Food Security And Local Government’s Role In Indonesia: Right-Based Approach In The Creation Of Local Regulation

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Abstract: This paper focusses to discuss governmental actions of the local/regional government, together with the central/national government, in establishing food security. Specifically, the governmental action is similar to the regulatory action related to food security, which will be discussed from a human rights perspective. From this stand point, the writers argue that the regional government can give positive contributions in establishing food security because based on the principles of local autonomy, the regional government can regulate depending on the specific conditions faced by the region. Regulations on food security are highly important as they will become policies and foundations of actions for the local government. Therefore, the governmental action in the local level can be more effective when the action is prescribed by an appropriate local regulation that matches the specific conditions faced by the respective region.

Key words: food, the right to food, governmental action

A. Introduction

Indonesia is a decentralized unitary state. Based on the legal framework, the governmental administration is undertaken not only by the central/national government, but also the local/regional government. The main function of the local government in the era of regional autonomy is realizing people’s welfare (Rauta, Kurnia, Siswanto, 2017). This paper focusses on discussing the governmental action by the local government, together with the central government, in establishing food security. Food security is a part of global health policy, encompasses development of the infrastructure and measures for the capacity building to promote and preserve the health status of individuals and communities across the world (Shrivastava & Ramasamy, 2017).

Food security is very strategic issue as food becomes the global attention, which is stated in one of the agendas in sustainable development goals, with the programs: zero hunger, responsible consumption and production (c.f. Ranjan & Deepanjali, 2015). The same is a concern of Food and Agriculture Organization in that year 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round (FAO, IFAD: 2018).

In Indonesia, food is the responsible of the government, not only it is seen as a constitutional mandate, but also as an impact of imbalances between the development of the population and residential areas versus the availability of lands as an effort to maintain food security. Stated
in Law No. 18 of 2012 on Food, Food Security is defined as a condition when food is fulfilled from the national level up to the individuals, as reflected in the availability of sufficient food, in its quantities and qualities, safety, diversity, nutrients, equity, and affordability, as well as not in contrary to the religions, beliefs, and cultures of the communities to develop healthy, active, productive, and sustainable lives. Based on the definition, the issue on food security covers several sub-aspects: adequacy, stability, affordability, and safety of the food.

A specific governmental action done by the local government that will be discussed in this paper is the creation of regional legal products related to the food security, seen from the human rights perspective. We argue that the local government has a positive contribution in establishing the food security since based on the principles of local autonomy, the local government can make local regulation based on the specific condition of the area. Regulations on food security are highly important because they will serve as policies and foundations of actions for the local government. Therefore, the actions performed by the local government can be more effective when they are prescribed based on the specific conditions faced by the area.

Based on the framework above, this essay will discuss specifically on several issues. First, human right, especially the right to food, as the basic obligation of the local government to establish food security. Second, the governmental action in the form of local regulation as the implementation of the local government’s responsibility in establishing food security. Third, the local regulation on food security based on human rights approach, specifically in this case is the right to food as a part of human rights.

**B. Discussion**

1. **The Right to Food as a Part of Human Rights**

Food is one of human beings’ basic needs. The human rights to adequate food is crucial importance for enjoyment of all other rights (Kumar Sinha, 2014). Therefore, food is seen as a part of human rights, which is acknowledged in Article 11 of the International Covenant on Economic, Social, and Cultural Rights. The acknowledgement takes part in two forms, the right to and adequate food which is a “relative” standard and the right to be free from hunger which is “absolute” (Narula, 2010). Referring to ‘freedom from hunger’ meant that the state would commit itself to ensuring that its people did not starve, at the very least (Rae, Thomas, Vidar, 2007). Thus, the human right to food places legal obligations on states to overcome hunger and malnutrition and realize food security for all (Garrow & Day, 2017).

The concept of the right to food as human rights means: “The right to food is an inclusive right. It is not simply a right to a minimum ration of calories, proteins and other specific nutrients. It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them” (Office of the High Commissioner for Human Rights). A right-to-food approach is not based on vague and replaceable policy goals subject to periodic redefinition, but on existing, comparatively specific and continuously becoming more precise obligations undertaken by governments (Mechlem, 2004). Operationally, the right to food has several aspects of: availability, accessibility, and adequacy. According to the availability aspect: food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other ways of obtaining food, such as fishing, hunting or gathering. On the other hand, it means that food should be available for sale in markets and shops (Office of the High Commissioner for Human Rights).
From accessibility aspect, it is seen that: economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. For example, the affordability of food can be guaranteed by ensuring that the minimum wage or social security benefit is sufficient to meet the cost of nutritious food and other basic needs. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to get food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners. For example, to guarantee physical access to food to people living in remote areas the infrastructure could be improved, so that they can reach markets by public transport (Office of the High Commissioner for Human Rights).

Lastly, from adequacy aspect: the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc. For example, if children’s food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, could be another example of inadequate food. Food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable. For example, aid containing food that is religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable (Office of the High Commissioner for Human Rights).

Referring to the theoretical concept of law, human rights are legal relationship among the entitled parties (entitlements) and obliged parties (obligations). The relationship is further explained (Sigrun, 2001):

*There is always someone who is the “right holder”, that is, the one who is entitled to something, this something being “the substance of the right” ... Corresponding to this entitlement holder there is an obligation holder, that is, someone who is under an obligation to respect or provide whatever the right holder is entitled to. Thus, for legally codified human rights, the right holders are each and every human being; while the obligation holders are, first and foremost, States or agents of the States.*

Based on the above definition, the right holder or the entitled party of food is every individual (human being), and the obligation holder or the obliged party is the nation or the government. Therefore, the main issue is the obligations of the nation or government, in terms of the right to food, are: to respect, to protect, and to fulfill. A doctrinal theory defines those obligations as (Sigrun, 2001):

*The obligation to respect requires the State to abstain from doing anything that violates the integrity of the individual or infringes on her or his freedom, including the freedom to use the material resources available to that individual in the way she or he finds best to satisfy basic needs. The obligation to protect requires from the State the measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other human rights of the individual - including the prevention of infringements of his or her material resources. The obligation to fulfill requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts.*
The relevance of the concept of government obligation is the benchmark in determining violation to the human rights (Dorothy, 1991). Related to the right to food, deciding whether violation to human rights happens or not must be distinguished on whether the actions or ignorance done by the government has the elements of inability or unwillingness. The element of inability can be excluded, but with burden of proofs: “the State has to demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations” … or “it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food” (Jayawickrama, 2002).

Since the framework used is the right to food as a part of human rights, food security should be understood as the obligation of the government toward the demands that arise from the right to food. In that case, the specific issue is the government’s obligations on the right to food, in which food security is the general answer of the demands on government’s obligations, are the obligation to respect, the obligation to protect, and the obligation to fulfil.

The obligation to respect the right to food contains the following ideas (Office of the High Commissioner for Human Rights):

States have to respect people’s existing access to food and means of obtaining food. This means that any measure which results in preventing access to food, for example denying food assistance to political opponents, is prohibited. States cannot suspend legislation or policies that give people access to food (e.g., social welfare legislation, nutrition-related programs), unless fully justified. States should ensure public institutions, including State-run enterprises or the military, do not undermine people’s access to food by, for example, contaminating or destroying farmland or through forced evictions. States should also regularly review their national policies and programs related to food to ensure that they effectively respect the equal right of everyone to food.

The obligation to protect the right to food contains normative ideas (Office of the High Commissioner for Human Rights):

States have to protect individuals’ enjoyment of the right to food against violations by third parties (e.g., other individuals, groups, private enterprises and other entities). For example, States should prevent third parties from destroying sources of food by, for instance, polluting land, water and air with hazardous industrial or agricultural products or destroying the ancestral lands of indigenous peoples to clear the way for mines, dams, highways or industrial agriculture. The obligation to protect also includes ensuring that food put on the market is safe and nutritious. States must therefore establish and enforce food quality and safety standards, and ensure fair and equal market practices. Furthermore, States should take the legislative and other measures needed to protect people, especially children, from advertising and promotions of unhealthy food so as to support the efforts of parents and health professionals to encourage healthier patterns of eating and physical exercise. A State must also take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.

The obligation to fulfil the right to food prescribes (Office of the High Commissioner for Human Rights):

The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to fulfil (facilitate) means the States must be
proactive in strengthening people’s access to and use of resources and means of ensuring their livelihoods, including food security. Typical measures include the implementation of agrarian reform programs or minimum income regulations. When adopting food policies, Governments would also need to balance carefully investment in cash crops for export and support for domestic food crops. Other possible measures could be implementing and improving food and nutrition programs and ensuring that development projects consider nutrition. Facilitating the full realization of the right to food also requires States to inform the population about its human rights and strengthen its ability to participate in development processes and decision-making. Whenever individuals or groups are unable, for reasons beyond their control, to enjoy the right to food by the means at their disposal, States have the obligation to fulfil (provide) it, for example by providing food assistance or ensuring social safety nets for the most deprived and for victims of natural or other disasters.

Conceptually, the right to food and food security are two different concepts. Based on FAO, food security is a condition where “all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.” This concept has not specifically become a juridical concept as in the right to food. However, rationally, the above concept has the meaning that food security is “a precondition for the full enjoyment of the right to food.” Therefore, the connection between the right to food as a part of Human Rights and the food security is further explained as: The right to food is a human right recognized under international law that provides entitilements to individuals to access to adequate food and to the resources that are necessary for the sustainable enjoyment of food security. The right to food places legal obligations on States to overcome hunger and malnutrition and realize food security for all (Office of the High Commissioner for Human Rights).

2. Local Regulation as a Governmental Action to Establish Food Security

The government efforts to establish food security requires governmental actions. Government agents must act deliberately to conform their actions to their obligations under human rights law (Kent, 2005). Generally, administrative acts or governmental actions is “most of the actions of the administrative authorities through which they affect the legal interests of an individual” (Mahendra, 1985). The concept is identical to positive law formulation in the Law of Administrative Procedure of 1976, Germany, which states that “of a particular case in the sphere of public law and directed at immediate external legal consequences administrative act is every order, decision or other sovereign measure taken by an authority for the regulation.”

Theoretically, the concept of administrative act contains a conception as a form of “the legal control of governmental powers” (Mahendra, 1985) that contains a mission statement “to keep the powers of the government within their legal bounds, so as to protect the citizen against their abuse” (Mahendra, 1985). Furthermore, it requires “to keep the powers of the government within their legal bounds, so as to protect the citizen against their abuse” (Mahendra, 1985). This definition is highly relevant, especially when it is connected to the discussion of food security regulation.

The essence of Administrative Act is as the law that regulate governmental action performed by the government in governmental administration, apart from its legislatve and judicial functions (Bagley, 2019). Specifically, this law defines the structural position of administrative agencies within the governmental system, specifies the decisional procedures
those agencies must follow, and determines the availability and scope of review of their actions by the independent judiciary (Stewart, 2003). Describing the scope of Administrative Act, Timothy Endicott (2011) says: “The core of administrative law is the provision of processes independent of the government, for the prevention of government action that can be identified as arbitrary with no breach of comity. That is, the core task of administrative law is to impose the rule of law on public authorities.” More specifically, Endicott emphasizes on the notion of Administrative Act as: “The main point of administrative law is to stand against arbitrary government, by imposing the rule of law on executive action” (Timothy Endicott, 2011). This notion can be used as a starting point in understanding the issue of governmental action in the effort to establish food security, as well as the relevance and urgency to make the regulations. From the understanding that establishing food security is a governmental action, it is clear that the regulation on food security is the regulation on the governmental action. The implication is the regulation on food security carries one specific mission, which is to regulate the action performed by the government on the basis of government authority.

Administrative act has one specific mission to regulate a good and responsible government. The concept of responsible government means “that government action is taken in the interest of the governed (and not for the personal advantage of the officials)” (Timothy Endicott, 2011). In relation to that, Peter Cane (2011) emphasizes the function of administrative act: “the accountability of public administrators for the performance of their functions, the exercise of their powers, and the discharge of their duties. In other words, it is concerned with enforcement of (i.e. ensuring compliance and remedying noncompliance with) the norms that regulate public administration.” Based on his opinion, in its relation to administrative act, the government must be responsible to its governmental actions. Therefore, regulation on the governmental actions performed by the government in general is needed so that the government can be held accountable related to their governmental actions. The regulation is the basis of the governmental actions, and must therefore be performed to be used as the basis to assess what the government has done when performing governmental actions.

Local regulations have a crucial role in the regional government administration in Indonesia, including in the effort to establish food security since Indonesia applies local autonomy principle. Based on the principle, the local government can form local regulations by considering the limitations stated in the law (Nestor, 2017). The limitations are written in Article 14 Law No. 12 Year 2011 that regulates that the contents of the Local Regulations contain the provisions to establish regional autonomy and the tasks of assistance, as well as accommodating the special conditions of the region and/or further elaborations of the higher laws. This limitation is further formulated in Article 236 of Law No. 23 Year 2014, which states that the region can also regulate in the Local Regulations some local contents in accordance to the existing laws and regulation.

Laws and regulations, including the local regulations, have important roles to make norms having clearer legal binding forces, for example: they can be distinguished from other rules such as moralities; there will be a legal institution that will ensure that sanctions will be imposed on violators, etc (Kurnia, 2016). In other words, laws and regulations are needed to provide legal certainty. Legal certainty has a specific definition: “making readers understand what the law commands” (Conard, 1985).

In accordance to the principle of legality, the regulation on food security has a basic function as the foundation of authorization of actions performed by the government. It contains two definitions: first, as a norm of authority (power-coffering rules) and second, as a norm of behavior (how the government should performs or not perform an action). Those definitions are in line with Brian Z. Tamanaha who says that: “government actions must have positive
legal authorization (without which the action is improper); and no government action may contravene a legal prohibition or restriction” (Tamanaha, 2009).

The basis of the authority to act is a main requirement for the government so that they can perform governmental actions. Therefore, legally, the process of gaining authority for the government is an important issue. Related to that, Brouwer and Schilder (1998) say: “To be able to administer, the administration needs to have power. Where is the authority derived from, what are the instruments with which administrative authorities can administer and who exactly do these administrative powers belong to?”

In its function to give foundation to the authority to act, laws and regulations can give two kinds of authority to the government: attribution and delegation. The process of giving the authority through attribution has the definition that: “power is granted to an administrative authority by an independent legislative body. The power is initial (original), which is to say that it is not derived from a previously existing power. The legislative body creates independent and previously non-existent powers and assigns them to an authority” (Brouwer and Schilder, 1998). Meanwhile, the process of giving the authority through delegation has the definition that: “the transfer of an acquired attribution of power from one administrative authority to another, so that the delegatee (the body that has acquired the power) can exercise power in its own name” (Brouwer and Schilder, 1998).

The difference between attribution and delegation as a process related to the transfer of authority to the government are: “an already existing power is being transferred” (Brouwer and Schilder, 1998). Basically, delegation must be done based on the legality principles: “delegation of an original power is only possible under the condition that the legal regulation in which the power rests, provides for the possibility of delegation” (Brouwer and Schilder, 1998).

On the other hand, as the implication of delegation: “If the originally empowered body (the delegator) decides on a transfer, then that body can no longer exercise the power itself; only the delegatee is empowered to exercise it” (Brouwer and Schilder, 1998). In this context, based on the above explanation, laws have an important role as instruments in the process of giving authority to the government (power-conferring rules), in which on the basis of the authority, the government then has the capacity or ability to perform governmental actions.

In its function as rules of conduct, laws and regulations stipulate prescriptions that must be followed by the government in doing or not doing an action. Therefore, the regulation of food security through the Local Regulation is a relevant need related to how governmental actions in establishing food security should be done. When the frame used is regulation, its principle definition is the governmental actions must not be done freely as the government wishes.

### 3. Human Rights Perspective in Regulating Food Security

The most current issue on establishing local regulation related to food security is the using human rights approach. The human rights approach in the regulations means that the provisions of regulation are limited by human rights. It means that the approved and unapproved provisions, as well as the provisions that must be included in the regulation become the implications.

Based on the approach, human rights decide the content to be included in forming the laws (Tamanaha, 2009). Legally speaking, it is regulated in Article 6 Law No. 12 Year 2011, the contents or provisions of the laws must reflect humanity principle, which means that they must reflect protection and respect for human rights, as well as the dignity of every citizen in Indonesia proportionally.
In the regional context, the regulation on food security in the Local Regulations should be based on human rights. It means that those regulations contain a specific mission as the local government’s commitment in implementing its human-right-based obligations, in this case is the right to food. The obligations of the local government in its correlation to human rights are to respect, to protect, and to fulfil. The creation of Local Regulations on food security is interpreted as efforts to implement the government’s obligations.

On the topic of the right to appropriate food, Attachment B, item 20 of the Minister of Law and Human Right Regulation No. 24 Year 2017 on Guidelines on Content Materials of Human Rights in the Creation of Laws and Regulations elaborate the main materials to be included in the regional regulations that are relevant to the human-right approach. They are:

a. Ensuring the accessibility and availability of decent and nutritious staple food for all the people in the region.
b. Monitoring the availability of staple food and nutrition in the region.
c. Creating strategy and coordinating the fulfilment of materials from the productions to distributions and ensuring that private sectors and communities’ efforts are in accordance to the fulfilment of the right to food.
d. Establishing institutions that manage or handle food, nutrition, and food eligibility.
e. Directly providing food and ensuring the availability of food for the victims of emergency events: conflict, natural disasters, etc.

Next, the limitations of the regulations include: (i) prohibition of food embargo for political and economic purposes, (ii) prohibition of restriction of food due to discriminative reasons, and (iii) the provision of food aid to other country must not be detrimental to local market and producers. Moreover, it should also be accepted by and in accordance to the culture of the local people.

C. Conclusion

From the above explanations, it can be concluded that first, food is included in the human rights, so that the nation, through its government, is obliged to strive for its realization through respecting and fulfilment to the right to food. Second, governmental actions in establishing food security must be based on its authority, which comes from laws, as a manifestation of the legality principle. Based on the legality principle, the regulations on food security serves as the legal basis for governmental actions. It has two meanings, as power conferring rules and as rules of conduct (on how the government should act or should not act). Third, the governmental actions in the form of regulating food security in the Local Regulations should be based on human rights. It means that there is a specific mission as the government’s commitment to implement its obligation related to human rights, in this case is the right to food, which are to respect, to protect and to fulfil.

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