

Equitable Access to Food as a Form of Social Justice: An Evaluation of Regional Food Policies in Improving People's Welfare

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Abstract— Food is a basic human need whose fulfillment is guaranteed by the constitution as part of human rights as well as a form of social justice as enshrined in the fifth precept of Pancasila. However, the disparity in food access between regions in Indonesia is still an unresolved structural problem, reflected in the high prevalence of insufficient food consumption and stunting in a number of regions, especially in the eastern region of Indonesia. This article aims to evaluate regional food policies as an instrument for equitable access to food to realize social justice and people's welfare, as well as formulate a normative solution offer for these regulatory gaps. This study uses a normative juridical method with four approaches, namely the statute approach, the case approach, the comparative approach, and the conceptual/theoretical approach. The results of the study show that the decentralization of food authority after the enactment of Law Number 23 of 2014 concerning Regional Government has not been followed by adequate fiscal and institutional capacity at the regional level, resulting in an overlap of central-regional authority and a weak content of distributive justice in regional food regulations. This article recommends a reformulation of regional food policy oriented to John Rawls' theory of distributive justice and Amartya Sen's entitlement approach, accompanied by strengthening vertical coordination between the central, provincial, and district/city governments through optimizing the role of the National Food Agency.

Keywords— Food Access; Social Justice; Regional Food Policy; People's Welfare; Decentralization.

I. INTRODUCTION

Food occupies a fundamental position in the construction of human rights because its existence is a prerequisite for survival and the fulfillment of other basic rights. The Constitution of the Republic of Indonesia in 1945 expressly places the right to food as part of the right to live a prosperous life in the body and mind as stipulated in Article 28C paragraph (1) juncto Article 28H paragraph (1), which is then affirmed more operationally through Article 27 paragraph (2) concerning the right to a decent livelihood and Article 33 paragraph (2) and paragraph (3) concerning state control over production branches and natural resources that control the livelihood of the people for the greatest prosperity of the people. These constitutional norms are in line with Article 11 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which has been ratified by Indonesia through Law Number 11 of 2005, which recognizes the right of

everyone to a decent standard of living, including adequate food. At the level of national legislation, the constitutional mandate is described in Law Number 18 of 2012 concerning Food which changes the paradigm of food administration from food security to food sovereignty and food self-reliance as a new philosophical foundation in the politics of national food law.

The problem is that the legal ideals (*rechtsidee*) of food justice enshrined in these various normative instruments (*das sollen*) are faced with a much different empirical reality (*das sein*). Data from the Indonesian Nutrition Status Survey (SSGI) of the Ministry of Health shows that the prevalence of stunting among toddlers in Indonesia in 2023 is still at 21.5%, only slightly down from 21.6% in 2022, and this figure has not met the target of the 2020-2024 National Medium-Term Development Plan (RPJMN) of 14%. Even if it drops to 19.8% in 2024 according to the SSGI report, the disparity between regions remains sharp: Central Papua and East Nusa Tenggara provinces record a stunting prevalence above 30%, while Bali is in the range of 8.7%. This condition is exacerbated by the high prevalence of food consumption inadequate (prevalence of undernourishment) which varies sharply between regions, as recorded in the publication of the Central Statistics Agency which shows that a number of districts/cities have a much higher rate of food consumption inadequate than the national average, while other regions actually experience a significant downward trend. This phenomenon confirms that the food problem in Indonesia is not solely a problem of availability in the sense of a national aggregate, but a problem of distribution and accessibility that is structural and regional.

The gap cannot be separated from the political design of the food decentralization law after the enactment of Law Number 23 of 2014 concerning Regional Government, which places food affairs as a mandatory government affair that is not related to basic services but is still mandatory to be organized by the regions. The division of authority normatively provides space for local governments to design food policies that are responsive to local characteristics, but empirically raises new problems in the form of gaps in fiscal, institutional, and human resource capacity between regions in implementing this authority. Areas with low local original income (PAD) and

archipelago or mountainous geographical conditions tend to lag behind in the development of food distribution infrastructure, while areas with high fiscal capacity are able to build regional food reserves and more reliable logistics systems. This structural inequality is what a number of experts call a new form of "territorial injustice" in the implementation of concurrent government affairs.

The urgency of this study is even more evident considering that the establishment of the National Food Agency through Presidential Regulation Number 66 of 2021 as a mandate of Article 129 of the Food Law as amended by the Job Creation Law has not been fully followed by the harmonization of regulations at the regional level, so that many regional regulations on food that were prepared before the establishment of the institution are still oriented to a conventional food security approach and have not adopted a paradigm distributive justice explicitly. On the other hand, the dynamics of the constitutionality of the Job Creation Law after the Constitutional Court Decision Number 91/PUU-XVIII/2020 which declared the law conditionally unconstitutional, and the Constitutional Court Decision Number 54/PUU-XXI/2023 which stated that Law Number 6 of 2023 was in accordance with the 1945 Constitution of the Republic of Indonesia, also added to the complexity of the legal certainty of food norms sourced from the Job Creation regime, including the norms that are the basis for the authority of the Food Agency National.

Based on this description, there is a real gap between the legal ideal of equal access to food as a form of social justice (*das sollen*) and the reality of distribution inequality, institutional capacity, and food welfare achievements between regions (*das sein*). The main obstacles lie in three aspects: first, the overlap of central and regional authorities in food affairs that are concurrent; Second, the weak content of the principle of distributive justice in the preparation of regional regulations on food which tends to be administrative-technocratic without being based on a solid theory of justice; and third, the lack of affirmative action mechanisms for disadvantaged, outermost, and frontier regions in national food policy. As a turning point, this article offers a reformulation of regional food policy that is not solely oriented to the technical aspects of food security, but explicitly makes the Rawlsian theory of distributive justice and the Amartya Sen entitlement approach as a normative framework for policy formulation, accompanied by strengthening the pattern of central-regional authority relations that are collaborative through optimizing the role of the National Food Agency as a vertical coordination node.

Departing from the background description above, the problems in this article are analyzed dialectically through the following three stages. Normatively, the national food law framework has undergone a paradigmatic transformation from food security to food sovereignty and independence, with the authority to administer food decentralized to local governments as a matter of concurrent government. The question is the extent to which the design of the authority has been implemented in real terms in the form of regional policies and regulations that support equitable access to food. The implementation of decentralization of food authority faces structural problems in the form of overlapping central-regional authority, gaps in

fiscal and institutional capacity between regions, weak content of distributive justice in regional regulations, and lack of optimal vertical coordination with the National Food Agency, so that instead of presenting equity, decentralization has the potential to give birth to new inequality of food access between regions. There is a need for a reformulation of regional food policies that place the theory of distributive justice as the philosophical foundation for the preparation of regulations, strengthening fiscal transfer schemes and institutional assistance for disadvantaged regions, harmonizing the authority of the central and regional governments through strengthening the coordinating role of the National Food Agency, and adopting an affirmation mechanism based on regional food vulnerability data (food vulnerability index) in the formulation of regional food policies.

II. METHODS

This article was prepared using the normative legal research method, which is research that examines law as a written norm (law in books) by examining primary, secondary, and tertiary legal materials to find legal principles, legal systematics, synchronization levels, legal comparisons, and legal history to answer the legal issues studied. Legal materials are analyzed prescriptively with descriptive-analytical-evaluative techniques to formulate legal arguments on the problem of equal access to food in regional food policies. This study uses four approaches as commonly used in normative law research, which are as follows. First, the statute approach, which is to examine all laws and regulations relevant to regional food law issues, including the Constitution of the Republic of Indonesia in 1945, Law Number 18 of 2012 concerning Food, Law Number 23 of 2014 concerning Regional Government, Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, Government Regulation Number 17 of 2015 concerning Food Security and Nutrition, as well as Presidential Regulation Number 66 of 2021 concerning the National Food Agency, to identify the level of horizontal and vertical synchronization between norms.

Second, the case approach, which is to examine the decisions of judicial institutions and the practice of implementing food policy in a number of regions as a precedent to build legal arguments, including the Constitutional Court Decisions Number 91/PUU-XVIII/2020 and Number 54/PUU-XXI/2023 related to the constitutionality of the Job Creation Law which is the basis for changes in a number of food norms, as well as food policy practices in several regions with geographical and fiscal characteristics as an internal unit of comparative analysis. Third, a comparative approach, which is to compare food regulation and policy in Indonesia with other countries, especially India through the National Food Security Act 2013 and Brazil through the Fome Zero program (Hunger Free Program), to obtain an institutional design perspective and affirmation mechanism that can be adapted into the context of national law. Fourth, the theoretical approach, namely using the framework of John Rawls's distributive justice theory (justice as fairness theory), Amartya Sen's entitlement and capability approach, and the concept of food sovereignty as an analytical knife to evaluate the content of social justice in regional food

policy. The legal materials that have been collected are then analyzed qualitatively and prescriptively with grammatical, systematic, and teleological interpretation techniques to answer the problems formulated.

III. RESULTS AND DISCUSSION

1. Normative Configuration and Empirical Portrait of Regional Food Policy.

The right to food in the Indonesian legal system is built on a multi-layered constitutional foundation. Article 28A of the 1945 Constitution guarantees the right of everyone to live and maintain his life and livelihood, which doctrinally interpreted includes the right to be free from hunger and malnutrition. This provision is strengthened by Article 34 paragraph (3) which requires the state to provide proper health service facilities and public service facilities, and Article 33 paragraph (4) which emphasizes that the national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. This principle of "equitable efficiency" is the normative bridge between food economic policy and the demands of social justice as aspired to in the fifth precept of Pancasila. At the level of the law, Article 1 number 4 of Law Number 18 of 2012 concerning Food defines food sovereignty as the right of the state and nation to independently determine food policies that guarantee the right to food for the people and that provide the right for the community to determine a food system that is in accordance with the potential of local resources. Article 3 of the a quo law explicitly places "the realization of sovereignty, independence, and food security" and "the realization of community welfare" as the objectives of food administration, while Article 66 stipulates that the implementation of food reserves is carried out in stages ranging from central government food reserves, provincial government food reserves, district/city government food reserves, to village and community food reserves. The multi-tiered construction is normatively a form of mainstreaming the principles of subsidiarity and territorial distributive justice, because each level of government bears a proportional responsibility in ensuring the availability and accessibility of food for its citizens.

Law Number 23 of 2014 concerning Regional Government places food affairs as one of the mandatory government affairs that are not related to basic services, as stipulated in Article 12 paragraph (2) letter a juncto Appendix letter C number 3. This classification carries the juridical consequence that the implementation of food affairs is concurrent, divided between the central government, provincial governments, and district/city governments based on the principles of externality, accountability, and efficiency. The district/city government, for example, is given the authority to provide infrastructure and manage district/city food reserves, the implementation of fresh food safety supervision, and the management and implementation of community food and nutrition counseling in their areas. Meanwhile, strategic authority such as the management of government food reserves at the provincial level and the determination of regional minimum prices for

local food that are not set by the central government are the authority of the province.

The design of concurrent authority is theoretically intended to bring decision-making closer to the community (subsidiarity) while accommodating the very wide diversity of local Indonesian food characteristics. However, as stated by Satjipto Rahardjo, a good law is not just a law that is written systematically, but a law that is able to provide real benefits to the society it regulates (progressive law). In this context, the crucial question is not only whether food authority has been formally decentralized, but whether the decentralization is substantially able to bring equal access to food for all people without exception. Empirical data shows that the decentralization of food authority is not directly proportional to outcome equality. The 2023 Indonesian Health Survey noted that the ten provinces with the highest prevalence of stunting are dominated by the eastern region of Indonesia, with Central Papua in the highest position at 39.4%, followed by East Nusa Tenggara at 37.9%, and Mountainous Papua at 37.3%, far above the provinces with the lowest prevalence such as Bali at 7.2%. The latest SSGI data for 2024 confirms a similar trend: even if the national figure improves to 19.8%, the gap between the provinces with the highest and lowest prevalence remains widening by more than fourfold. This phenomenon confirms the thesis that food problems in Indonesia are distributive, not merely aggregated: the relatively surplus national food availability for a number of strategic commodities does not necessarily guarantee decent food accessibility for every individual in every region.

In line with these findings, data on the prevalence of food inadequate consumption published periodically also shows significant variation between regions, where a number of districts/cities have experienced a sharp decrease in the prevalence of food inadequate consumption in the past year, while other regions have actually increased. This fluctuating and non-uniform pattern shows that the effectiveness of regional food policies is highly dependent on the fiscal, institutional, and political commitment capacity of the respective local governments, not solely on the existence of legal norms at the central level. Research by Maulana Andinata Dalimunthe and colleagues on the communication of extension of the National Food Agency in North Sumatra also confirmed that the effectiveness of food policy is greatly influenced by the intensity of communication and participatory counseling between food institutions and communities at the site level, which in practice varies in quality between regions. Thus, normative configurations that are textually quite progressive (*das sollen*) are faced with unequal and uneven implementation (*das sein*), thus emphasizing the urgency of in-depth evaluation of regional food policies.

2. Juridical and Structural Problems of Regional Food Policy

The first problem identified is the overlapping authority between the central government, provinces, and districts/cities in food administration. The establishment of the National Food Agency through Presidential Regulation Number 66 of 2021 gives broad authority to the institution in the formulation and implementation of policies in the field of availability and

stabilization of food supply and prices, including food price determination and management of government food reserves. This authority has the potential to intersect with the authority of local governments in managing regional food reserves and determining local food price policies as stipulated in the Regional Government Law, so that without clear technical guidelines it can cause disharmony in implementation in the field. The absence of norms that explicitly regulate the mechanism for resolving conflicts of authority between the National Food Agency and regional food security agencies has caused a number of regions to experience regulatory confusion in formulating food policies that are in line with national policies.

This problem is exacerbated by the dynamics of the constitutionality of the Job Creation Law, which is the legal basis for amending Article 129 of the Food Law. The Constitutional Court Decision Number 91/PUU-XVIII/2020 declared Law Number 11 of 2020 concerning Job Creation unconstitutional conditionally and ordered lawmakers to correct it with meaningful public participation, before finally the government issued a Government Regulation in Lieu of Law Number 2 of 2022 which was later stipulated as Law Number 6 of 2023, and declared constitutional through a Court Decision Constitution Number 54/PUU-XXI/2023. The dynamics of the repetitive legislation create legal uncertainty (*rechtsonzekerheid*) for local governments in drafting derivative regional regulations on food, because the reference to the central norm itself has undergone repeated changes in a relatively short period of time.

The second problem is more substantive, namely the weak content of the principle of distributive justice in the formulation of regional regulations on food. Most regional regulations on food are prepared with a technocratic-administrative approach that focuses on aspects of production, logistics distribution, and food safety monitoring, but contain minimal affirmative provisions for food-vulnerable groups such as the extreme poor, people with disabilities, the elderly without economic support, and people in remote, outermost, and disadvantaged (3T) areas. Viewed from the perspective of John Rawls's theory of justice, fair public policy should fulfill two main principles: the equal liberty principle and the difference principle, which states that social and economic inequality can only be justified as long as it provides the greatest benefit to the least advantaged members of society. This principle of difference should be the main guideline in regional food policy design, especially in determining the priorities for food reserve allocation, food subsidies, and non-cash food assistance programs. However, a study of a number of regional regulations on food shows that the content of the principle of difference is generally not explicitly formulated, but is only mentioned normatively without measurable indicators of success or concrete affirmation mechanisms.

From the perspective of Amartya Sen's entitlement approach, hunger and food insecurity are not solely caused by food availability decline, but by the failure of the entitlement system, namely the failure of a person or community group to gain command over food through production, trade, labor, and social transfer. This approach is relevant to read the

phenomenon of the high prevalence of insufficient food consumption in a number of regions of Indonesia even though in aggregate national food production is relatively sufficient. This means that the main problem does not lie on the supply side alone, but on the purchasing power side, market access, distribution infrastructure, and social security that allows vulnerable groups to obtain food properly. Regional food regulations that only focus on increasing production without being accompanied by strengthening the entitlement of the poor have basically not touched the root of the problem of food justice.

The third problem is the inequality of fiscal and institutional capacity between regions in implementing decentralized food authority. Regions with low local incomes and heavy reliance on central transfer funds tend to have budget constraints to build food distribution infrastructure, such as community food barns, regional food reserve warehouses, and cross-island food logistics systems. The geographical condition of the islands and mountains that dominate the eastern region of Indonesia also increases the cost of food distribution (cost of remoteness), so that food prices in the region tend to be much higher than in other regions, while the purchasing power of the people is relatively lower. Institutional inequality is also evident from the variation in the organizational capacity of the regional apparatus that handles food affairs. Some regions have established separate food security offices with adequate human resources, while other regions still combine food affairs with agricultural affairs in one regional apparatus with limited personnel and operational budgets. This institutional gap has direct implications for the quality of food policy planning, supervision, and evaluation at the regional level, as mentioned in various studies on the effectiveness of regional-based food policy counseling and communication. Without affirmative intervention from the central government in the form of strengthening fiscal and institutional capacity proportional to the level of regional food vulnerability, the decentralization of food authority has the potential to perpetuate, or even widen, existing structural gaps.

To strengthen the normative argument above, the case approach is used by comparing the patterns of food policy implementation in regions with different characteristics. In regions with high fiscal capacity and relatively developed logistics infrastructure, regional food policies tend to be able to reduce the prevalence of food consumption inadequate consistently from year to year, as reflected in the downward trend in food consumption inadequate in a number of major cities. On the other hand, in areas with geographical conditions of islands and mountains in the eastern region of Indonesia, regional food policies face structural challenges in the form of high distribution costs, lack of community food barns, and low coverage of food and nutrition counseling, so that the prevalence of stunting and insufficient food consumption tends to stagnate high even though there are regional regulations that formally regulate food security. This pattern emphasizes that the existence of regional legal norms alone is not enough to ensure equitable access to food, as long as it is not supported by equal implementation capacity and a clear orientation of distributive justice in policy formulation.

3. *Reconstruction of Regional Food Policy Based on Social Justice*

The synthesis of the above problems begins with strengthening the theoretical foundation of regional food policy. Rawls's difference principle should be explicitly internalized into local food regulatory norms, for example through a clause that requires local governments to prioritize the allocation of food reserves and food subsidies for regions and community groups with the highest food vulnerability index, rather than just proportional-administrative distribution. This approach is in line with the idea of social justice in the fifth precept of Pancasila which requires a balance between rights and obligations, as well as harmony between individual interests and the interests of the wider community. In addition, Amartya Sen's entitlement and capability approach provides guidelines that regional food policies should not stop at the aspect of increasing production (supply-side policy), but must be accompanied by strengthening demand-side policies in the form of food social security, food-intensive programs, and strengthening market access for small-scale farmers. A capability-oriented regional food policy will place the community not as an object of food assistance alone, but as a subject who is empowered to have the economic ability to access food independently and with dignity.

The comparative approach to food policies of other countries provides valuable insights for the reformulation of regional food policies in Indonesia. India through the National Food Security Act 2013 establishes the right to food as a justiciable right by guaranteeing food subsidies for more than two-thirds of its population through a public distribution system that is integrated down to the village level, accompanied by a grievance redressal mechanism that allows citizens to sue for failure to provide food by local authorities. This kind of justiciability design is not yet explicitly recognized in Indonesia's food law system, which tends to place the right to food as a programmatic norm without a clear remedy for individuals whose rights to food are not fulfilled due to the failure of local policies.

Brazil through the Fome Zero program (Hunger-Free Program) initiated in 2003 offers a model of cross-sectoral integration between food policy, social security (through the Bolsa Familia conditional cash transfer program), and family farm empowerment (agricultura familiar), coordinated through the National Council for Food Security and Nutrition (Conselho Nacional de Segurança Alimentar e Nutricional/CONSEA) as a participatory forum that involve governments and civil society equally in the formulation of food policies. This kind of participatory institutional model is relevant to be replicated in the regional context in Indonesia through the optimization of the Regional Food Security Council so that it does not just become a formal coordinating forum, but actually involves the participation of civil society, including farmer groups and food vulnerable groups, in the formulation of regional food policies.

To overcome the overlap of central-regional authority, it is necessary to strengthen the coordinating function of the National Food Agency as stipulated in Article 3 of Presidential Regulation Number 66 of 2021, especially in formulating technical guidelines that regulate in detail the limits of authority

between the National Food Agency and regional apparatus that handles food. The guidelines ideally contain a mechanism for resolving conflicts of authority, minimum service standards for regional food affairs, and performance indicators for equitable access to food that are measurable and can be accounted for periodically to the Regional House of Representatives and the community. The horizontal and vertical synchronization of food norms also needs to be strengthened through a thorough evaluation of regional regulations on food prepared before the establishment of the National Food Agency, in order to be in line with the paradigm of food sovereignty and independence after the Job Creation Law. This evaluation is important considering the dynamics of the constitutionality of central norms that have changed several times, so that without adequate harmonization, regional regulations risk losing their legal basis or even contradicting higher norms (the principle of *lex superior derogat legi inferiori*).

As an operational instrument of distributive justice, it is recommended to develop and integrate the regional food vulnerability index into the mechanism for allocating special transfer funds in the field of food and government food reserves. The index ideally combines the variables of stunting prevalence, prevalence of food inadequate consumption, extreme poverty rate, geographical accessibility, and regional fiscal capacity, so that the regions with the highest levels of vulnerability obtain a larger affirmative allocation than regions with better independent capacity. This kind of index-based approach directly operationalizes the Rawlsian principle of difference into fiscal policy, while also addressing entitlement failures as identified by Sen, because allocation is focused on strengthening access and purchasing power of vulnerable people, rather than simply increasing aggregate production.

The integration of the food vulnerability index is also in line with Indonesia's commitment to achieving the Sustainable Development Goals (SDGs), especially the Second Goal on Zero Hunger, as stipulated in Presidential Regulation Number 59 of 2017 concerning the Implementation of the Achievement of the Sustainable Development Goals. Thus, the reformulation of regional food policies based on social justice is not only a domestic constitutional demand, but also part of the fulfillment of global commitments that have been ratified by Indonesia in the framework of sustainable development.

IV. CONCLUSION

Based on the dialectical analysis above, three main things can be deduced. First, normatively, the national food law framework has placed the right to food as part of human rights and decentralized the authority of food administration to local governments through the Food Law and the Local Government Law, but this configuration has not been balanced with adequate implementation capacity at the regional level. Second, the implementation of decentralization of food authority faces structural problems in the form of overlapping authority between the National Food Agency and local governments, the weak content of distributive justice in regional regulations on food, as well as inequality of fiscal and institutional capacity between regions, which is empirically reflected in the high disparity in the prevalence of stunting and insufficient food

consumption between regions, especially between the western and eastern regions Indonesia. Third, the normative solutions offered are the reformulation of regional food policies that explicitly internalize the Rawlsian principle of distributive justice and the Amartya Sen entitlement-capability approach, accompanied by strengthening the coordinating functions of the National Food Agency to eliminate overlapping authority, learning from the justiciability design of food rights in India and Brazil's participatory institutional model, as well as the development of regional food vulnerability indexes as an instrument of affirmation in the allocation of regional budgets and food reserves.

Thus, equitable access to food as a form of social justice can only be realized if regional food policy is no longer treated solely as a technocratic-administrative issue, but is directed consciously and measurably as an instrument of distributive justice that favors the most vulnerable groups of society, in line with the ideals of the welfare state law as enshrined in the Preamble and body of the Constitution of the Republic of Indonesia 1945 and the value of social justice in the fifth precept of Pancasila.

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