to food with the background of its interests certainly makes the main philosophical basis that food is part of the human rights of every citizen whose fulfillment is an obligation imposed on the state. Then, because food is a basic need for every citizen, legally and formally, a constitutional hierarchy should have formed a Ministry or State Institution that has super body authority in relation to the tasks and functions of food affairs which are linear from the center to the regions. of course all of this requires good will and political compromise in the interest of realizing national food sovereignty.

If we examine the thoughts about political and legal relations from critical legal studies such as Roberto Mangabeira Unger, he stated that law and politics are intertwined so that there is no such thing as "pure law" or "pure politics" as Hans Kelsen said in pure legal theory or what the positivists say that law can be separated from politics and vice versa. This view is almost similar to Karl Max's view that law is merely a tool in the hands of those in power to maintain their position and may even be used as a means of oppression from one class to another, in short legal decisions are a formal form of political decisions even though the perpetrators law and political actors go their separate ways. Along with the views above on law and politics are mutually correlated of course with their respective domains and by different institutions. But the most important thing is that both political decisions and legal decisions must proceed according to their respective fields and must not interfere with each other. The most important thing is that political decisions about the urgency of food, which is the life of the people, can become a critical study in order to turn it into legislation and regulation.

Legal politics as a legal policy and the direction of development is closely related to the direction of the goals of a legal product, especially a law. Understanding legal politics can be done through various perspectives, such as: philosophical, sociological, to a formal perspective. The factor is more automatic, this also has an influence on the enforcement of the intended law. Finally, we can understand that legal politics touches the most substantial things in a country, namely laws and regulations.

The theory of hierarchy or levels of legal norms (Stufenbau or Stufentheorie) was introduced by Hans Kelsen. In this theory, Hans Kelsen expressed the opinion that legal norms are tiered and layered in a hierarchy (organization) in the sense that a higher norm applies, originates and is based on even higher norms, and so on until on a norm that cannot be traced further and is hypothetical and fictitious in nature, namely the Basic Norm (Grundnorm). Basic Norms are the highest norms in a system of legal norms which are no longer formed by a higher norm. The Basic Norms are determined in advance by the community as a legal basis which is the basis for the norms below it, so that a Basic Norm can be said to be pre-supposed.

According to Hans Kelsen, a legal norm is always based on and originates from a norm that is above it, and conversely downwards the legal norm also becomes a source and becomes the basis for norms that are lower than it. In terms of system layout/hierarchy norms, the highest norms (Basic Norms) become the place where the norms below depend or stand, so that if the Basic Norms change, the system of norms underneath them will be damaged.

Then Hans Nawiasky, who is a student of Hans Kelsen, developed a theory of the hierarchy of legal norms to become more systematic. Hans Nawiasky said that apart from being tiered and multi-layered, a legal norm in a country is also in groups. He divided legal norms in a country into 4 major groups, namely:

Group I: State Fundamental Norms (Staatsfundamentalnorm);

Group II: Basic Rules/State Rules (Staatsgrundgesetz);

Group III: "Formal" Law (Formell Gesetz);

Group IV: Implementing Rules/Autonomous Rules (Verordnung & Autonome Satzung).

Juridically, the meaning of the word "hierarchy" as mentioned in the elucidation of Article 7 Paragraph (2) of

Law no. 12 of 2011 concerning the Formation of Legislation, as amended into Law no. 13 of 2022, the hierarchy is a hierarchy of each type of legislation which is based on the principle that lower laws and regulations may not conflict with higher laws and regulations. Hamid, *et al.* explained that in the hierarchical system of laws and regulations there are three fundamental principles, namely:

- a. The principle of *lex superior derogat lex inferior*, means that a higher regulation will override a lower regulation if it regulates the same and contradictory substance.
- b. The principle of *lex specialist derogat lex generalis*, means that more specific regulations will override general regulations if they regulate the same and contradictory substances.
- c. The principle of *lex posterior derogat lex priori*, means that new regulations will override old regulations.

The hierarchical stratification of legal norms by Hans Kelsen, supplemented by his student Hans Nawiasky, emphasized that the pyramid of laws and regulations must comply with the principles and must not conflict with higher regulations. In this regard, the author is of the opinion that in terms of the formation and renewal of laws, they must not conflict with the 1945 Constitution of the Republic of Indonesia which is contained in article 28I paragraph (4) which mandates, "The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government." In the context of the right to food, the state is burdened with the obligation to fulfill it like other human rights. So that the birth of a new law on food administration that is more meaningful and comprehensive is a necessity.

Whereas in terms of the realization of food sovereignty, the rationale is that food sovereignty is the right of every person (country) to determine their own food policy in accordance with their cultural conditions and needs (local wisdom values), and environmental sustainability, which focuses on fulfilling food needs for the community rather than food as a traded commodity.

Then it is the responsibility of the government and society to uphold, protect and guarantee that the people can enjoy their rights. And then it is the duty of the state to guarantee the fulfillment of its people's right to food.

As for this matter, the Principles of Food Sovereignty are as follows

- Food is the Right of Every Citizen whose fulfillment is the guarantee and responsibility of the state.
- Agrarian reform and justice for land tenure in the context of the survival of every citizen
- Protection of natural resources for the greatest prosperity of the people.
- Empowering Farmers in a broad sense in terms of access to knowledge, technology and capital.
- Utilization of agricultural land based on specific localities, local wisdom, environmentally friendly, sustainable, and oriented towards fulfilling the right to life and the family economy.
- Ending Globalization Hunger, food insecurity and food crises
- Creation of family, rural employment and modernization of agricultural mechanization.
- Democratic control with social justice for all Indonesian people.

As for the concept of Food Sovereignty, the author tries to analyze Mochtar Kusumaatmaja's legal and development theory as a tool for analysis. As a point of departure from legal arguments as a means of renewal and social change and development in the field of food agriculture by using legal means.

The function of law in a developing Indonesian society is not enough to guarantee certainty and order. According to Mochtar Kusumaatmadja, the law is expected to function more than that, namely as a "means of community renewal"/"law as a tool of social engineering" or "a means of development" with the following main ideas:

Saying law is a "means of social renewal" is based on the assumption that the existence of order or order in development and renewal efforts is something that is desired or deemed (absolutely) necessary. Another assumption contained in the conception of law as a means of reform is that law in the sense of legal rules or regulations can indeed function as a tool (regulator) or a means of development in the sense of channeling the direction of human activity in the direction desired by development and renewal.

2. Food Globalization Contextualization

The threat of protracted war in the South China Sea and the Russia-Ukraine war has always threatened humanity, including conflicts in several countries. It is in this context that food security is one of Indonesia's strength programs towards national and world food storage.

The Food and Agriculture Organization (FAO) reports that there are 5 (five) countries that are threatened or have even faced hunger. According to FAO's official statement on the commemoration of World Food Day (HPS), it occurs when global food security is facing threats from various directions. The soaring prices of food, energy and fertilizers have raised concerns about global food security, especially with the climate crisis and long-standing conflicts, such as Russia and Ukraine. "Unless action is taken, as many as 970,000 people are at risk of starvation in Afghanistan, Ethiopia, Somalia, South Sudan and Yemen, the number of people facing hunger worldwide continues to increase," FAO wrote in an official statement quoted on Sunday (16/10/2022).

According to the FAO's Food Security and Nutrition Report in 2021, 828 million people are hungry, while 3.1 billion people cannot afford or obtain healthy and proper food. In fact, writes FAO, most of them are farmers and rural communities. In the current global situation, FAO also projects that from October 2022 to January 2023, global acute food insecurity will continue to increase.

According to the Global Report on Food Crisis 2022 Mid-year Update, it is estimated that in that period there will be 205 million people in 45 countries who will face acute food insecurity and need urgent food assistance. When combined with the latest data from 2021, this number is estimated to reach 222 million people in 53 countries/territories covered in the 2022 Global Report on Food Crises. This number is also recorded to be the highest in the report's seven-year history. "In addition, approximately 45 million people in 37 countries are projected to have so little food that they will be severely malnourished, at risk of death or already face hunger and death," FAO continued.

President Joko Widodo (Jokowi) said that many countries in the world are currently at risk of experiencing acute food insecurity due to the uncertain global situation. This was

conveyed by Jokowi in commemoration of World Food Day which falls on October 16 every year. Jokowi said that countries in the world were threatened with economic, energy and food crises due to the Covid-19 pandemic that had lasted 3 (three) years and the never-ending Russia-Ukraine conflict.

"There are various predictions about the global situation in the future which are the same that many countries in the world whose people are threatened with acute food insecurity. Nearly three years of a pandemic, then conflict and war in Ukraine, have impacted the economy, energy and food crises throughout the world," Jokowi wrote on his Instagram account @jokowi, Sunday (16/10/2022). According to him, like it or not, Indonesia must be prepared to face various crisis threats, especially the food crisis by increasing food security. Jokowi claimed that Indonesia had long ago made a number of preparations to face the threat of a food crisis. "We have prepared the road to food security far in advance, one of which is by building infrastructure in the agricultural sector, from dams, ponds, to irrigation networks that support national agricultural production."

Then in terms of food globalization the author uses the legal theory of the welfare state (state welfare). According to Bessant, Watts, Dalton and Smith (2006), the basic idea of the welfare state dates back to the 18th century when Jeremy Bentham (1748-1832) promoted the idea that government has a responsibility to ensure the greatest happiness (or welfare) of the greatest number of their citizens. Bentham uses the term 'utility' to describe the concept of happiness or well-being.

Based on the principles of utilitarianism he developed, Bentham believes that something that can cause extra happiness is something good. Conversely, something that causes pain is bad. According to him, government actions should always be directed at increasing the happiness of as many people as possible. Bentham's ideas on legal reform, the role of the constitution, and research social policy for the development of social policies made him known as the "father of the welfare state" (father of welfare states).

In the Indonesian context, in the administration of the state, the spirit of the main objective is to ensure prosperity for every citizen, guarantee a decent job and livelihood, as stated in Article 33 paragraph 3 and Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, in harmony with the state's responsibility in meeting the needs the basis of the people, namely the basic need for primary needs for food.

Utilitarianism puts benefit as the main goal of law, benefit here is defined as happiness, which does not matter whether a law is good or unfair, but depends on the discussion of whether law can give happiness to humans or not.

The basic principles of Jeremy Bentham's teachings are as follows^[1]:

1. The purpose of the law is that the law can guarantee happiness to new individuals and many people. Bentham's utility principle reads "the greatest happiness of the greatest number" (the greatest happiness for as many people as possible).
2. The principle must be applied quantitatively, because the quality of pleasure is always the same.
3. To achieve individual and societal happiness, legislation must achieve four objectives

- a. To provide subsistence (to provide a living)
- b. To Provide abundant (to provide abundant food livelihood)
- c. To provide security (to provide protection)
- d. To attain equity (to achieve equality).

Closing

The reality of the global food crisis is not a figment, many countries are already experiencing critical conditions and are malnourished, thus threatening the sovereignty of a nation. It takes effort and good will from the government and the state to anticipate it.

Through 3 (three) legal theories which, according to the author's opinion, are relevant to be applied in this case, the first is the legal political theory of the formation of laws and regulations on food administration that are able to respond to global dynamics and accommodate the principles of food sovereignty, namely that: Food is the Right of Every Citizen. The state whose fulfillment is the guarantee and responsibility of the state; Agrarian reform and justice for land tenure in the context of the survival of every citizen; Protection of natural resources for the greatest prosperity of the people; Empowering Farmers in a broad sense in terms of access to knowledge, technology and capital; Utilization of agricultural land based on specific localities, local wisdom, environmentally friendly, sustainable; and oriented towards fulfilling the right to life and family economy; Ending Globalization Hunger, food insecurity and food crises; Creation of family, rural employment and modernization of agricultural mechanization; Social justice democratic control for all Indonesian people.

Then the second is the theory of law and development. The concept of law as a tool of social engineering was actualized to bring change and renewal as well as development of food agriculture within the framework of policies in the food sector to prevent classic problems of pragmatic settlement of imported culture, and issues regarding food distribution and trade governance. So that in this case a strong institution is needed that has linear super body authority from the center to the regions and is supported by a regulation on food affairs that is strong and in favor of the people, especially farmers. In line with Mochtar Kusumaatmadja's main point of view which says that law is a "means of social renewal" is based on the assumption that the existence of order or order in development and renewal efforts is something that is desired or deemed (absolutely) necessary. Another assumption contained in the conception of law as a means of reform is that law in the sense of legal rules or regulations can indeed function as a tool (regulator) or a means of development in the sense of channeling the direction of human activity in the direction desired by development and renewal.

Furthermore, in terms of food globalization, the author uses the legal theory of the welfare state (state welfare) within the framework of the present state to be able to guarantee that every citizen of the nation creates the greatest happiness for as many people as possible "the greatest happiness of the greatest number". The basic assumption is that the majority of all the people of this nation make a living in the food-agriculture sector which is marginalized, vulnerable and on average living below the poverty line, of course without ruling out other sectors but that food is the lifeblood and heart of a country's sovereignty.

So that later this becomes in harmony with the embodiment of the meaning of the embodiment of individual and community happiness through legislation which must achieve four objectives according to Jeremy Bentham: To provide subsistence (to provide a living); To Provide abundant (to provide abundant food livelihood); To provide security (to provide protection); To attain equity (to achieve equality).

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