



The Existence of Food Regional-Owned Enterprises (BUMD Pangan) in the Pancasila Legal State

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Abstract—The issue of food at the state level is very important as a variable that determines the life and death of the state. It is urgent as a priority for the government at the central level to local governments in forming a comprehensive configuration and system to create continual food security. Article 28I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia contains keywords that the state, especially the government, is compulsory to fulfill human rights in terms of the right to food. The purpose of this study is to determine how the government should behave in forming policies and realizing the existence of BUMD Pangan with juridical-normative research methods. The results of the study indicate that there are unsynchronized and inconsistent regulatory provisions related to food funding and institutions in the regions, so that amend and synchronization of statutory regulations governing affairs related to food security are needed to be consistent by internalizing local wisdom values and Pancasila values as the main morality in shaping policies and laws that will apply. The existence of BUMD Pangan becomes very urgent to be formed to overcome food problems in each region by capturing substantive discourse betwixt local governments with local communities and farmers in order to shorten the food supply chain, create reasonable food prices that are affordable, realize food security, and realize the welfare of local communities.

Keywords—Food Security; Pancasila Legal State; BUMD Pangan.

I. INTRODUCTION

Food matters at the state level become very important as a variable that determines the life and death of the state, for instance when the United States imposed a food embargo on the Soviet Union which resulted in the dissolution of the Soviet Union, while the Cuban state was able to maintain its existence because it was able to provide hygienic food supplies to its citizens without depending on food imports.[1] Even the United States uses food as a weapon of control, manipulation and one of the main tools of negotiation as written by Mark Wilson in his article entitled “Food as A Weapon” that food became an extra force used by the United States during conflicts and ideological competition in Eastern Europe, especially to control the influence of Communists and the Bolshevik rebellion after World War One and in China during World War Two.[2] Likewise, an article written by George McGovern revealed some important things related to food by stating that food is a weapon that must be used and for liberal economic interests. United States Secretary of Agriculture Earl Butz showed little respect for developing countries which he likened to children hungry for candy. Likewise, distribution and food are far more important than political and military considerations because food is the essence of life.[3]

This shows that in food issues there is economic determination to gain significant economic benefits, as well as propaganda by the United States to dominate, control, and influence regions and countries that do not have food security.[4] Therefore, food matters are very important as a priority for governments at the central level to local governments in forming a comprehensive configuration and system to create continual food security. Apart

from being a trade commodity that has added value, food is also a basic and fundamental need that can affect the life and death of humans as citizens and the existence of the state itself.[5]

Indonesia is an agricultural country as it is in the tropics with fertile soil due to its perfect rock weathering process and makes most or 40% of the livelihoods of utmost of its inhabitants work in the agricultural sector.[6] The wealth of natural reservoir is then one of the main capitals for the implementation of national development which is derived in the form of optimizing the superintending of natural reservoir in a continual manner, economic growth targets (economic growth development), with the hope of increasing revenue and foreign exchange (state revenue).[7] Which in turn can enlarge the affluence and welfare of the people and gain added value and competitiveness.[8]

With such conditions, the government is still importing in 2023 as much as 429,207.3 tons.[9] And in 2024 the government targets a total of 4.1 million tons of rice imports on the grounds of a shortage of rice supply in the Government Food Reserve (CPP) whereabouts then accustomed to intercede in market fees so that the fee of rice in the fraternity can be controlled with the assumption that if the stockpile of rice enlarge or is copious, the fee will diminish. The government has also committed to restraint rice fees by disseminated the Highest Retail Fee (HET) through the Regulation of the National Food Agency of the Republic of Indonesia No. 7 of 2023 on the Highest Retail Fee of Rice. However, what happens factually is that the average cost of rice in all provinces in Indonesia is uncontrollable and above the Highest Retail Fee (HET) set by the government.

In November 2023, the average fee of medium quality rice, at IDR 13,600/kg, enlarged by 0.4% monthly (Month on Month), and on an annual basis (Year on Year) enlarged by 24.8%. Meanwhile, the fee of premium quality rice became the most expensive record in the last five years, marked by an enlarge in the average fee of premium quality rice by 0.4% (Month on Month) to reach IDR15,117/kg, and an enlarge of 18.1% on an annual basis (Year on Year).[10]

Food problems do not stop with food fees, but also with unequal food distribution, shrinking paddy fields, food insecurity, hunger, lack of farmer welfare, and the effect of food on the poverty line. Data from Indonesia's Central Bureau of Statistics shows that in March 2023, the Food Poverty Line (GKM) to the Poverty Line (GK) in March 2023 was 73.00% in urban areas and 76.08% in rural areas, where rice was the food commodity that made the largest contribution to the poverty line, namely in urban areas 19.35% and in rural areas 23.73%.[11] Even data from the Global Hunger Index, in 2023 Indonesia is in position 77 out of 127 countries prone to hunger with an index score of 17.6.[12] This ranking is down from the previous position in 2020 at 70 with an index score of 19.1.[13]

The condition of Indonesia, which has a population of 275.8 million people, mostly makes rice their staple food with the average national rice consumption needs reaching 28.69 million tons / year and increasing by 2021 reaching 1.451 kg / capita per week. This large food demand requires a large area of paddy fields as a medium for producing and maintaining food needs, in this case rice. The current area of paddy fields in Indonesia is 7,463,948 hectares which produces 32,074,045 tons of rice.[9] However, the shrinkage of paddy fields is also a serious obstacle to meeting rice needs, reaching 96,512 hectares/year and it is estimated that by 2045 only 5.1 million hectares of paddy fields will remain.[14]

On October 21 to November 1, 2023, there was a famine case that ensued in the demise of 23 people in Amuma District, Yahukimo, Mountainous Papua Province, where 12,000 people were also potentially affected.[15] There was also a case in NTT, where a man tried to commit suicide because he could not afford to buy rice to meet his family's food needs.[16] Data obtained from The State of Food Security and Nutrition in the World reports the alarming food problems in Indonesia in the Rifeness table and the Number table as follows:[17]

1	Rifeness of undernutrition in the total population	5.9% (2020-2022)
2	Rifeness of severe food insecurity in the total population	<0.5% (2020-2022)
3	Rifeness of moderate or severe food insecurity in the total population	4.9% (2020-2022)
4	Rifeness of wasting in children (<5 years)	10.2% (2022)
5	Rifeness of stunting in children (<5 years)	31.0% (2022)
6	Number of undernourished people	16.2 million (2020-2022)
7	Number of women (15-49 years) affected by anemia	22.3 million (2019)
8	Number of people experiencing moderate or severe food insecurity	13.4 million (2020-2022)

9	Number of children (<5 years) affected by wasting	2.4 Million Population (2022)
10	Number of children (<5 years) affected by stunting	6.9 Million Population (2022)

Table.1. Food Problems in Indonesia

These data reveal an abysmal and disconcerting visualization of nourishment nuisance in Indonesia, embarking on the issuance of regulations, the establishment of policies, the control of staple nourishment costs, and the issue of diminishing rice fields. There are symptom that the government is pointless in addressing nourishment issues and fulfilling the right to nourishment. The preamble of Law 18/2012 on Food states that nourishment is the paramount primary human need and must be fulfilled from the national, regional to individual levels perpetually. A nourishment security system is needed in terms of production, apportionment, price and marketing with the expectation that staple nourishments are available, farmers' welfare is ameliorated, and staple nourishment costs are stable.

The government should be aware of previous events when the United States made food a weapon of control, manipulation and the main tool of negotiations in controlling areas that do not have food security and the country of Cuba can maintain its existence because it is able to provide hygienic food supplies to its citizens without depending on food imports as an anticipation and effort to maintain the existence of the Republic of Indonesia by realising food security, overcoming food insecurity, malnutrition and stunting. The state, in this case the government, must seriously realise national food security under any conditions such as peaceful conditions, natural disasters, even in the worst conditions such as war. This is essentially to maintain the existence of the Republic of Indonesia and its citizens as an inseparable unit. Derive from the circumstance of the problem, how should the government behave in forming policies and realizing the existence of BUMD Pangan to realize food security?

II.LITERATURE REVIEW

A. *Pancasila Morality and its Correlation in Law Formation*

The philosophy of Pancasila is the result of a long process of thinking of the Indonesian people, which grew and developed along with the development of the Indonesian people in the process of facing the dynamics and all problems of life which then gained valuable experience to achieve a better future life. The experience contains values and concepts that are extracted into a view of life that is consistently implemented in facing the dynamics and all problems. Pancasila is a formulation of basic values that become the deepest essence of the establishment of the Republic of Indonesia as the first step taken by the founding fathers of the Indonesian nation which is then formulated in the Preamble of the Constitution of the Republic of Indonesia. These basic values then develop into basic norms which then become moral norms, legal norms and development norms that are used as guidelines in living in society, nation, and state. The next step that must be achieved is to strive for the agreed values to be applied in making policies and forming laws that affect daily life in an obedient manner. Therefore, Pancasila must be a solid foundation of thought and needs to be developed philosophically, so that it has a stronger accountability.[18] That is the obligation for state administrators to internalize the values and concepts that develop in society systematically so that a structured, integrated, and systematic idea is formed in making a policy and forming laws as applicable law.

Pancasila contains the basic value of consensus which is upheld in deliberation as a form of application of popular sovereignty or democracy. The foundations of democratic thought are first, humans are treated and placed in accordance with their dignity as creatures of God in terms of the community being given the right to express their wishes, aspirations, hopes and opinions. Second, human rights in freedom to pursue truth, justice, and happiness. Third, something that is decided together will have a level of accuracy and truth that guarantees more because the resulting decision will have consequences for him, so each of them tries to produce the best decision.[18]

Based on that statement, it correlates with Lon Luvois Fuller's idea of law that there is an absolute correspondence betwixt law and morality that cannot be divided and law as a human attribute stands on 8 principles, namely, 1. Comprehensiveness; 2. Dissemination; 3. Non-retroactive; 4. Lucidity; 5. Equivalent; 6. Likelihood of fulfilment; 7. Fidelity; 8. Unanimity betwixt disseminated edict and authorized deed. If these 8 principles are not met, then the law itself is reduced in quality, or bad law, and can even be said to be no law at all.[19]

B. *Method of Accommodating Pancasila Morality and Local Wisdom in Legal Products*

Then, in the process of forming law and morality, it is necessary to democratize the prosuderalist model of democratic procedures as the idea of Deliberative Democracy by Jurgen Habermas which states that the accommodation of the soul, culture and democratic ideology that internalizes the organization of units of government institutions and communities as the substance of democracy. Efforts to reach consensus, dialogue,

and accommodation of community aspirations, according to Jurgen Habermas, are also important emphases in democratic life. Deliberative democracy emphasizes how substantive legal procedures are formed. The dynamics of life betwixt the community and various interested parties (stakeholders) give rise to discourse which in turn legitimizes the deliberative democracy model. The indicators are as follows: *First*, dialogue that occurs betwixt formal or informal discourse in the community with the mechanism used as the basis for the formation of a law. *Second*, there is a communicative space through a public communication network that provides opportunities for interested parties which can then be accommodated in the form of rules.

Jurgen Habermas argues that what is presented in the concept of deliberation is the legitimacy of a decision or consensus obtained through discourse and testing, where all issues are discussed together by the community, especially those directly affected by the issue without pressure and in an equal position. The hope of the concept is that the process of forming laws and policies is carried out by accommodating and intensifying opinions, aspirations, and citizen participation in the form of public discourse as a real form of democracy. As Reiner Forst comments on Jurgen Habermas that deliberation here is not necessarily the general or individual will in obtaining legitimacy, but the openness of revision and criticism in the process of forming policies and political decisions in an argumentative discourse (legal and political proceduralism).[20]

In the 1945 Constitution of the Republic of Indonesia, the definition of Indonesia as a democracy is not found explicitly, but implicitly it can be seen in the Preamble of the fourth paragraph which states "...formed in an arrangement of the Republic of Indonesia which has the sovereignty of the people...", Article 1 Paragraph 2 states "Sovereignty is in the hands of the people and shall be exercised according to the Constitution", and Article 28 states "Entitlement of association and assemblage, manifestation of conceptualization verbally and in record and in such wise shall be determined by law".

The constitutional foundation related to the utilization of natural reservoir is in line with the mandate of Article 33 paragraph (3) UUD NRI 1945. The phrase "controlled by the state" is not just to take the results, but mainly in the form of ability as a means of control to regulate every person or institution that utilizes natural reservoir in order to adhere to the principles of benefit and sustainability, integration, togetherness, openness, and justice and for the greatest affluence of the people in accordance with the ideals of the rule of law.

III.METHOD

The research method used is juridical-normative scrutiny by scrutinizing library's subject matters or ancillary files. Literature materials or secondary data used by the author in this research are books, data, journals, or research results related to this research, as well as an inventory of positive laws regarding food security. The material is then analyzed and looked for logical relationships from related aspects.

IV.RESULT AND DISCUSSION

A. *Legitimate Cornerstone for the Inception of BUMD Pangan*

Actually, in the Preamble and the Body of the 1945 Constitution of the Republic of Indonesia, there are no explicit phrases on the guarantee of the right to food. However, there are sentences that implicitly state the right to food in the Preamble, Article 28C Paragraph (1), Article 28H Paragraph (1), and Article 28I Paragraph (4). Further accommodation related to the right to food can be traced when Indonesia joined the United Nations (UN), by implementing the Universal Declaration on Human Rights (UDHR). Then, on September 23, 1999, the government issued Law No. 39/1999. The Law was enacted in accordance with the TAP MPR No. XVII/MPR/1998 on Human Rights.

Further accommodation of the right to food can be traced when Indonesia joined the United Nations (UN), by implementing the Universal Declaration on Human Rights (UDHR). Then, on September 23, 1999, the government issued Law No. 39/1999 on Human Rights (Human Rights Law). The Law was enacted based on the TAP MPR No. XVII/MPR/1998. Furthermore, the Government of Indonesia ratified the International Covenant on Economic, Social and Cultural Rights on October 28, 2005, by issuing Law Number 11 of 2005. The right to food consists of availability, access, and eligibility. The state is compulsory to respect, protect, fulfill the right to adequate food, facilitate it. Even when the state fails to guarantee the right to food and freedom from hunger, it can be considered a violation of the covenant. Article 28I Paragraph (4) of the 1945 Constitution clearly states that the state, especially the Government of Indonesia, is compulsory to fulfill human rights, in this case the right to food.

Then, on March 20, 2006, came Law No. 4/2006, on November 15, 2006, came Law No. 16/2006, On October 14, 2009, came Law No. 41/2009, and on November 17, 2012, came Law No. 18/2012 on Food (Food Law). Law No. 18/2012 on Food compulsory local governments to fulfill food availability in Article 12, empower farmers in Article 17, meet food needs in Article 18, expedite the use and burgeoning of amenities and framework in an attempt to enlarge food production in Article 20, and develop community food institutions to enlarge food production in Article 21. However, in Chapter XII on food institutions, there is no provision to establish food

institutions at the local level under the local government, even the affairs of implementing the production, procurement, storage, and distribution of staple food are withdrawn to the central government.

This shows that there are unsynchronised food-related laws and regulations that have an impact on the difficulty of realising BUMD Pangan because in principle, state administrators in implementing and not implementing a policy or regulation must be based on the hierarchical system of laws and regulations. While local governments are obliged by the Food Law to meet food needs, empower farmers, and develop community food institutions, the next article related to food institutions actually cancels the obligation itself and also related to funding in principle money follows priority programmes. This is very contradictory and clearly creates an ambiguity that is difficult to understand and difficult to implement by local governments and local communities, especially farmers as the main pillar in agriculture, who should be the main part in the design of the regulation of Food BUMD.

Considering the fourth point of Pancasila as the standard of morality of state life and the constitution as the basis of all laws in Indonesia, the government must pay serious attention to this matter that the formation of a regulation must be synchronised and not contradictory as this interpretation of Lon Fuller's theory, the quality of regulations in the food sector is poor enough to be considered as applicable law. It is necessary to revise it immediately because food problems must be addressed and realised as the state's responsibility towards citizens in fulfilling the right to food in all conditions that will be faced in the future including conditions of peace, war, health crises, natural disasters and so on.

B. Rationale and Attitude of the Government in Realizing the Existence of BUMD Food for the Realization of Food Security.

The presence and role of central and regional governments become very important in order to realize national food security and overcome all its problems with the establishment of food BUMD, and the configuration of fiscal decentralization between central and regional governments as mandated by the Constitution Article 18A Paragraph (2). This is further embodied in Law Number 28 of 2022 concerning the State Budget (APBN) for Fiscal Year 2023 and Law Number 19 of 2023 concerning the APBN for Fiscal Year 2024 which contains that agriculture is a priority in the APBN Special Allocation Fund (DAK).

However, in Law No. 1 of 2022 are no specific arrangements regarding financial relations for the benefit of food security, even though Law No. 23/2014 regulates the general principles of financial relations between the central governments and regional governments as Article 279 and Article 280.

Furthermore, the role of provincial governments and city/regency governments related to food security in Law No. 23/2014 is also very minimal, so that food security affairs look very centralized without any mechanism to explore and pay attention to food issues at the regional level. This indicates that the regulations on food, food institutions, funding of food priority programs from the level of laws to regional regulations are not synchronized, inconsistent, contradictory and the formulation of provisions is difficult to understand by the public, which makes the law not meet the parameters of good law.

Therefore, in determining and establishing policies related to national food security, they should not only be formulated at the central level, but there must also be roles and efforts at the level of staple food producing regions by involving local governments and communities, and farmers in the regions who can then capture public communication and conduct intensive and substantive discourse. This is done in order to explore all problems at the lower level (local governments and communities) with a bottom-up approach so that food security can be realized by bringing and internalizing the values of local wisdom that have different characteristics in each region substantively while still making the value of Pancasila the main morality which then the central government can respond to intensify national food security and the interests of citizens which in turn can improve and improve the quality of regulatory provisions related to food in terms of funding, regional food institutions (BUMD Pangan), production and distribution. It is hoped that this can also influence the improvement of the economy at the regional level, which in turn can realize food security and the welfare of regional communities.

This is very important as a legal procedural effort in forming a regulation that can represent, accommodate, and intensify opinions, aspirations, and substantive participation in the form of public discourse as a real form of democracy. It cannot be denied that the current legislation in the food sector indicates the existence of pseudo-participants who are not really in favour of local communities. It can be said that legal procedures are the heart of the law and funding of food institutions in the regions (BUMD Pangan) is the blood to be able to drive all the plans and programmes of BUMD Pangan in each staple food-producing region.

In the current era of free markets and globalisation, a modern paradigm has emerged that developed countries are industrial countries so that if Indonesia wants to become a developed country, then Indonesia seems to have to change from an agrarian country to an industrial country with the main footing of economic growth. The logical consequence of this paradigm is that farmers will be displaced and lose their land. More and more land speculators will emerge, land control will be monopolised by one or a group of people, and various other control patterns that are far from democratic values and further exacerbate the shrinkage of paddy fields as one of the main media for realising food security.

Legislation in the food sector should be a legal instrument that is truly able to support each other and strengthen programmes to realise food security with a bottom-up approach to the formation of BUMD Pangan arrangements, instead of cancelling and weakening each other so that there are no legal loopholes and no legal vacuum in it. The hope is that a comprehensive configuration and system for creating sustainable food security can be realised that is good and strong because it is supported by good and strong legal instruments as well. By doing so, it will automatically create strong, well-established, and independent food enterprises institutions.

The constitutional mandate as a crystallisation of the Pancasila philosophy has essentially provided a fundamental basis for the state to play a role and initiate the realisation of national food security with a bottom-up approach. However, the state is the main institution carrying out regulatory and enforcement functions. This goes back to how far the state, in this case the government, has internalised the philosophy of Pancasila as national morality, which in turn plays a strong role in regulation to realise national food security and establish food enterprises. In addition, it is hoped that it can shorten the food supply chain in the community, create reasonable food prices that are affordable and can also affect the improvement of the economy at the regional level which can further realise food security and the welfare of the regional community.

V. CONCLUSION

It is incumbent to amend and synchronize the statutory regulations governing affairs related to food security to be consistent, especially related to funding and food institutions at the regional level by internalizing local wisdom values and Pancasila values as the main morality in shaping policies and laws that will apply. The existence of BUMD Pangan is urgent to be formed to overcome food problems in each region by capturing substantive discourse between local governments with local communities and farmers in order to shorten the food supply chain, create reasonable food prices that are affordable, realize food security, and realize the welfare of local communities.

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